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A Submission to

Australian Law Reform Commissions

National Classification Scheme Review Issues Paper

on behalf of

Australian Association of National Advertisers
15 July 2011

1. Executive Summary

- AANA represents Australia’s national advertisers.
- The advertising, marketing and media industry play a fundamental economic role in society and contribute in excess of \$30 billion to the Australian economy annually.
- AANA established the self regulatory system for advertising and marketing communications in 1997.
- Since that time, new codes have been introduced and existing codes have been amended to keep pace with the ever evolving advertising, marketing and media industry.
- The Code of Ethics is the cornerstone of the advertising self regulatory system in Australia and is currently under review by AANA. The review is being undertaken by an Independent Reviewer, appointed in 2010.
- The review of the Code of Ethics has found a high level of community and industry satisfaction with the Code and recognition of its pivotal role in the self regulatory system.
- The self regulatory system is underpinned by an independent, transparent and robust complaints handling system which was established by AANA over a decade ago.
- The complaints handling system is administered by the Advertising Standards Bureau and complaints are adjudicated by the Advertising Standards Board, made up of individuals who are representative of the community and not connected to the advertising industry.
- The level of complaint and breach findings by the Board is low when compared with the level of advertising nationally.
- Given this low level of complaint, greater regulation of advertising through amendments to the film and literature classification system is not justified.
- AANA is encouraged by a report released recently from the House of Representatives Committee Inquiry into Billboard and Outdoor Advertising, which has acknowledged AANA’s self-regulatory system.

Introduction

Australian Association of National Advertisers (AANA) provides this submission to the Senate Inquiry into the film and literature classification scheme.

AANA is the peak body and has represented national advertising for over 80 years. It represents the common interests and obligations of companies across all business sectors involved in the advertising, marketing and media industry.

AANA serves to protect the rights of consumers in ensuring advertising and marketing communications is conducted responsibly, including through its development and administration of industry codes and the self-regulatory system.

The advertising, marketing and media industry plays a fundamental economic role in society and contributes in excess of \$30 billion to the Australian economy annually.

It is the driver of consumer choice and, by promoting competition, helps consumers get better value for money. It enables innovation to be brought to market and stimulates economic growth and jobs. It provides substantial funding to support media and a variety of media content.

AANA has a strong ongoing commitment to self regulation. AANA designed and delivered the self-regulatory component of regulation controlling advertising and marketing communications in Australia.

AANA's self regulatory system applies to all media and all forms of advertising and marketing communications. As such, all outdoor media in Australia is subject to AANA's self regulatory system and the complaints handling system which underpins it.

This submission comments on the following issues in response to the Inquiry:

Section 2: The self regulatory system for advertising and marketing communications in Australia

Section 3: Review Process for the AANA Codes

Section 4: The complaints process underpinning the self regulatory system

Section 5: The community's response to advertising and marketing communication through the complaint's process

Section 6: AANA's initial response to the ALRC Review Issues

2. The Self Regulatory System

a. A role for self regulation

Self regulation is an essential part of the Australian business landscape and contemporary society. It flourishes through strong leadership, commitment and cooperation across business, government and the community at large. Self regulation is not the exclusive domain of any one particular body but the collective concern of many players, large and small.

The self regulatory system for advertising and marketing communications in Australia was established by AANA in 1997. The establishment of the self regulatory system was in response to advertisers' recognition that they have a responsibility to deliver agreed and trusted standards.

Australia is not alone in having an industry self regulation system for advertising and marketing communications. A self regulatory system for advertising and marketing communications is a common feature of many other jurisdictions. These self regulatory systems apply across all media, including broadcast, print and outdoor. AANA is not aware of any jurisdictions where outdoor media is subject a classification system.

The AANA system of self regulation sits alongside and complements systems of regulation, co-regulation and self regulation.

Regulation can be seen in the form of Federal and State legislation such as the Trade Practices Act 1974 (Cth) and the various State Fair Trading Acts, the Therapeutics Goods Act 1989 (Cth) and the Tobacco Advertising Prohibition Act (1992).

The film and literature classification scheme established by the *Classification (Publications, Films and Computer Games) Act 1995* applies to advertisements only in so far as the advertisements are for a publication, a film or a computer game as defined by the scheme. The classification scheme does not apply to advertising in general.

Examples of co-regulation include the Codes of Practice developed by various industry associations under the Broadcasting Services Act 1992, including the Commercial Television Industry Code of Practice, the Commercial Radio Codes of Practice and the ASTRA Codes of Practice.

