



**ADVERTISING
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Advertising Standards Bureau submission on National Classification Scheme Review Discussion Paper

The Advertising Standards Bureau appreciates the opportunity to make this submission in relation to the National Classification Scheme Review Discussion Paper.

Our supplementary submission elaborates further upon our earlier submission provided on the Australian Law Reform Commission Issues Paper.

We are pleased to provide a statement addressing issues and questions arising in the National Classification Scheme Review Discussion Paper (Attachment 1) and an overview of the advertising Self-Regulation system as administered by the Advertising Standards Bureau (Attachment 2).

The Bureau has also made a submission in response to the Convergence Review Emerging Issues Paper and the Community Standards Discussion Paper for the Convergence Review being undertaken by the Department of Broadband, Communications and the Digital Economy.

Yours sincerely,

Fiona Jolly
Chief Executive Officer
Advertising Standards Bureau

17 November 2011

ATTACHMENT 1:

ADVERTISING STANDARDS BUREAU SUBMISSION

NATIONAL CLASSIFICATION SCHEME REVIEW DISCUSSION PAPER

Executive Summary

- The existing advertising self-regulation system works effectively complaints about advertising and marketing communications wherever they appear in traditional broadcast and publishing areas and also internet and social media.
- Self-regulation is an effective means of ensuring that media content meets community standards. The advertising self-regulation system should be used as a model for regulating other media content.
- Regulation should not be imposed on advertising without a proper regulatory impact assessment.
- The current self-regulation model does not need to be regulated, or have Advertising Standards Board decisions reviewed by the Classification Review Board as it has its own review system.
- The Advertising Standards Board is a diverse group representative of the Australian community. Board members are able to work, train and share information with Industry assessors generally but decisions of the Board should not be subject to audit by a regulator.
- The Advertising Standards Board already assesses complaints about advertisements for classifiable material which includes movies, TV programs, DVDs, Games and advertisements wherever they appear (including the internet and social media). It is not appropriate or necessary for the Regulator to take on this role.
- The Bureau supports a review of community standards in Australia. It would be appropriate for such work to partner with or take into account the Bureau's existing community standards research work.
- The existing self-regulation system effectively deals with complaints about advertising content. Complaints about advertising content should not be handled by the Regulator.
- The Bureau is well positioned to take on an independent and impartial role as the first point of contact for complaints about media content.
- 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. The self-regulation system can effectively enforce and achieve compliance with the codes of practice without formal legislative powers.
- The Bureau is committed to continuous improvement, taking into account input from the public and the industry, and having regard to international best practices.

CHAPTER 5: THE PROPOSED CLASSIFICATION SCHEME

The Advertising Standards Bureau (referred to in this submission as “the Bureau”, “we” or “our”) administers the complaints adjudication component of the advertising self-regulation system.

Proposal 5-3: The Classification of Media Content Act should provide for the establishment of a single agency (‘the Regulator’) responsible for the regulation of media content under the new National Classification Scheme.

The current self-regulatory measures concerning advertising and marketing communications in broadcast are effective and appropriate. The Bureau is of the view that advertising should not be subject to control or review by a new regulatory system. The self-regulation system for advertising in Australia is an effective way to ensure high levels of advertising standards are maintained across all media.

The Bureau regulates advertising standards in Australia, adjudicating both public and competitor complaints and ensuring compliance with relevant codes. The Bureau is the first point of contact in administering a well respected, effective and independent advertising complaints resolution service. Self-Regulation can effectively enforce and achieve compliance with the codes of practice without formal legislative powers. 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 regulation is very unlikely to rival.

The current self-regulation system operates at no cost to government or the community. The current 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. We strongly believe that the existing self-regulation system is a cost effective and efficient scheme which provides appropriate protection and safeguards for the community.

CHAPTER 6: WHAT CONTENT SHOULD BE CLASSIFIED?

Proposal 6-3: The Classification of Media Content Act should provide a definition of ‘exempt content’ that captures all media content that is exempt from the laws relating to what must be classified (Proposals 6–1 and 6–2). The definition of exempt content should capture the traditional exemptions, such as for news and current affairs programs. The definition should also provide that films and computer games shown at film festivals, art galleries and other cultural institutions are exempt. This content should not be exempt from the proposed law that provides that all content likely to be R 18+ must be restricted to adults: see Proposal 8–1.

