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24 June 2013

Dear Sir/Madam,

**Advertising Standards Bureau submission: Inquiry into sexually explicit outdoor advertising**

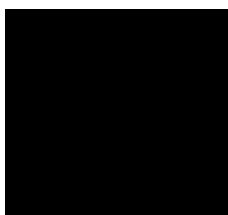
The Advertising Standards Bureau (Bureau) appreciates the opportunity to provide a submission to the Health and Community Services Committee (Committee) Inquiry into sexually explicit outdoor advertising (the Inquiry).

The Bureau administers the complaint resolution component of the advertising self-regulation system, which applies to all media including outdoor. The current advertising self-regulation model is working well to maintain high advertising standards and ensure consumer trust and protection is met for the benefit of all of the community.

Our submission (attached to this letter) addresses the Inquiry terms of reference and then provides an overview of the advertising self-regulation system and the role of the Bureau within that system.

I would be happy to elaborate further on any of the information provided with this submission, if required by the Committee.

Yours faithfully,



Fiona Jolly  
Chief Executive Officer

**Advertising Standards Bureau  
Submission:**

**Queensland Health and Community Services Committee  
Inquiry into sexually explicit outdoor advertising**

**24 June 2013**

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## 1. Executive summary

- The self-regulation system effectively regulates outdoor advertising and it is neither appropriate nor necessary to introduce State legislation to regulate outdoor advertising in Queensland.
- The self-regulation system is effective in minimising the exposure of children to sexually explicit images and slogans in advertising.
- The self-regulation system is industry funded and well supported by all parts of the industry – advertisers, advertising agencies, media buyers, media operators and industry associations.
- The Advertising Standards Bureau (Bureau) is responsible for the administration of the complaint resolution component of the advertising self-regulation system, supporting the work of the Advertising Standards Board (Standards Board), which is the body established to consider complaints about advertising and marketing communications against the provisions set out in the relevant advertising codes.
- High standards of advertising are maintained through the interaction of the various parts of the self-regulation system:
  - through the existence and development of appropriate codes and initiatives relating to advertising standards;
  - the voluntary compliance of advertisers;
  - the efforts of other industry stakeholders in ensuring compliance and supporting enforcement where required; and
  - the operation of the complaint resolution process.
- The complaint resolution process managed by the Bureau is an effective and efficient way to respond to consumers' concerns about advertising.
- The complaint process is transparent and accessible to all consumers, with easy to follow steps and support throughout the process provided by Bureau staff.
- If required, the Bureau is supported in enforcing compliance with Standards Board determinations in relation to third party outdoor advertising by the Outdoor Media Association's commitment on behalf of its members to act on Standards Board decisions.
- The vast majority of advertising and marketing communications in Australia comply with the relevant codes and do 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, the Bureau has a record of nearly 100 per cent compliance by industry with Standards Board determinations – demonstrating the commitment of the vast majority of advertisers to the system and to maintaining high standards of advertising.

## 2. How existing self-regulation maintains standards of outdoor advertising

Regulation of outdoor advertising, including billboard, transport and poster advertising, comes within the advertising self-regulation system.

Self-regulation provides an effective and efficient way for advertisers to engage with consumers and to respond to consumers' concerns about advertising. It ensures consumer protection by providing a free and fast route for consumers to express their views about advertising and to have an impartial body to contact.

### *Industry Support*

The roles of the Bureau and Standards Board (set out in Part 4 of this submission) are only part of the self-regulation system as it relates to outdoor advertising. The system starts with the voluntary actions of advertisers in agreeing to be bound by the Australian Association of National Advertisers (AANA) codes and other relevant codes of advertising conduct. The commitment of advertisers, their agencies, media buyers, media operators and industry associations are all essential to ensure community expectations about advertising standards are being met. The Bureau is active in maintaining close working relationships with those industry stakeholders, providing them with information and education as appropriate, and ensuring they are maintaining their commitment to the system.

The relevant industry association in relation to third party outdoor advertising is the Outdoor Media Association (OMA). The OMA plays a key role in ensuring compliance of its members in relation to third party outdoor advertising sites. They do this by incorporating the AANA codes into the Code of Ethics applying to OMA members and committing OMA members to abide fully by the decisions of the Standards Board and to remove content if a complaint is upheld by the Standards Board.

These preventative measures around self-regulation complement the complaint adjudication process managed by the Bureau, which seeks to capture those instances where members of the community consider an advertisement offensive and lodge a complaint for consideration by the Standards Board.

It is important to note that the vast majority of advertisements do not trigger complaints and in the majority of cases where complaints are received, the Standards Board finds there has been no breach of the codes. We are firmly of the view that the reason for this is that Australian advertisers, for the most part, respect the rules set out in the industry codes.

### *Community Standards – Board composition*

Prevailing community standards are at the heart of all Standards Board decisions and are the reason the Standards Board is made up of members of the community. The overriding objective of the Standards Board is to make decisions relating to the AANA Code of Ethics and other Codes based on what it perceives are prevailing community attitudes. In this way, the Standards Board aims to draw community expectations into its consideration of the rules set out in the codes. This is frequently a difficult task, as views on the types of issues set out in the Codes are in many cases necessarily personal and subjective and often attract a range of differing views in the community.

To address this issue, the Bureau ensures that the membership of the Standards Board is as diverse as possible. The Standards Board comprises members who are from a diverse range of ages, professional backgrounds, geographic locations, 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.

### *Community Standards – Research*

In addition to the diverse community experiences and views that the members bring to the Standards Board, the Bureau conducts research into community standards on a regular basis, to measure whether the Standards Board's decisions 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.