While these Codes apply to the particular broadcasters who operate in the relevant industry, the AANA Codes apply across the board to all media and all advertisers. The AANA Codes are technology and platform neutral.

The suite of advertising regulation is represented pictorially in **Appendix 1**.

b. The benefits of self regulation

Self regulation of the advertising and marketing communications industry,

which includes six AANA Codes, various AANA Practice Notes, and a number of industry initiatives, provides a flexible mechanism to meet the challenges of the ever-evolving advertising, marketing and media industry, along with changing consumer expectations.

The industry is experiencing a revolution in that advertisers are no longer exclusively driving consumer demand. There is a growing movement towards consumer driven marketing. This will require a quick and innovative response by companies in their advertising and marketing practices.

The response by the advertising and marketing industry will be reflected in a review of the self regulatory system (Codes and initiatives) and amendment and refinement to keep pace with the fast moving advertising and marketing environment.

There are many benefits of self regulation which have been recognized by governments and consumer advocates alike.

AANA welcomes government recognition for the role of self-regulation in the advertising and marketing environment. In February 2010 at the inaugural AANA Congress, the Minister for Broadband, Communications and the Digital Economy, Senator the Hon Stephen Conroy, acknowledged the AANA's role as the peak industry body for advertising and marketing communications and emphasized the importance of industry self regulation.

The benefits of self regulation include:

- Costs of the system are borne by the advertiser and the industry – there is no cost to Government
- A self regulatory system is flexible. It can adapt easily to changes in community attitudes. By contrast, legislation is more costly, time consuming and difficult to amend.
- It can adapt quickly and more efficiently than government regulation
- Resolution time for complaints is faster than for co-regulatory and regulatory schemes.
- Compliance with a self regulatory system can be seen through compliance with both the letter and the spirit of the regulation.
- Industry which supports self regulation has an interest in its success. Regulation through legislation would undermine this support.

c. AANA Codes

AANA's self regulatory system is comprised of a number of different codes and industry initiatives.

The AANA Code of Ethics¹ is AANA's core self-regulatory code. It came into operation in 1997 following extensive consultation by AANA with consumers and consumer groups, advertisers and business and government representatives.

The AANA Code of Ethics provides the overarching set of principles with which all advertising and marketing communications, across all media should comply. It complements Australia's long standing statutory regulation system and co-regulatory systems.

The AANA Code of Ethics comprises two parts.

Section 1 of the Code deals with questions of truth, accuracy and questions of law.

Section 2 of the Code deals with maintaining standards of taste and decency in advertising and marketing. Section 2 contains provisions dealing with the portrayal of people (including discrimination and vilification), portrayal of violence, treatment of sex, sexuality and nudity, use of language and prevailing community standards on health and safety. Section 2 also references the following AANA Codes: AANA Code for Marketing & Advertising Communications to Children, the AANA Food & Beverages: Advertising & Marketing Communications Code, and the Motor Vehicle Code.

The AANA Code of Ethics is in step with and in some cases ahead of the self regulation of marketing communications elsewhere in the world. It shares much in common with Western Europe and North America and is ahead of systems in much of Asia and Eastern Europe.

In addition to its Code of Ethics, AANA has developed three other specialised codes to address the specific circumstances of advertising to children, the advertising of food and beverages and environmental claims in advertising.

More detail on these Codes follows:

- AANA Code for Marketing & Advertising Communications to Children²

The AANA Code for Marketing & Advertising Communications to Children came into effect on 1 October 2003.

¹ http://www.aana.com.au/advertiser_ethics_code.html

² http://www.aana.com.au/childrens_code.html

The Code is designed to ensure that advertising and marketing communications directed at Australian children is conducted within prevailing community standards.

It was reviewed in April 2007 following a period of public consultation as described further in Section 4 (b) below. The revised Code was released in May 2008.

The Code contains provisions dealing with sexualisation of children, misleading and deceptive conduct, parental authority, competitions, premiums, food and beverage advertising and privacy.

- AANA Food & Beverages: Advertising & Marketing Communications Code³

The AANA's Food & Beverages Advertising & Marketing Communications Code became fully operational on 1 March 2007

It has gained international recognition as a world first.

The Code is based on International Chamber of Commerce principles, and is designed to ensure a high sense of social responsibility in advertising and marketing of food & beverage products and services in Australia.