The Bureau is of the view that the Classification of the Media Content Act should be widened in its definition of ‘exempt content’; and include advertising under the possible list of exemptions. The Bureau currently manages complaints about advertising in all media. Only advertisements shown on Free to air TV are classified. Advertisers are able to assess themselves the appropriateness of advertisement placement.

CHAPTER 7: WHO SHOULD CLASSIFY CONTENT?

Proposal 7-6: The Classification of Media Content Act should provide that the functions and powers of the Classification Board include:

(a) reviewing industry and Board classification decisions

The current 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. It does not need to be further regulated, reviewed or audited by the Classification Review Board as it has its own review system.

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 Independent Reviewers are well respected, impartial people with expertise in administrative law and decision making.

Reviews may be undertaken if the request is about at least one or all of the following grounds.

- 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 Code, or clearly made against the weight of evidence).
- Where there was a substantial flaw in the process by which the determination was made.

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.

(b) auditing industry classification decisions

The centre piece of the self-regulation system is the Standards Board. The Standards Board is independent, dedicated and diverse. It comprises 20 people from a broad range of age groups and backgrounds and is gender balanced and as representative of the diversity of Australian society as any such group can be.

Individual Board members do not represent any particular interest group 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 Board member absents herself or himself from the meeting.

The Board discharges its responsibilities with fairness, impartiality and with a keen sense of prevailing community values in its broadest sense.

The Standards Board is happy to work, train and share information with Industry assessors generally but should not be subject to an audit.

CHAPTER 8: MARKINGS, ADVERTISING, DISPLAYING AND RESTRICTING ACCESS

Proposal 8.4: The Classification of Media Content Act should provide that methods of restricting access to adult media content—both online and offline content—may be set out in industry codes, approved and enforced by the Regulator. These codes might be developed for different types of content and industries, but might usefully cover:

(c) how and where to advertise, package and display hardcopy adult content.

Industry Codes can be effective and useful for self-regulating the advertising, packaging and display of hardcopy adult content. The current Self-Regulation system applies to all forms of advertising in the media including the content of advertisements for hardcopy adult content. The Bureau should continue to regulate the content of advertisements for hardcopy adult content. There should be one consistent system for assessing the appropriateness of advertisements.

Industry Codes, developed on this issue, should recognise the Bureau's current and continuing role is assessing advertisements for such material. The Bureau is well positioned to take on the role of regulating such material.

Proposal 8-5: The Classification of Media Content Act should provide that, for media content that must be classified and has been classified, content providers must display a suitable classification marking. This marking should be shown, for example, before broadcasting the content, on packaging, on websites and programs from which the content may be streamed or downloaded, and on advertising for the content.

The Bureau supports consistency in classification marking, however considers that the wording should be changed to reflect the following...“The Classification of Media Content Act should provide that, for media content that must be classified **OR** has been classified, content providers must display a suitable classification marking”.

Proposal 8-6: The Classification of Media Content Act should provide that an advertisement for media content that must be classified must be suitable for the audience likely to view the advertisement. The Act should provide that, in assessing suitability, regard must be had to:

- (a) the likely audience of the advertisement;**
- (b) the impact of the content in the advertisement; and**
- (c) the classification or likely classification of the advertised content.**

The Bureau does not support this recommendation because the current system, whereby the Advertising Standards Bureau assesses complaints about advertisements for movies and other classifiable content, is working effectively. The Bureau already assesses the suitability of advertisements for classifiable material which includes movies, TV programs, DVDs, Games and advertisements wherever they appear (including the internet and social media). The Board looks at the Australian Association of National Advertisers (AANA) Code of Ethics which requires the Standards Board to look at the Discrimination; Violence; Sex, Sexuality and Nudity; Language and Community Standards. In assessing suitability of the advertisements for media content the

Standards Boards takes into account the likely audience of the advertisement; the impact of the content and the classification or likely classification of the advertisement. The Bureau recognises the broad nature of the audience for such advertisements and will not just have regard to who the advertisement is targeted.

Question 8-1: Should Australian content providers—particularly broadcast television—continue to be subject to time-zone restrictions that prohibit screening certain media content at particular times of the day? For example, should free-to-air television continue to be prohibited from broadcasting MA 15+ content before 9pm?

Industry advertising codes will be able to be appropriately applied in the television environment without timezones.