The research conducted in 2007 and 2012 related broadly to the Code of Ethics, while research conducted in 2009 and 2010 related to the specific issues of community perceptions of violence in advertising and community perceptions of sex, sexuality and nudity in advertising. Full reports of the research conducted are available on the Bureau website ([www.adstandards.com.au](http://www.adstandards.com.au)).

The 2007, 2009 and 2010 research indicated that Standards Board decisions generally reflect community standards on the key provisions of the AANA Code of Ethics. The research conducted in 2012 indicated that community views and Standards Board decisions appear to have shifted relative to each other in a couple of areas. While the research found that the community is less conservative than the Standards Board regarding issues relating to health and safety, violence and discrimination, it also found that the community is, in general, more conservative than the Standards Board regarding themes of sex, sexuality and nudity and strong language, particularly with regard to exposure of children to strong language. This is an area where community views appear to have

become more conservative since the research undertaken in 2007.

This research has provided important feedback for the Standards Board, enabling members to assess and where necessary realign their understanding of community attitudes to particular issues covered in the codes. This ability for the Standards Board to quickly respond and adjust their approach to the codes in response to changing community views is one of the advantages of the self-regulatory system over blunt legislative measures.

Standards Board members take the results of such research into account in their consideration of complaints under the codes. Cases over the past few years relating to billboard and outdoor advertising provide good examples of situations where the Standards Board has taken into account feedback contained in the research commissioned by the Bureau, as well as feedback in the media and previous government inquiries.

A recent example is a case involving complaints about a poster used in an in-store promotion, which featured the acronym “OMFG” (case reference 0184/13). The 2012 research suggested the community would take a stronger view than the Standards Board had in the past in regard to the use of terms such as “WTF”, “bullshit” and an incompletely beeped out “fuck”, as being in breach of the codes. In case 0184/13, the Standards Board upheld the complaint(s) about the use of the term “OMFG”, noting that “the position of the posters in store windows meant that the advertisement would easily be viewed by a large audience that would likely include children”. Further, although the Standards Board noted that the term is used in a manner consistent with its colloquial usage and not in a threatening or hostile way, “because the term is so well known, the [Standards] Board considered it is not subtle and that it is a clear reference to the term ‘Oh my Fucking God’” and that “most people would find these words when associated together as offensive and strong and certainly not appropriate in a prominent public location”.

Another example is case 0288/12, which related to a billboard advertisement featuring an image of a hand with the middle finger extended. While the advertiser expressed the view that the gesture has gained increased acceptance in recent times, the Standards Board accepted the complainant’s view that the image is “a universally recognised gesture meaning ‘fuck you’ or ‘fuck off’”. The case report notes that:

“The Board discussed the findings of recent research conducted by the [Bureau] around testing of [Standards] Board decisions against broader community views and noted that the research indicated that the community is very concerned about matters around language, particularly where children may hear or view that language. The [Standards] Board noted that the advertisement was displayed on a billboard that could be easily viewed by children and that the gesture could easily be mimicked by children. The [Standards] Board considered that the depiction of the extended middle finger was inappropriate, particularly on a billboard that is able to be seen by a broad section of the community including children.”

Standards Board determinations relating to billboard and outdoor advertising have also in the last few years made clear reference to the broad nature of the audience for billboard and outdoor

advertising and the fact that more rigorous standards therefore need to be applied to such advertising.

For example, a billboard advertisement for the Queensland Theatre Company (case 0289/12) that raised issues about the sexualisation of children was upheld by the Standards Board in July 2012. In this case, the Standards Board noted that it had previously considered the same advertisement in an earlier case and that in this case the media format had changed and “the advertisement is displayed on a billboard which is available to a broad audience which would include children”. Although the advertiser asserted that the image intended to capture the essence of the play *Romeo and Juliet* from its upcoming season, the Standards Board noted that there was no reference to the play and considered that “the image, as viewed by a broad audience, would not be interpreted in the context of a play about young love but as an image of a man embracing an apparently naked young looking woman”. The Standards Board concluded that the image was not appropriate and did not treat sex, sexuality and nudity with sensitivity to the relevant audience, upholding the complaint(s).

## **2.1 Types of outdoor media and rate of complaints about outdoor advertising**

The Bureau accepts complaints about a range of different types of outdoor advertising, including billboards, transport advertisements (featured on buses, taxis, trams and other vehicles), posters (including in shopping centres and other public facilities) and on-premises signage in certain circumstances.

The rate of complaints about advertising allocated by the Bureau under the various categories of outdoor advertising has fluctuated since the Bureau was established in 1998. In 2012, the percentage of total complaints relating to forms of outdoor media were:

- Billboard – 4.8% of total complaints
- Transport – 1.49% of total complaints
- Outdoor – 1.38% of total complaints
- Poster – 1.88% of total complaints

These results can be seen in the table at Attachment A. A noteworthy decrease from 2011 was for billboard complaints, which decreased from 26.4 per cent of total complaints in 2011 to 4.8 per cent in 2012.

Attachment A also includes a table showing the percentage of total *cases* (advertisement) relating to each category of advertisement.

## **2.2 Whether legislative reform is needed or other regulatory frameworks applied to outdoor advertising**

The Bureau strongly believes that the existing self-regulation system is a cost effective and efficient system of regulation for outdoor advertising, providing appropriate protections and safeguards for the community.

We consider that legislative reform for outdoor advertising in Queensland is neither an appropriate nor necessary regulatory intervention.

Applying other regulatory frameworks (namely classification of billboards) has been considered at the federal level, with the House of Representatives Standing Committee on Social Policy and Legal Affairs in its *Inquiry into the regulation of billboard and outdoor advertising* rejecting “the classification system as an inappropriate system for regulating outdoor advertising”. The committee also noted that it “failed to be convinced that a government regulatory or classification model would improve compliance or provide a more effective means of regulating the industry in line with community expectations”.