- Environmental Claims in Advertising and Marketing Code⁴

This Code was launched on 14 September 2009.

The object of this code is to ensure that advertisers and marketers develop and maintain rigorous standards when making Environmental Claims and to increase consumer confidence to the benefit of the environment, consumers and industry.

- Motor Vehicle Code⁵

The Voluntary Code of Practice for Motor Vehicle Advertising applies to all advertisements published or broadcast in Australia from 1 July 2004. It was adopted after a review of the original Code which came into effect in August 2002.

³ http://www.aana.com.au/food_beverages_code.html

⁴ <http://www.aana.com.au/documents/EnvironmentalClaimsCode-September2009.pdf>

⁵ http://www.aana.com.au/motor_vehicle_code.html

The Code was developed by AANA in consultation with the Federal Chamber of Automotive Industries (FCAI). It was formally adopted by the FCAI from 1 July 2004.

The Motor Vehicle Code of Practice for Motor Vehicle Advertising has been instituted by FCAI as a means of industry self-regulation of motor vehicle advertising in Australia. The primary purpose of the Code is to provide guidance to advertisers in relation to appropriate standards for the portrayal of images, themes and messages relating to road safety.

The AANA Code of Ethics, the AANA Code for Marketing & Advertising Communications to Children, the AANA Food & Beverages: Advertising & Marketing Communications Code, the AANA Environmental Claims in Advertising and Marketing Code and the Motor Vehicle Code are collectively referred to as the AANA Codes.

AANA has also developed a number of practice notes which sit alongside and provide further guidance for advertisers and consumers. These practice notes are:

- Practice Guide: Managing Images of Children and Young People, launched on 15 October 2009⁶
- AANA Food & Beverages: Advertising & Marketing Communications Code Practice Note launched in March 2010⁷
- AANA Environmental Claims in Advertising and Marketing Code Practice Note launched in December 2009⁸

The Practice Guide: Managing Images of Children and Young People, the AANA Food & Beverages: Advertising & Marketing Communications Code Practice Note and the AANA Environmental Claims in Advertising and Marketing Code Practice Note are collectively referred to as the AANA Practice Notes.

The AANA Codes and the AANA Practice Notes are attached to this submission as follows:

Appendix 2: AANA Code of Ethics

Appendix 3: AANA Code for Marketing & Advertising Communications to Children

⁶ http://www.aana.com.au/documents/AANAPracticeGuide-ManagingImagesofChildrenandYoungPeople_FinalOct2009.pdf

⁷ <http://www.aana.com.au/documents/AANAFoodandBeveragesCode-PracticeNote-FinalMarch2010.pdf>

⁸ <http://www.aana.com.au/documents/AANAEnvironmentalClaimsCode-PracticeNote-Edit2March2010.pdf>

Appendix 4: The Practice Guide: Managing Images of Children and Young People

Appendix 5: AANA Food & Beverages: Advertising & Marketing Communications Code

Appendix 6: the AANA Food & Beverages: Advertising & Marketing Communications Code Practice Note and the

Appendix 7: AANA Environmental Claims in Advertising and Marketing Code

Appendix 8: AANA Environmental Claims in Advertising and Marketing Code Practice Note

Appendix 9: AANA Motor Vehicle Code.

d. Industry Initiatives

The self regulatory system is complemented by a number of industry initiatives.

These include:

- The Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children

Leading quick service restaurants in Australia, in collaboration with AANA, developed the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (the Initiative) as part of the system of advertising and marketing self-regulation in Australia.

The Initiative established a common framework:

- to ensure that only food and beverages that represent healthier choices are advertised to children; and
- to help parents and guardians make informed product choices for their children.

Compliance with the initiative is monitored on an ongoing basis by the Australian Food and Grocery Council and complaints are adjudicated by the ASB.

- Online Behavioural Advertising – Cross-Industry Initiative

AANA has convened a cross-industry forum, with other relevant industry associations, to develop a self-regulatory framework for Online Behavioural Advertising practices and a consumer education initiative.

Recently, the advertising and marketing industry has faced mounting worldwide scrutiny over the standards it applies to digital advertising and marketing practices, in particular, around online behavioural advertising (OBA). Critics question whether OBA is sufficiently transparent and fair to consumers. Regulators led by the US and the EU have called on industry to respond to privacy concerns arising in the context of OBA through self-regulation. If the industry is seen to fail to self-regulate effectively, regulators are threatening to step in.