Content time zones are not necessary in the determination of whether or not particular advertisements breach industry codes provided that advertisements themselves continue to be classified by CAD or, in the case of Subscription Television, the advertiser and broadcaster can assure the Board about the classification of the programming in which the advertisement appears.

Some decisions under the industry codes are based on the relevant audience for the advertisement. For example, section 2.3 of the Code of Ethics provides that ‘Advertising and marketing communications must treat sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant programme time zone.’

In determining the suitability of an advertisement the Board must consider the audience of the advertisement – this depends on the audience for the programme or content in or around which the advertisement appears. The concept of timezones is currently only relevant to television, yet the Board is able to effectively apply the industry codes to all other media environments.

CHAPTER 9: CLASSIFICATION CATEGORIES AND CRITERIA

Proposal 9-4: The Classification of Media Content Act should provide for one set of statutory classification criteria and that classification decisions must be made applying these criteria.

The Bureau believes that it should be responsible for administering all advertising complaints and there are already effective and appropriate Codes regarding the suitability of advertising content. It would be an unnecessary burden on industry for other statutory classification criteria to be imposed.

Through the advertising self-regulation system the community has access to a complaints resolution service in relation to all advertisements and the Board's existing jurisdiction covers the full range of media in which advertising and marketing communications are made available.

Proposal 9-5: A comprehensive review of community standards in Australia towards media content should be commissioned, combining both quantitative and qualitative methodologies, with a broad reach across the Australian community. This review should be undertaken at least every five years.

The Bureau supports a review of community standards in Australia. It would be appropriate for such work to partner with or take into account the Bureau's existing community standards research work.

The Bureau undertakes extensive research to ensure that the decisions of the Standards Board reflect community standards.

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 AANA 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 AANA codes are in many cases necessarily personal and subjective and often attract very 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.

The Board does NOT include people with links or affiliations to advertisers nor does it include people as representatives of any consumer lobby groups. The imperative for the Board is that it is comprised of members of the Australian community.

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 conducted for the Bureau and Standards Board in 2007, 2009 and 2010 indicates that Standards Board decisions generally reflect community standards on the key provisions of the AANA Code of Ethics. Research conducted in 2007 related broadly to the Code of Ethics, while research conducted in 2009 related to community perceptions of violence in advertising and in

2010 related to community perceptions of sex, sexuality and nudity in advertising. Standards Board members have taken the results of such research into account in their consideration of complaints under the Codes. Full reports of the research conducted in 2009 and 2010 are available on the Bureau website. Information about Community Standards research conducted on behalf of the Bureau in 2007 is also available on the website.

CHAPTER 11: CODES AND CO-REGULATION

Proposal 11-3: The Regulator should be empowered to approve an industry classification code of practice if satisfied that:

- (a) the code is consistent with the statutory classification obligations, categories and criteria applicable to media content covered by the code;**
- (b) the body or association developing the code represents a particular section of the relevant media content industry; and**
- (c) there has been adequate public and industry consultation on the code.**

Approval of Codes by the Regulator is co-regulation, not self-regulation. Advertising should remain self-regulated. Recent Parliamentary inquiries support the view that self-regulation remains the most appropriate and effective means for regulating advertising and marketing communications in Australia.

We note that the findings of the House of Representatives Inquiry suggested that, subject to certain recommendations, self-regulation remained the most effective means of regulating advertising in Australia and that the classification system is not appropriate for that purpose. The Committee noted in its report 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”*¹.

The existing self-regulation system is a cost effective and efficient scheme which provides appropriate protection and safeguards for the community. 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. The current system effectively meets the objective of protecting consumers and promoting responsible advertising.

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

CHAPTER 12: THE NEW REGULATOR

Proposal 12-1: How should the complaints-handling function of the Regulator be framed in the new Classification of Media Content Act? For example, should complaints be able to be made directly to the Regulator where an industry complaints-handling scheme exists? What discretion should the Regulator have to decline to investigate complaints?

The existing self-regulation system is a cost effective and efficient system of regulation for advertising and marketing communications and effectively deals with complaints about

¹ *Reclaiming Public Space* – Inquiry into the regulation of billboard and outdoor advertising, House of Representatives Standing Committee on Social Policy and Legal Affairs, July 2011, Paragraph 3.58, Page 36.

advertising content.