The current system provides an effective, transparent and robust mechanism for consumers to raise concerns about the content of particular advertisements and provides a robust, independent and fair system for assessing whether or not an advertisement meets the broader community’s standards.

A determination that an advertisement breaches community standards means the prompt removal of the advertisement and prohibits use of the advertisement in the future. The current system effectively meets the objective of protecting consumers and promoting responsible advertising.

Regulatory intervention is not required or justified for the less than 1 per cent of advertisements which have been complained about and failed to comply with the system in more than 14 years of operation. This is particularly the case as the Bureau is already working with government bodies to address the gaps.

The Committee must also carefully consider the financial impact of any proposed regulatory intervention as it relates to advertising in outdoor formats.

The current self-regulation system operates at no cost to government or the community. The system is funded by industry at a relatively small level of 0.035% of advertising expenditure. The complaints management system works in a manner that minimises costs to the sectors of industry who work within the relevant industry codes and imposes appropriate compliance costs on those who breach the codes.

In considering any additional requirements that advertisers must meet or government intervention in the assessment of advertisements, the Committee must:

- consider the impact on advertisers
- consider the costs to government, industry and the Queensland community; and
- justify how any change to the current system will lead to improved outcomes for the Queensland community.

### 3. How self-regulation addresses the sexualisation of children in advertising

The advertising self-regulation system addresses the sexualisation of children in two ways. Firstly, there is the depiction of children in advertisements in sexualised poses. Secondly is the exposure of children to sexualised images, themes or words in advertising.

In regard to the first element, since 2008 complaints about three advertisements have been upheld on the basis of the advertisement including children depicted in sexualized poses, with the latest case being in 2011. Since that time the AANA has strengthened its Practice Note supporting the Code of Ethics, proscribing advertising which may include children in sexualised poses, as follows:

#### *Images of Children and Young People*

- *Particular care must be exercised when using images of children and young people in marcomms.*
- *Advertisers should have regard to the AANA Practice Guide: : Managing Images of Children and Young People*

*Section 2.2 In advertisements where images of children are used, sexual appeal is not acceptable and will always be regarded as exploitative and degrading. Advertisements must not state or imply that children are sexual beings and that ownership or enjoyment of the advertised product will enhance their sexuality. Children must not be portrayed in a manner which treats them as objects of sexual appeal.*

*Section 2.4 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.*

This submission focuses on the issues relating to the exposure of children to sexualized images, themes or words in advertising, which is most relevant to the terms of reference for this Inquiry.

As set out in Part 4 of this submission, advertising standards are maintained through the interaction of the various parts of the self-regulation system. Self-regulation addresses community concerns about the sexualisation of children in advertising through:

- the operation of key provisions in the codes relating specifically to the issue of sexualisation of children and the treatment of sex, sexuality and nudity more generally;
- the voluntary commitment of advertisers to comply with these provisions along with other provisions of the codes;
- the efforts of other industry stakeholders in ensuring compliance and supporting enforcement when required; and
- the operation of the complaint resolution process through which the Standards Board considers complaints raising concerns about the sexualisation of children.

The relevant provisions of the codes addressing the sexualisation of children and the Standards Board's consideration of those provisions are discussed in further detail below.

### 3.1 Code provisions relevant to children's exposure to sexualised images, themes or words

The protection of children from exposure to sexualised images, themes or words is regulated through the operation of Section 2.4 of the Code of Ethics and Section 2.4 of the Children's Code.

Section 2.4 of the Code of Ethics provides:

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

Section 2.4 of the Code of Ethics contains a "relevant audience" test that provides the Standards Board with the flexibility to consider the different audiences that may, for instance, exist for different media, different locations and different time zones.

The AANA 2012 Code of Ethics Practice Note explains that the relevant audience is determined by examining the media plan (formal or informal). It also 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 the broad nature of the audience for advertisements in public places. The Board will not just have regard to whom the advertisement is targeted (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."

Section 2.4 of the Children's Code provides:

*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.*

In this context, "Advertising or Marketing Communications to Children" is defined to mean:

*Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for [goods, services and/or facilities which are targeted toward and have principal appeal to Children].*

"Children" is defined to mean children 14 years old or younger.

Section 2.4 of the Children's Code was inserted as part of a review of the Children's Code by the AANA in early 2008 to specifically address community concerns about the sexualisation of children.

Paragraph (a) of Section 2.4 of the Children's Code prohibits the inclusion of sexual imagery in advertising directed primarily towards children and paragraph (b) prohibits advertising from suggesting children are sexual beings or linking products to enhancement of their sexuality.

### 3.2 Standards Board consideration of complaints about children's exposure to sexualised images

Under Section 2.4 of the Code of Ethics the Standards Board takes into consideration the "relevant audience" of the advertisement in determining whether the advertisement treats sex, sexuality and nudity with sensitivity.

The Standards Board recognises the broad nature of the audience for billboard and outdoor advertising and takes this into consideration in ensuring rigorous standards are applied to such advertising. In this regard, the Standards Board has taken into account feedback from past government inquiries as well as research commissioned by the Bureau in relation to community perceptions of sex, sexuality and nudity (see next section) in ensuring it is continuing to reflect prevailing community standards surrounding these issues.