With input from AANA, the World Federation of Advertisers (WFA) in July 2009 released the Global Principles for self-regulation of online behavioural advertising. These seven principles have formed the basis of industry self-regulatory initiatives internationally, particularly in the US and UK. The WFA 7 principles are:

1. Education
2. Transparency
3. Consumer Control
4. Data Security
5. Material Changes to Existing Online Behavioural Advertising Policies and Practices
6. Sensitive Data
7. Accountability

The Australian cross-industry forum has set out to pursue the development of a domestic, implementation framework. In particular, this group noted that Australian privacy legislation, and proposed privacy regulatory reform, provided a higher level of consumer protection in Australia than in some overseas jurisdictions where privacy concerns re OBA have been more prominent.

The OBA cross-industry group is driving the conception of two initiatives for the Australian advertising industry and the public:

- (1) industry self-regulatory guidance on the above principles and;
- (2) a consumer education initiative.

The development of these initiatives is progressing well and AANA is pleased with industry interest and participation in developing these initiatives.

3. Amendment and Review of the AANA Codes

a. Development of the AANA Codes

The AANA's advertising self-regulatory scheme came into operation in 1997.

The development of the AANA self regulatory system involved an extensive period of consultation with government, consumer representatives, and advertisers.

The launch of the AANA Code of Ethics in 1997 was the first phase of the introduction of an advertising and marketing self regulatory system in Australia.

It was followed in 2003 by the launch of the AANA Code for Marketing & Advertising Communications to Children and the AANA's Food and Beverages: Advertising and Marketing Communications Code in 2007.

The launch of the AANA Code for Marketing & Advertising Communications to Children and the AANA's Food and Beverages: Advertising and Marketing Communications Code were the result of a rapid response by industry to community concerns about food and beverage advertising. They were developed in consultation with consumer advocacy groups, government, media and advertising.

b. Amendment of the AANA Codes

While the current review of the AANA Code of Ethics is the first full scale review, the Code of Ethics and other AANA Codes are subject to a continual process of review and refinement.

In 2007 AANA amended all the AANA Codes to expand their ambit from "advertising" to "advertising and marketing communications". This broadening of the Codes was in response to changes in the media landscape and the increasing opportunities available to advertisers and marketers.

AANA's view was that it was no longer appropriate for the Codes to be confined to advertising (as it was traditionally understood).

The amendment was designed to ensure that all advertising and marketing communications, including those on the internet and social media sites were clearly within the ambit of the AANA Codes and the AANA's self regulatory system.

The AANA Code for Marketing & Advertising Communications to Children was reviewed commencing 17 April 2007.

A number of major changes resulted following this review, including a direct prohibition against the sexualisation of children and a ban on the use of sexual imagery in advertising targeted at children.

The revised Code was launched in 2008.

c. 2010 Review of the AANA Code of Ethics

- **Aim of the Review**

The aim of the review of the objectives and content of the Code of Ethics is to update and where necessary develop the Code of Ethics to ensure that it continues to meet all stakeholders' requirements and expectations. A revised Code of Ethics will articulate world's best practice standards against which it can be measured and administered.

- **The Review Process**

On 27 May 2010 AANA launched a review of the Code of Ethics. (See **Appendix 10** for a copy of the press release). On 5 August 2010 AANA opened the public consultation phase and called for submissions (see **Appendix 11** for a copy of the press release and **Appendix 12** for a copy of the Discussion Paper).

The review is being undertaken by an Independent Code Reviewer, Dr Terry Beed. See **Appendix 13** for Dr Terry Beed's biography.

The review is unprecedented and timely. It is the first to be commissioned by AANA, to an Independent Reviewer since the Code was launched in 1997.

The Code review process included three principle phases: research, consultation and revision.

- **Phase 1: Research**

The Independent Reviewer undertook literary research and consulted the relevant published literature on self regulatory systems, code making processes and the regulation of advertising and marketing communications in other markets around the world.

The Independent Reviewer's literary review confirmed that Australia is not alone in having an industry self-regulation scheme.

The form and function of self regulatory schemes has been the subject of material by academic business educators and researchers as well as industry executives. AANA's Code development process is in line with the key elements as identified by commentators; these are

- Develop standards
- Make them widely known and accepted

- Advise advertisers beforehand about grey areas
- Monitor compliance with the norms
- Handle complaints from consumers and competitors
- Sanction “bad” behaviour in violation of standards⁹

Governments also participate in this process through inquiries such as this House of Representatives Inquiry into Outdoor Media.