Complaints about advertising and media content should not be handled by the regulator because we already have an effective system, providing appropriate protections and safeguards for the community. Giving advertising complaints handling to the regulator is neither an appropriate nor necessary regulatory intervention.

In 2008² and 2011³, Parliamentary Inquiries into aspects of advertising in Australia recommended that a central body or “clearing house” be established to accept all complaints about advertising and classification of content in Australia. The Advertising Standards Bureau is well positioned to take on this role and this should be considered as a viable option to regulatory intervention.

The Australian Government is required to consider the regulatory impact of any proposals around regulatory decisions. The Bureau urges the ALRC to ensure that they give proper consideration in the form of a Regulatory Impact Analysis (RIA)⁴ to any recommendations for regulatory intervention in the advertising self-regulation system. Proper impact analysis will improve ALRC recommendations by:

- requiring consideration of whether acting in response to a perceived problem through regulatory action is required at all;
- requiring understanding of the implications and impacts of regulatory intervention; and
- ensuring that the information on which any government regulatory decision is made is transparent.

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

- consider the impact on advertisers;
- consider the costs to government, industry and the community as a whole; and
- justify how any change to the current system will lead to improved outcomes for the Australian community given that the current system has high levels of compliance and no evidence of failure or ‘capture’.

² Senate inquiry - Standing Committee on Environment, Communications and the Arts - *Sexualisation of children in the contemporary media* June 2008, Recommendation 8, Page vi

³ Senate inquiry – Legal and Constitutional Affairs Reference Committee – *Review of the National Classification Scheme: achieving the right balance* June 2011, Recommendation 29, Page xvii and House of Representatives – Standing Committee on Social Policy and Legal Affairs – *Reclaiming Public Space: Inquiry into the regulation of billboard and outdoor advertising* July 2011, Recommendation 17, Page xx

⁴ *Australian Government RIS requirements*, Department of Finance and Deregulation 2011

ATTACHMENT 2:

OVERVIEW OF THE ADVERTISING SELF-REGULATION SYSTEM

SELF-REGULATION:

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 codes and industry initiatives. The rules are based on the principle 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.

Industry support is fundamental to the success of Australia's world-class system of advertising industry self-regulation:

- Participating advertisers demonstrate their support for self-regulation by instructing their advertising agencies to adhere to its various codes of advertising standards, by agreeing to the levy being applied to their media expenditures, and by complying with decisions of the Standards Board.
- Participating advertising agencies support the system by monitoring the various codes and determinations made by the Standards Board and consulting with their advertiser client.
- Participating media buyers support the system by collecting and remitting the levy which funds the system through their accounting systems.
- Participating media operators support the system by promoting self-regulation through information and advertising material prepared by the Bureau and by assisting with the removal of advertisements where appropriate.

As a voluntary system, self-regulation relies very much on the good will, good sense, and commitment of advertisers to provide consumers with appropriate advertisements and through this promote consumer and government confidence in the general standards of advertising.

The components of the complaint resolution arm of the self-regulation system are: the Bureau; the Bureau Corporate Board; the Standards Board; the Advertising Claims Board (Claims Board) and the Independent Reviewer.

Role of the Bureau

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

Our mission is 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.

Our purpose is:

- to efficiently manage and promote the complaints adjudication component of the advertising self-regulation system in Australia;
- to ensure the community, industry and government is confident in and respects the advertising self-regulatory system; and
- to ensure the general standards of advertising are in line with community values.

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

These codes (collectively referred to hereafter as “the 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 Claims Board. The Bureau promotes the work of the Standards Board and Claims Board and the role of the Bureau in the advertising self-regulation system. The two boards have separate and distinct roles in considering complaints about advertising against the advertising codes they administer.

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.

Role of the Standards Board

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 sole function of the Standards Board is to determine 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 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.

Standards Board appointments are made following a publicly advertised application and interview process. Appointments are made by the Directors of the Corporate Board of the Bureau. The most recent appointment of new members to the Standards Board was in March 2011. 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.

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.

Role of the Independent Reviewer of Standards Board determinations

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. A fact sheet outlining the review process is available to the advertiser and the person(s) who originally made a complaint. The fact sheet is available to all on the Bureau website. Former Federal Court Justice Ms Deirdre O'Connor and former Australian Federal Police Commissioner Mick Palmer are the Bureau's Independent Reviewers.

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.