In 2012, four cases in the outdoor media categories that were considered at meetings of the Standards Board raised issues about the sexualisation of children. One was upheld – this was the Queensland Theatre Company **billboard** advertisement referred to earlier. The Standards Board dismissed the remaining three cases as follows:

- A **billboard** advertisement for ladies underwear (case 0359/12) depicting two women wearing bras and underwear with the word "Besties" was dismissed, with the Standards Board noting that "the advertisement is visible to a broad audience that includes children" and "the poses of the women are playful rather than sexualised" and the Board "considered that most members of the community would find the images used in these advertisements to be not inappropriate for a broad audience" and "that it is reasonable to expect an underwear advertisement to feature imagery of underwear".
- An in-store **poster** advertisement for ladies underwear (0110/12) depicting a life-sized woman wearing a bra and briefs was dismissed, with the Standards Board noting that "the women are posed in a manner clearly intended to show the lingerie and is not overtly sexualised" and that "it is reasonable to expect a lingerie advertisement to feature imagery of lingerie and noted that the advertisements are aimed at women seeking to buy lingerie" and the Standards Board concluded that "the posters are visible to a broad audience that includes children and considered that most members of the community would not find the images used in these advertisements to be inappropriate for a broad audience".
- A **transport** advertisement (case 0513/11) showing a woman putting on lipstick, wearing a bra and long skirt and featuring shoes was dismissed, with the Standards Board considering the model did not look underage and that the "pose of the model is not sexualised" and noting "that the posters are visible to a broad audience that includes children and considered that the advertisement is not inappropriate for a broad audience".

### **3.3 Research undertaken to support Standards Board determinations on complaints about the sexualisation of children**

The Standards Board takes its responsibility regarding issues surrounding the sexualisation of children very seriously. Decisions to dismiss such complaints under the relevant provisions of the Code of Ethics and Children's Code are made only after appropriate and careful consideration.

The wide experience and understanding of Standards Board members in relation to the community means it is well placed to make determinations reflecting the community's attitude and expectations and the overall acceptability of an advertisement having regard to the particular provisions of the codes. Members with specific experience relevant to a particular issue in the code are able to contribute that experience to the discussion of advertising complaints in Standards Board meetings. The current membership of the Standards Board includes members with experience and knowledge in relation to social and child psychology, gender equality and education. Some other members bring to the table their experience as parents, grandparents and involvement in community organisations working with children and young people. This collective experience provides the Standards Board with a solid basis to consider complaints raising issues around the sexualisation of children.

To further enhance the existing knowledge and experience of Standards Board members, the Bureau commissioned research into community perceptions of sex, sexuality and nudity in 2010 (the full report is available from the Bureau website). One of the aims of the research was to explore and report on community perceptions of the portrayal of sex, sexuality and nudity in advertising with a particular focus on sexualisation of children and the medium in which an advertisement appears. The research found that the outcomes of the Standards Board's considerations of the cases forming the basis of the research were generally aligned with the community views but noted that there is a level of community concern around the content of advertising for sex related products. The research provided the Standards Board with valuable feedback and Standards Board members have taken the results of such research into account in their consideration of complaints under the codes. The research is not just intended as a valuable information and training tool for the Standards Board. It is also intended to be useful to advertisers in designing campaigns.

In 2012, community perceptions research was undertaken to assess current community attitudes to the five core provisions of the AANA Code of Ethics. As noted earlier, the research results suggested that the community is in general more conservative than the Standards Board regarding themes of strong language and sex, sexuality and nudity. With regard to language, there was concern over the exposure of children to strong language and it was noted that this is an area where community views appear to have become more conservative since 2007. This important feedback has been provided to the Standards Board and applied by them in subsequent cases as highlighted by the examples referred to earlier.

## 4. The advertising self-regulation system

Australia's system of advertising self-regulation is recognised as world class. The current system was established by the AANA in 1998. It recognises that advertisers share an interest in promoting consumer confidence in and respect for general standards of advertising.

Self-regulation of the advertising industry has been achieved by establishing a set of rules and principles of best practice to which the industry voluntarily agrees to be bound. These rules are expressed in a number of advertising codes and industry initiatives. The rules are based on the belief that advertisements should be legal, decent, honest and truthful, prepared with a sense of social responsibility to the consumer and society as a whole and with due respect to the rules of fair competition. Self-regulation of advertising is not designed to set community standards, but rather to reflect community standards.

The system is funded by advertisers agreeing to a levy being applied to their media expenditures and is well supported by all parts of the industry – advertisers, advertising agencies, media buyers, media operators and industry associations.

High standards of advertising are maintained through the interaction of the various parts of the self-regulation system:

- through the existence and development of appropriate codes and initiatives relating to advertising standards;
- the voluntary compliance of advertisers;
- the efforts of other industry stakeholders in ensuring compliance, supporting industry education and public awareness programs, and supporting enforcement where required; and
- the operation of the complaint resolution process.

The system meets world best practice in self-regulation and operates, at no cost to the consumer, on the principles of accessibility, transparency, responsiveness and robust decision making.

### 4.1 Role of the Bureau

The Bureau administers the complaint resolution component of the advertising self-regulation system. The work of the Bureau is not underpinned by any Government legislation.

The Bureau's purpose is that the community, industry and government have confidence in, and respect the advertising self-regulatory system and are assured that the general standards of advertising are in line with community values.

The Bureau aims to administer a well-respected, effective and independent advertising complaints resolution service that regulates advertising standards in Australia, adjudicating both public and competitor complaints, and to ensure compliance with relevant codes.

Currently, the Bureau administers the following codes of practice relating to advertising and marketing communications in Australia:

- AANA Code of Ethics;
- AANA Code for Advertising and Marketing Communications to Children;
- AANA Food and Beverages Advertising and Marketing Communication Code;
- AANA Environmental Claims in Advertising and Marketing Code;
- Federal Chamber of Automotive Industries (FCAI) Voluntary Code of Practice for Motor Vehicle Advertising;
- Australian Food and Grocery Council Responsible Children's Marketing Initiative of the Australian Food and Beverage Industry; and
- Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children.