- **Phase 2: Public Consultation Phase**

As discussed above AANA launched the public consultation phase of the review of 5 August 2010.

In addition to releasing a public statement and calling for submissions, AANA also conducted a direct email and phone campaign to raise awareness of the review, secure interviews and encourage submissions from key government Departments, industry associations, various advocacy and interest groups.

The review and consultation has attracted extensive media attention with articles appearing in AFR, The Sydney Morning Herald, The Advertiser – SA, Marketing Magazine, B&T, Adnews and more.

The public consultation period provided for under the review was 6 weeks. Extensions were granted for a number of parties and submissions were received as late as 29 November 2010. Stakeholder interviews were conducted in August to October 2010.

Some 55 organisations and individuals participated in the review process.

- **Outcomes of Phases 1 and 2 of the Review Process**

Phases 1 and 2 Research and Consultation are now complete. AANA and the Independent Reviewer are currently considering drafting options and next steps for the Code review process.

Next steps will necessarily be adjusted to take into account the outcomes of the House of Representatives Inquiry into outdoor advertising.

AANA’s expected outcomes of the review are an up-to-date, relevant, useful, easy to understand and world’s best practice Code for Australian advertisers.

⁹ Boddewyn - 1988

The public consultation process has shown that the Code is regarded as the foundation stone of the self regulatory system and it is widely accepted by the Australian business community.

The review process has also shown that the Code is in step with and in some cases ahead of codes which underpin the self regulation of advertising and marketing communications elsewhere in the world. It shares much in common with Western Europe and North America and it is ahead of the code development in much of Asia and Eastern Europe.

The general consensus was to keep the code simple.

- **Phase 3: Drafting**

While the consensus coming from the public consultation process is to keep the Code simple, AANA will be making a number of drafting amendments to clarify the scope and intent of the Code. The diversity of stakeholders' perspectives will be carefully considered in the amendments to the Code.

Drafting amendments may include broadening the Code to clarify that it applies to all advertising and marketing communications (including advertising and marketing communication in the online environment and advertising and marketing communication for which no consideration is provided).

AANA is currently consulting with its members, the AANA Board and the ASB to develop drafting for the Code which reflects the outcomes of the review including the public consultation process and the work of the Independent Reviewer.

- **Next Steps:**

Practice Notes: The public consultation process indicated that there was a need for clarification and further guidance on the Code. Currently the Code is only accompanied by a brief statement of its purpose and definitions of key terms.

AANA will prepare a practice note to sit alongside the Code to provide further clarity to advertisers, consumers, and the Code adjudicator, the ASB, the intended meaning of the Code clauses. The AANA Practice Notes will explain the Code objective, definitions of key terms and give guidance as to how the Code clauses are intended to apply.

The AANA Practice Notes will have regard to the outcome of ASB adjudications of complaints under the Code over the past 12 years.

Training: AANA has previously conducted Code training through its own member education programs and through the Communications Council's (previously the Australian Federation of Advertisers) accredited training programs. Following the launch of the new Code, AANA will conduct formalised training sessions with its members and service provider organisations. AANA sees these educational programs as an important and necessary part of the Code review process and relaunch.

Further review: AANA will commit to regular and ongoing review of the Code of Ethics. The review of the AANA Code of Ethics will also result in some consequential amendment to the other AANA Codes. These consequential amendments will be made. AANA will then timetable a review of each of the other AANA Codes and AANA Practice Notes. In accordance with best practice, AANA will commit to further reviews of the AANA Code of Ethics and the other AANA Codes at regular intervals in order to preserve their currency in the changing environment of advertising and marketing communications.

4. The Complaints Handling System

a. Establishment of the ASB

The AANA Codes are underpinned by a transparent complaints adjudication system administered independently by the Advertising Standards Bureau. The system is funded by advertisers and accessible free of charge by the community.

AANA sponsored the formation of the Advertising Standards Bureau and Board in 1998, since then it has operated under separate management, funded by a levy on advertising administered by the Australian Advertising Standards Council Ltd.

With advertisers, marketers and media sharing a common interest in promoting consumer confidence in and respect for advertising and marketing communications, the self-regulatory system has industry-wide backing. Complaints about advertising are determined by the Advertising Standards Board, while competitive complaints are referred to the Advertising Claims Board.

b. Complaints submission process

The Advertising Standards Board (Board) accepts written complaints – by post or facsimile or via the online complaints form on the Advertising Standards Bureau (ASB) website (www.adstandards.com.au).