The issue of whether 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. Survey participants in 2009 and 2010 were asked the same question. Survey of spontaneous awareness identified in the 2010 sex, sexuality and nudity research showed the level of Bureau awareness at 63 per cent (67 per cent in 2009) and was significantly higher than the 10 per cent (unprompted) in the 2006 Community Awareness research.

Following the 2006 research which demonstrated a low level of unprompted awareness, the Bureau developed an awareness raising campaign. The campaign, which commenced in June 2008, featured television, print and radio advertisements encouraging the community to complain to the Bureau if it has concerns about advertising. The campaign will be extended to outdoor and internet advertising in 2011. The Bureau is supported in its campaign by industry who have developed the campaign at reduced costs and who 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 developed a series of “Determination Summaries”, also available to all from the Bureau website. The purpose of the Determination Summaries is to provide a general overview of Standards Board determinations on complaints about particular issues covered by the Codes. 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 mentioned above. 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. For example, in November 2010, the Australian Food and Grocery Council (AFGC) presented information regarding the new AFGC Responsible Children’s Marketing Initiative to enhance Standards Board member understanding of the Code and clarify issues regarding complaints under the Code. Similarly, Google provided information about Internet Advertising, and the Communications Council and a Media Buying organisation talked to the Standards Board about advertising to children.

All community standards research which the Bureau 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. Both research reports, and another covering *Discrimination and vilification in advertising* are available to all on the Bureau website. 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. Implementation of our new case management system has allowed us to more accurately report on timeliness. From April to December 2010 we turned around 23 per cent of cases within 30 calendar days and 73 per cent within 45 calendar days. Over the reporting period, all cases were completed within 90 calendar days and only five per cent of cases took longer than 60 calendar days to complete.

It is important to note that the turnaround times indicated are based on *calendar days* and covers the period from receipt of the complaint by the Bureau until resolution of the complaint and publication of the final case report recording the Standards Board's determination on the matter. This period includes:

- processing and assessing complaint(s) to ensure the complaint addresses a matter covered by a relevant code and that the information provided adequately identifies the advertisement that is the subject of the complaint (this may also include assisting complainants through the process);
- notifying the advertiser of the complaint received and obtaining a copy of the relevant advertisement and a response to the complaint from the advertiser (this may also include assisting advertisers through the process);
- seeking expert advice or opinions (e.g. nutritional advice may be required in the case of a food advertisement), for complex matters;
- Bureau staff preparing information received from all sources for consideration by the Standards Board at its next meeting and providing this information to Standards Board members in preparation for the next meeting;
- consideration of the matter at the Standards Board meeting;
- preparation by Bureau staff of a draft case report;
- review of the draft case report by the Chair of the relevant Standards Board meeting;
- notification of determination to advertisers and complainants; and

- publication of the final case report.

Complainants and advertisers also have the opportunity after the Standards Board determination to seek an independent review of the determination, provided there are appropriate grounds for review. The set time for the Independent Reviewer to make a decision is 10 working days.

Complaint processes in other sectors of the media and communications industry work to similar timeframes to those of the Bureau, although the Bureau's complaint process covers a broader range of activities. For example:

- There are mandated complaint response times applying to commercial television licensees under the Commercial Television Industry Code of Practice. This complaint process is essentially an "in-house" process with licensees making the initial response to complaints. Licensees are required to provide a substantive written response to complainants within 30 *working days* of receiving the complaint. This translates to approximately 42 calendar days.
- Commercial radio licensees are required under the Commercial Radio Codes of Practice to respond substantively in writing to complainants within 30 *business days* (approximately 42 calendar days) of receiving the complaint. Again, this is essentially an in-house process. The code allows licensees to provide a final reply within 45 *business days* (approximately 63 calendar days) of receiving the complaint where further investigation is required.
- The Australian Broadcasting Corporation (ABC) Code of Practice indicates complainants will receive a response from the ABC within 60 days of receipt of their complaint (although the ABC aims to respond to all complaints within four weeks of receipt and if a considered response cannot be provided quickly, an acknowledgement will be sent).
- The Special Broadcasting Service (SBS) Code of Practice indicates that the SBS Ombudsman will endeavour to provide a written response to the complainant within 30 days of receipt of the complaint, but in any event must do so within 60 days.
- Complainants who are not satisfied with a broadcasting licensee's response, or who have not received a response within 60 days of making the complaint, may then make a complaint to the Australian Communications and Media Authority (ACMA). According to the ACMA's Annual Report 2009-10, 1,538 out of 1,676 (92 per cent) written complaints and enquiries were actioned within a timeframe of seven days, while 171 of 189 (90 per cent) broadcasting investigations were completed within a timeframe of six months.
- The Classification Board is prescribed by regulation a maximum of 20 *working days* (approximately 28 calendar days) in which to process a standard application for classification of films, computer games, publications and other material. In addition to this, applications staff must firstly undertake a series of administrative and validity checking tasks in relation to each application to ensure the Classification Board has the information it requires to make a classification decision. The administration period in the case of a standard application is not to exceed 5 *working days* (approximately 7 calendar days). Importantly, applicants for classification decisions are required to provide all relevant documentation and materials for the application to be processed. This contrasts to the process undertaken by the Bureau, in which Bureau staff must actively seek copies of relevant material from the advertiser (based on the complainant's description of the advertisement) as well as an advertiser response and