These codes apply to all advertising and marketing communications across all media. The Bureau also works with the Alcohol Beverages Advertising Code (ABAC) management scheme, and accepts, and forwards to the ABAC chief adjudicator, all complaints about alcohol advertisements.

The Bureau is secretariat for the Standards Board and the Advertising Claims Board (Claims Board), the bodies appointed to adjudicate public and competitor complaints and to ensure compliance with the relevant codes and industry initiatives. The two boards have separate and distinct roles considering public and competitor complaints about advertising against the advertising codes they administer. Members of the Standards Board are community representatives, independent of the industry and appointed following a publicly advertised application and interview process. Members of the Claims Board are legal practitioners sourced from a register of lawyers experienced in advertising and/or competition and consumer law.

## **4.2 Role of the Bureau Corporate Board**

The Bureau is a limited company headed by a Board of Directors (Corporate Board). Under the Constitution of the Bureau, there must be between three and six directors of the Bureau.

The Corporate Board is responsible for management of the business of the Bureau consistent with the Bureau's objectives and, with the Chief Executive Officer, is also responsible for the corporate governance of the Bureau. The Corporate Board deals with strategic, financial and operational concerns, and works to improve the operation of the Bureau so that it is the foremost complaints resolution body for advertising in Australia.

The Corporate Board has the integrity of the advertising self-regulation system at heart and it insists that the work of the Corporate Board and of the Standards Board be absolutely separate.

## **4.3 Role of the Standards Board**

The Standards Board is the independent body established to determine public complaints about advertising and marketing communications against the principles set out in the relevant codes. The

Standards Board makes determinations on complaints about most forms of advertising in relation to issues including the use of language, the discriminatory portrayal of people, concern for children, portrayals of violence, sex, sexuality and nudity, and health and safety.

The Standards Board comprises 20 members of the community and reflects a diverse knowledge and experience base. The Standards Board is gender balanced and members come from a broad range of age groups and backgrounds. It is independent, dedicated and diverse and as representative of the diversity of Australian society as any such group can be.

Individual Standards Board members do not represent any particular interest group (industry or consumer) and are individually and collectively clearly independent of the industry. On the rare occasion an individual member has a connection with a party concerned in a particular determination, that Standards Board member absents herself or himself from the meeting.

The Standards Board discharges its responsibilities with fairness, impartiality and with a keen sense of prevailing community values in its broadest sense. Its task is often a difficult one and the outcomes of its determinations will not and cannot please everyone.

Membership of the Standards Board is on a fixed term basis. New appointments are staggered to avoid desensitisation and to ensure the Board retains a mix of corporate knowledge and at the same time introducing people with different experiences, views and skills. Profiles of current Standards Board members are available to all on the Bureau website ([www.adstandards.com.au](http://www.adstandards.com.au)).

Standards Board appointments are made following a publicly advertised application and interview process. People sought for appointment to the Standards Board ideally have an interest in, and views on, advertising and have been exposed to a broad range of community activities and interests.

Standards Board Members participate in twice yearly training days to reinforce codes and initiatives and highlight issues impacting on community standards in advertising.

#### **4.4 Role of the Claims Board**

The Claims Board provides a separate competitive complaint resolution service and is designed to determine complaints involving issues of truth, accuracy and legality of advertising on a user pays cost recovery basis.

The Claims Board is a system of alternative dispute resolution aimed at addressing and resolving challenges to advertising that might otherwise lead to expensive and time consuming litigation.

The Claims Board considers complaints which breach Part 1 of the AANA Code of Ethics. This includes complaints about: the legality of an advertisement; misleading or deceptive advertisements; and advertisements that contain misrepresentations likely to harm a business.

Complaints received by the Claims Board are considered by a panel of legal advisors with experience and expertise in advertising and/or trade practices law.

#### **4.5 Role of the Independent Reviewer of Standards Board determinations**

As part of its ongoing commitment to international best practice in delivering the advertising self-regulation system in Australia, the Bureau introduced a review process for Standards Board determinations in April 2008.

The Independent Review process provides the community and advertisers a channel through which they can appeal decisions made by the Standards Board in prescribed circumstances. The review process is available to the advertiser and the person(s) who originally made a complaint.

In line with international best practice, the Independent Reviewer's role is to assess the validity of the process followed by the Standards Board, or to assess any new material provided by parties to the case. The Independent Reviewer does not provide a further merit review of a case. Their role is to recommend whether the Standards Board's original determination should be confirmed or be reviewed. It would be inappropriate to set up one person as a decision maker in place of a 20 member board that makes determinations on the basis of community standards.

There are three grounds for review:

- Where new or additional relevant evidence which could have a significant bearing on the determination becomes available. An explanation of why this information was not submitted previously must be provided;
- Where there was a substantial flaw in the Board's determination (determination clearly in error having regard to the provisions of the codes or initiatives, or clearly made against the weight of evidence); and/or
- Where there was a substantial flaw in the process by which the determination was made.

The Independent Reviewer will first consider whether the application for review sets out a prima facie case for review and will decide to accept or not accept the request. If the request is accepted, the Independent Reviewer will undertake appropriate investigation and will make a recommendation to the Standards Board, stating whether the Standards Board's original determination should be reviewed or confirmed.

During the review process, the original determination (and any subsequent remedial action or withdrawal of the advertisement) will stand. The Bureau publishes the initial determination until the outcome of the review is known at which point the revised determination with Independent Reviewer recommendation is published.

Information about the review process is available on the Bureau website. The advertiser and original complainant(s) are also informed about the process when notified of the complaint determination.