All complaints received are assessed as to their appropriateness for submission to the Board for determination. As the Board secretariat, the ASB replies to all complainants informing them of the status of their complaint.

Once a complaint has been accepted by the ASB, the advertiser/marketer is notified about the complaint, provided with a copy of the complaint and is requested to provide a written response and copies of the relevant advertising or marketing communication within sufficient time to allow the complaint to be dealt with at the next meeting of the Board.

If an advertiser/marketer fails to provide a response to the complaint within the specified period or any extension of it, the Board may consider the complaint and the advertising or marketing communication in question without the advertiser/marketer response.

c. Composition of the Board

The Board meets twice a month to consider complaints received. The Board also meets between meetings, usually by teleconference, if the Secretariat considers that a matter should be considered as a matter of urgency.

The position of Chair is rotated among Board members on a meeting by meeting basis. The Chair for each meeting during a year is generally determined at the beginning of each year but can be varied to accommodate changes in individual schedules.

Board members must disclose any personal interest in a matter that is the subject of a complaint. The member concerned must withdraw from contributing to the debate and decision or case report approval in relation to those complaints.

The Board reaches its decision by way of simple majority. In the event of a tied vote, the Chair has a casting vote.

d. Board review process

Board members consider:

- the complaint(s) received;
- all relevant advertising/marketing communications submitted by the advertiser/marketer;
- the advertiser/marketer's response (if any);
- all relevant provisions of the Codes; and

- any other relevant supporting materials or other representations or submissions.

The Board considers complaints in light of all of the Codes and accordingly may apply any part of those Codes in reaching a determination. The Board is not limited, in its considerations, to issues raised by the complaint.

If the Board is unable to reach a decision until it is in possession of additional information, it can defer its determination until a future date.

e. Decisions the Board can make

- *for DISMISSED cases* - the advertiser is notified the day after the meeting of the outcome and provided with the reasons for the decision within 10 business days of the meeting
- *for UPHELD Cases* - the advertiser is advised verbally and in writing of the decision within 48 hours of the board meeting and is provided within 48 hours with the draft reasons for decision. The advertiser must reply within 5 business days with its response including its agreement to remove or modify the advertisement. A final case report which includes the advertiser's response to the decision is sent within 10 business days.

f. Notifying advertisers/marketers and complainants of the Outcome of the Board's decision

Following the Board's determination, a draft case report is prepared by the ASB and submitted to the Chair for approval. Following receipt of Chair approval, the ASB notifies the advertiser/marketer of the outcome and sends the advertiser/marketer a copy of the draft case report. This usually occurs between 8 and 10 business days of the Board decision. The advertiser/marketer is requested to advise the Board whether it agrees to modify or discontinue the advertising or marketing communication (**Advertiser Statement**) within 5 business days of the covering letter advising of the outcome and enclosing the draft case report. The advertiser/marketer is also advised of the opportunity to include an Advertiser's Statement in the case report.

If an advertising or marketing communication is found to breach a provision of the Codes and the advertiser/marketer does not respond to the opportunity to modify or discontinue the advertising or marketing communication within the allowed time frame, the Board will:

- If appropriate, refer the case report to the appropriate government agency;
- Include the advertiser/marketer's failure to respond in the case report;
- Forward the case report to media proprietors; and

- Post the case report on the ASB’s website.

g. Publish case report

Within 10 business days of the Board’s decision, all finalised case reports are made publicly available.

h. Review

If a complaint is upheld, the advertiser/marketer can ask for a review of the Board’s decision. If a complaint is dismissed, the original complainant can ask for a review of the Board’s decision.

There are 3 grounds on which a request for review may be made:

- Where new or additional relevant evidence which could have a significant bearing on the decision becomes available;
- Where there is a substantial flaw in the Board’s decision; or
- Where there was a substantial flaw in the process by which the decision was made.

Any request for review must contain a full statement of the grounds, be addressed to the Independent Reviewer of ASB decisions c/o the ASB and be sent within 10 business days of the date of the ASB’s letter of notification of a decision. The non-refundable cost of a review is \$500 for complainants, \$1000 for complainants who are Incorporated Associations and \$2000 for advertisers/marketers.

Requests for review will be considered by the Independent Reviewer. If the Independent Reviewer accepts the request for review, the Independent Reviewer will invite further comments on the review from the party who did not request the review.

Unless exceptional circumstances apply, within 10 business days of receipt of the request, the Independent Reviewer will make a recommendation (including reasons for the decision/recommendation and copies of any material relevant to the recommendation) to the Board, stating whether the decision should be reviewed, amended or confirmed. This recommendation will remain confidential until the Board’s decision is published.

The Board must consider, but is not obliged to accept the Independent Reviewer’s recommendation. Following reconsideration by the Board, a new case report will be prepared. The Board’s decision in the new case report is final and not capable of further review.

i. Transparent and Robust Complaints Handling system

Australian Association of National Advertisers

Submission to the Australian Law Reform Commission – National Classification Scheme Review

The complaints handling system is transparent and robust. It is well recognised in Australia by consumers and advocates alike. The ASB reports a high level of consumer awareness of the advertising complaints system.

A google search for “complaints about advertising” lists the Advertising Standards Bureau.

Many advertising associations and media websites direct complainants to the ASB.

These include the following:

- Australian Competition and Consumer Commission:
www.accc.gov.au
<http://www.accc.gov.au/content/index.phtml/itemId/286909/fromItemId/815972/quickLinkId/816518/whichType/org>
- Australian Communications and media Authority
http://www.acma.gov.au/WEB/STANDARD/pc=PC_91768
- Media Federation
<http://mediafederation.org.au/industry-links/industry-associations>
- Outdoor Media Association
<http://oma.org.au> - <http://oma.org.au/useful-links/>
- Australian Publishers Bureau
<http://www.publishersbureau.com.au/partner-details#partner-7>
- Free TV Australia
http://www.freetv.com.au/content_common/pg-Viewer-Feedback.seo
- Australian Subscription Television and Radio Association
<http://astra.org.au/pages/advertising-standards>
- Channel 7
<http://help.yahoo.com/l/au/yahoo7/tv/basics/tvcontactchan7.html>
- Channel Nine

<http://help.ninemsn.com.au/support/channel9.asp>

- Channel Ten

<http://ten.com.au/contact-us.htm>

5. Complaints Figures for advertising and marketing communications

AANA acknowledges concerns expressed by some individuals about some advertising and marketing communications.

However, AANA notes that the level of complaint and level of breach in relation to advertising and marketing communications is minimal in the context of the level of national advertising.

In 2010 there were some 33 million national ads across all media (this does not include ads on regional/local media)¹⁰.

On average, the ASB considers complaints about approximately 600 ads per year, about 0.0018% of all national ads (as monitored by Nielsen). Of the 600 considered by the ASB, around 80 or 13.3% (of the 600) were upheld. The total upheld complaints out of the total number of ads are around 0.00024%.

The self regulation system and complaints handling system is robust, transparent and well recognized by consumers. The low level of complaint and even lower level of breach findings, indicate a negligible level of consumer concern.

However, the industry continues to monitor all advertising including outdoor advertising, and will continue to work with consumer advocates and government to increase the level of consumer satisfaction with advertising and marketing communications.

6. AANA's initial response to the ALRC Review Issues

- Question 1 – In this Inquiry should the ARLC focus on developing a new framework for classification, or improving key elements of the existing framework?**

AANA submits that the current system of self regulation which is working well to reflect prevailing community standards should remain in its current form.

As described above, advertising and marketing communications are regulated by the self regulatory system and are not subject to the national classification scheme. The exception is advertising on commercial free to air television which is classified under the Commercial Television Industry Code of Practice.

¹⁰ Number of advertisements monitored by Nielsen in 2010

b. Question 2 – What should be the primary objectives of a national classification scheme?

AANA supports the existing objectives of the national classification scheme, which provide that:

- Adults should be able to read, hear and see what they want;
- Minors should be protected from material likely to harm or disturb them;
- Everyone should be protected from exposure to unsolicited material they find offensive;
- The need to take account of concerns about depictions that could condone or incite violence, and the portrayal of persons in a demeaning manner.

The objectives are reflected in the AANA's self regulatory system which provides an appropriate framework for the regulation of advertising and marketing communications.

c. Question 16 – What should be the respective roles of government agencies, industry bodies and users in the regulation of content?

The AANA self regulatory system is industry funded and supported and is operated at no cost to the government or the tax payer. It is underpinned by a robust and transparent complaints handling system which provides efficient and timely resolution of complaints.

Industry's role in the self regulation of advertising and marketing communications should remain.