#### **4.6 Principles underpinning the self-regulation complaints system**

##### ***(a) Accessibility of complaint process***

The complaint process is accessible to all members of the public. Complaints may be made via an

online complaint form, by post or facsimile. A single written complaint is sufficient to initiate the complaint process.

The complaint process is a free service and provides fairness for complainants and advertisers. Process steps are clearly set out and available to all on the Bureau website, along with information about how the Standards Board makes its determinations. Members of the public without access to the internet are able to contact the Bureau and request information about the complaint process.

Ensuring consumers know where to complain about advertising is an important issue for the Bureau. In 2006 the Bureau undertook research to gain an understanding of the level of unprompted awareness of the Bureau. Survey participants in 2009, 2010 and 2012 were asked the same question. Spontaneous awareness of the Bureau as a complaints organisation remained high from 2009 through to 2012. Overall, 62% of the general public in the 2012 community perceptions study were aware that they could complain to the Bureau if they had a complaint about paid advertising. This result remained stable since the 2010 sexuality research (63%) and 2009 violence research (67%). The result was also significantly higher than the level of unprompted awareness in the 2006 community awareness research (10%), which drove the development of an awareness raising campaign commencing in 2008 with television, radio and print advertisements. The campaign was extended to outdoor advertising in 2011. The Bureau is supported in its campaign by industry, who have developed the campaign at reduced costs and broadcast the advertisements in relevant media at no charge to the Bureau.

**(b) Transparency of complaint process and decision making**

The Bureau is committed to a high standard of transparency with regard to Standards Board determinations.

Complaints are promptly assessed as to their appropriateness for submission to the Standards Board for determination. The Bureau, as secretariat for the Standards Board, responds to all complainants, informing them of the status of their complaint and keeps complainants and advertisers informed of the progress of complaints throughout the process via written correspondence.

In 2010, the Bureau initiated the development of a series of “Determination Summaries”, aimed at providing a general overview of Standards Board determinations on complaints about particular issues covered by the codes. The Determination Summaries are available from the Bureau website and cover topics including *Discrimination and vilification in advertising*, *Use of sexual appeal in an exploitative and degrading manner* and *Portrayal of gender in advertising*.

The summaries are not “how to” guides and are not intended to operate in the manner of binding legal precedents, but are designed to assist the advertising industry, consumers and the Standards Board itself in understanding how the Standards Board has viewed particular issues covered by the codes that have been the subject of complaints in the past.

All case reports are also made publicly available on the Bureau website promptly after

determination. Case reports contain details about the complaint, a description of the advertisement, the advertiser response and the Standards Board's determination, along with a summary of the reasons for its decision.

**(c) Robust decision making**

The Standards Board has the complex and sometimes difficult task of making determinations in relation to a wide range of issues covered by the various codes and initiatives it administers.

To assist the Standards Board in its deliberations, the Bureau conducts two training days each year in which issues of topical or general importance and determination precedent are discussed. This often includes presentations from other organisations or experts on matters of current interest. For example, at the May 2013 training day the Outdoor Media Association gave a presentation to the Standards Board on *Understanding who sees outdoor advertising and how*. An update was also provided at the training day from ABAC representatives on recent issues in alcohol advertising.

All community standards research which the Bureau regularly undertakes on behalf of the Standards Board is discussed at training days both during the draft stage and subsequently during a formal presentation of the final research report. The Bureau also involves the Standards Board in the development of the Determination Summaries which provide precedent information regarding previous Standards Board determinations on particular issues.

All case reports following Standards Board determinations are published on the Bureau website. Since these documents are available to the entire community, the Bureau ensures that determinations in case reports are articulated clearly, logically and concisely.

The Standards Board is extremely careful to follow appropriate process in making its determinations. The introduction of the Independent Reviewer process in 2008, which allows for a request for review on the basis of a flaw in the determination or a flaw in the process the Standards Board followed, increases the Standards Board's resolve to ensure sound decision making.

**(d) Responsiveness of complaints handling**

The Bureau's complaint handling system is efficient. Ongoing improvements to our case management system have allowed us to maintain prompt turnaround of complaints and to more accurately report on timeliness. In 2012, 75% of cases were completed within 42 calendar days (covering the period from receipt of complaint until resolution and publication of the final case report), with considerably shorter timeframes for advertisements that receive a large number of complaints or that are likely to breach the code.

Since early 2009 the Standards Board has met at least twice per month, which contributes to the timely turnaround of complaints. It is also possible to provide a 24 to 48 hour turn around for cases where it is likely that the advertisement will breach the Code or if there is immediate and significant community concern. In the latter case, however, most advertisers would remove the advertisement

voluntarily – an example of this is a Target advertisement which depicted an act considered by many in the community to be dangerous. Upon receipt of Bureau notification of complaints, Target immediately withdrew the advertisement, prior to the Standards Board determination (in which the complaints were upheld). This self-regulatory action on the part of the advertiser is an example of the self-regulation system working as it should.

Neither the Standards Board nor the Bureau considers the receipt of complaints a problem. Complaints provide a good test of the self-regulatory system and of the alignment of the codes to community opinion. We do not aim for, or expect to experience a situation where the community does not complain about advertising at all. No system of regulation is failsafe and the role of the complaints process is to act as a safeguard to ensure participants continue to comply with the codes, having regard to changing community standards.

**(e) *No cost to the community***

The system is funded by industry – it receives no government funding. Responsible advertisers assist in maintaining the self-regulation system’s viability and support its administration by agreeing to a levy being applied to their advertising spend. The levy is paid to and administered by the Australian Advertising Standards Council (AASC). The AASC holds the industry funds in an account which is drawn down to pay the costs of managing the Standards Board and the self-regulatory system. Financial management of the funds is outsourced to a chartered accounting firm and the Annual Financial Statements of the Bureau and the AASC are audited by independent auditors.

**(f) *Continuous improvement***

The Bureau is committed to continuous improvement, taking into account input from the public and the industry, and having regard to international best practices relating to advertising self-regulation.

Since 2005, the Bureau has undergone substantial remodeling, including a range of initiatives to improve the transparency and accountability of its complaint handling service. These initiatives include the following:

- Complaint processing
  - A new case management system was implemented in 2010 and further enhanced in 2012 resulting in improvements in the efficiency and timeliness of complaint processing.
- Public awareness
  - A major public awareness campaign was conducted in 2008 and continued in 2011.
  - Community standards research has included testing of community awareness about the Bureau and advertising self-regulation.
  - A new website was developed in 2006 and further refined in 2010, with improvements to the presentation of information about the complaint process and role of the Bureau and determination search functionality. Ongoing improvements continue, including the introduction of a blog in 2012 to improve our community engagement.

- Community standards research
  - In 2006, the Bureau commissioned research to determine the level of unprompted awareness of the Bureau
  - World-first research commissioned by the Bureau in 2007 testing the Standards Board's decisions against the views of the community.
  - Research conducted in 2009 on community perceptions of violence in advertising (the full report is available on the Bureau website).
  - In 2009, research was also commissioned into discrimination and vilification in advertising at the request of the Standards Board, to better inform them about issues in this area (the full report is available on the Bureau website).
  - Research in 2010 on community perceptions of sex, sexuality and nudity in advertising (the full report is available on the Bureau website).
  - In 2012, research was again commissioned into community perceptions to assess current community attitudes and seek information about possible shifts in community standards and the Board's alignment with those standards (the full report is available on the Bureau website).
  - Research conducted provides the Standards Board with valuable feedback and Standards Board members have taken the results of such research into account in their consideration of complaints under the codes.
- Maintaining an independent and effective Standards Board
  - Since 2005, a number of changes have been made to the structure and procedural arrangements of the Standards Board, including expansion to a membership of 20 and appointment of new members at staggered intervals to ensure that the Standards Board has a mix of experienced and new members.
  - The frequency of meetings has increased, with the Standards Board now meeting twice a month to consider complaints and also meeting between scheduled meetings, usually by teleconference, if the Bureau considers that a case should be considered as a matter of urgency.
- Introduction of an Independent Review process
  - An Independent Review process was introduced in April 2008 as part of the Bureau's efforts to meet international best practice. The process enables original complainants and advertisers to appeal determinations made by the Standards Board.
  - There are currently two Independent Reviewers, Emeritus Professor Dennis Pearce AO and Ms Victoria Rubensohn AM, appointed in August 2011.
- Introduction of consistently dismissed category
  - A "consistently dismissed" category was introduced in 2010, responding to concerns that Bureau resources were too stretched and to ensure that resources are devoted to the work that is most likely to be upheld. This initiative has resulted in streamlining of this type of complaint.

The Bureau will continue to work with the advertising industry, associated national and international bodies and the community to maintain a healthy system of advertising self-regulation.

**(g) *Keeping up to date with international advertising standards***

The Bureau is a member of the European Advertising Standards Alliance (EASA) which is the key organisation regarding advertising self-regulation issues in Europe and beyond. Bureau Chief Executive Officer, Ms Fiona Jolly, represented the Bureau at the EASA General Council Meeting in Brussels in April.

EASA promotes responsible advertising and high ethical standards in commercial communication and assists members and others via initiatives such as the EASA Advertising Self-Regulatory Charter and Best Practice recommendations. Membership of EASA allows the Bureau to measure its performance and operations against international standards and ensures that we have access to an appropriate best practice model for advertising complaint resolution.

In line with the EASA work and in our role as Deputy Chair of International Council on Advertising Self-Regulation, ASB has worked to promote advertising self-regulation in the Asia/Pacific region. In November 2012, the Bureau played the lead role in organising and conducting a Dialogue on Advertising Standards-Principles and Practice held in Hanoi for APEC economies.

#### **4.7 Upheld rates**

Compared to the total number of advertisements considered by the Board in 2012, the number of advertisements found to breach the codes equated to an upheld rate of 13.7 per cent. This compares to 5 per cent in 2006. This is due to the continuous improvement initiatives referred to above, and in particular the introduction of new and more diverse Standards Board members and a greater awareness within the Standards Board of community standards, particularly around issues relating to sex, sexuality and nudity.

There is no right or wrong number for an upheld rate. There will always be circumstances in which people make valid complaints about an advertisement, but whose complaint is not in line with the broader community. There is a wide range of community views on particular issues and Bureau research shows that the Standards Board is generally in line with community views.

Further discussion of upheld rates for outdoor advertising is above at 2.1.

#### **4.8 Compliance with Standards Board determinations**

The Bureau has a record of nearly 100 per cent compliance by industry with decisions of the Standards Board. The Bureau's ability to achieve compliance across Federal, State and Territory jurisdictions, regardless of the size of the advertiser, is something that legislation and government administration is very unlikely to rival.

#### **4.9 Enforcement of Standards Board determinations**

Regardless of an advertiser's reaction to a Standards Board determination, in the vast majority of cases where Code breaches are found, advertisers quickly ensure that their advertisement is

removed or modified. Very few advertisers require more encouragement to comply. However, if necessary the Bureau has developed a range of enforcement actions to ensure compliance with Standards Board decisions.

Firstly, if a complaint indicates that an advertisement may breach government regulations or has broken the law, the Bureau can refer the case report to an appropriate government agency or industry body that has the authority to withdraw the advertisement. This can be done without a case going to the Standards Board for consideration.

Other actions can include:

- An advertiser's failure to respond will always be included in the final case report which is made public on the Bureau's website. This is generally unwelcome publicity for the advertiser and for most advertisers such publicity is a threat to brand reputation and is to be avoided.
- In a similar fashion, an advertiser's failure to respond can feature in information released to the media which follows the relevant Standards Board meeting, and the Bureau Chief Executive Officer will respond to all media requests with a full account of the particulars of the case, including the timeliness of the advertiser's compliance.
- Should an advertiser fail to respond to the Bureau's request to remove or modify advertising, the Bureau will liaise with industry and media bodies such as FreeTV and the Outdoor Media Association, which will either negotiate with the advertiser directly for the removal of the advertisement or in specific cases, take action to remove the advertisement.
- Under appropriate circumstances, the Bureau will refer an advertiser to a government agency such as: the Commonwealth Department of Communications, Broadband and the Digital Economy; the Australian Communications and Media Authority; the Attorney-General's Department; or to State Police Departments to request that these agencies assist in taking action against the advertiser. In some cases, local councils may also have relevant authority to assist with the removal of an advertisement, although this authority varies greatly between jurisdictions. Although Government agencies can be of assistance should the Bureau be unable to facilitate removal of an advertisement, it is apparent that they do not have relevant powers or funding to achieve enforcement outcomes or, in some cases, are unable to act quickly or on the basis of community concerns.

## 5. Conclusion

The self-regulation system for advertising in Australia is an effective way to ensure high advertising standards across all media.

The combined commitment of advertisers, advertising agencies, media buyers, media operators and industry associations has meant that the vast majority of advertisements do not receive complaints and, of those that do, the majority are found not to be in breach of community standards. It has also contributed to the excellent compliance record of the Bureau in enforcing Standards Board decisions, of nearly 100 per cent compliance.

The Bureau and the Standards Board each recognise the important responsibility they have to the community to ensure advertising content meets prevailing community standards in accordance with the advertising codes.

The complaint adjudication process administered by the Bureau is working well in ensuring consumers have the opportunity to be heard when they consider an advertisement does not meet the standards set out in the codes.

The Standards Board takes its responsibility regarding outdoor advertising very seriously. Decisions to dismiss complaints about outdoor advertising under provisions of the advertising codes are made with the appropriate and careful consideration the Standards Board gives to all cases. The Standards Board recognises the broad nature of the audience for outdoor advertising and, consistent with the nature of a self-regulatory body made up of community representatives, takes into account changing community perceptions towards particular types of media and particular issues covered by the codes.

The Bureau is committed to continuous improvement of the complaint resolution process, as indicated in part 4.6 of this submission and welcomes any relevant feedback that may come out of this Inquiry.

The Bureau recommends that the Committee consider the value of the current processes in ensuring the needs of complainants, advertisers and the general community are effectively balanced and met, having particular regard to:

- the fact that the vast majority of advertisements do not receive any complaints;
- the majority of those complained about are not found to be in breach of community standards; and
- the Bureau's success with ensuring compliance where the Standards Board upholds complaints about an advertisement is nearly 100%.

We are happy to provide the Committee with any additional information it requires and look forward to attending the public hearings for the Inquiry to further expand on the important roles of the Bureau and the Standards Board in the self-regulation system.

## Attachment A

### 2012 Complaint/Case Statistics by Media

	2006	2007	2008	2009	2010	2011	2012
<b>MEDIA ATTRACTING COMPLAINT (%)</b>							
TV	85.81%	75.10%	68.59%	59.83%	62.25%	44.16%	65.47%
Internet	0.25%	1.13%	1.13%	2.58%	7.55%	5.57%	7.84%
Print	3.85%	4.08%	4.73%	1.92%	3.56%	4.86%	4.94%
Billboard ***					9.69%	26.35%	4.80%
Radio	4.10%	2.36%	2.77%	3.12%	1.66%	3.24%	4.09%
Pay TV	0.18%	0.44%	1.46%	5.61%	2.42%	1.95%	2.90%
Internet - Social Media							2.59%
Poster ***					1.99%	7.43%	1.88%
Transport	1.73%	1.62%	3.64%	2.46%	0.76%	3.67%	1.49%
Cinema	0.42%	2.46%	0.80%	0.11%	0.43%	0.19%	1.41%
Outdoor	3.67%	12.80%	16.48%	23.92%	8.40%	1.67%	1.38%
Mail	0.00%	0.00%	0.00%	0.29%	1.28%	0.91%	1.16%
Other	0.00%	0.00%	0.40%	0.15%	0.00%	0.00%	0.06%
Multiple Media	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
<b>TOTAL</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

\*\*\* Statistics not separately captured prior to 2010. Information on this category aggregated in "Outdoor" category prior to 2010.

#### ANALYSIS OF CASES BY MEDIA (%)

\*\*\*\*

TV	52.12%	42.02%	45.07%
Internet	6.73%	6.93%	10.26%
Billboard	5.77%	11.55%	8.45%
Print	9.62%	8.19%	6.44%
Radio	5.96%	6.93%	5.63%
Pay TV	5.77%	5.04%	5.43%
Outdoor	5.00%	3.15%	4.23%
Poster	4.23%	8.40%	4.02%
Transport	2.50%	4.62%	3.82%
Internet - Social Media			3.02%
Mail	0.96%	2.73%	2.01%
Cinema	1.35%	0.42%	1.41%
SMS			0.20%
<b>TOTAL</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

\*\*\*\* This table relates to individual cases, not complaints