any other relevant materials so that the Standards Board has the necessary information to make a determination.

To improve the turnaround of complaints, since early 2009 the Standards Board has met at least twice per month. It is also possible to provide a 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).

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 foolproof 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 both 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.

During 2011 the Bureau’s is currently developing and implementing a “Board Online” process in which non-controversial cases can be dealt with quickly out of session via the Bureau’s Extranet. We anticipate that this initiative will significantly reduce determination turn-around times, providing an even faster and more responsive complaint resolution outcome for consumers. Other cases that require more detailed analysis will be considered at scheduled meetings or, if necessary, at a special meeting.

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

- Complaint processing
 - A new case management system was implemented in 2010 resulting in improvements in the efficiency and timeliness of complaint processing.
- Public awareness
 - A major public education campaign was conducted in 2008.

- 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.
- 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.
 - Research in 2010 on community perceptions of sex, sexuality and nudity in advertising.
 - 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.
 - Following the appointment of the inaugural independent reviewer in 2008, the Bureau appointed a second Independent Reviewer in 2009 to ensure the operation of the Independent Review system was not affected by absences.
- Introduction of consistently dismissed category
 - A "consistently dismissed" category was introduced in 2010, responding to concerns that Bureau resources are 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 and enabled the Board to spend more time discussing more complex cases.
- Provision of information seminars

- During 2010 the Bureau presented papers at 18 Seminars/Conferences to a total audience of approximately 825. Presentations were made to: 450 industry personnel; 40 students; 50 non-government organisational representatives; 75 legal practitioners; and 210 State and Federal Government staff and non-government organisation representatives.

A priority for 2011 is to explore partnerships with bodies which represent small business, such as Chambers of Commerce, to commence a program of education for this sector who are less aware of their obligations under the advertising Codes.

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) International approach to outdoor advertising

The Bureau is a member of the European Advertising Standards Alliance (EASA) which is the single authoritative voice on advertising self-regulation issues in Europe and beyond. 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.

The majority of international self-regulatory organisations (SROs) do not have specific arrangements for outdoor advertising. Exceptions are Poland, Hungary and Romania. There is a specific article in the Polish Code that allows the jury to apply stricter rules to outdoor advertising that targets children. Hungary and Romania ban alcohol advertisements inside and within 200 metres of the main entrance of educational and health establishments. Romania applies the same ban to tobacco advertising.

Most SROs do not offer preclearance (examination of advertisements by SROs as a compulsory pre-condition of publication) for outdoor advertisements. Exceptions apply in some jurisdictions for some or all alcohol advertisements, for example preclearance of alcohol advertisements is mandatory in Ireland; voluntary in Canada and New Zealand. Preclearance is used as a sanction in exceptional cases in Belgium and in the UK against repeat offenders who are incapable of or unwilling to comply with the Codes. In Lithuania, preclearance is mandatory for outdoor advertising only and is administered not by the SRO, but by each local Municipality. (The Lithuanian situation is under review and it is likely that all outdoor advertising administration will be incorporated within the SRO's responsibility).

Copy advice (SRO advice on a proposed advertisement or advertising campaign at the request of an advertiser) is more common in international SROs. Most copy advice is provided free to advertisers, advertising agencies and the media and is generally offered orally on a non-binding basis in relation to all forms of advertising. Some jurisdictions charge non-members of the SRO for copy advice. The Austrian SRO provides copy advice in writing and the advice is produced using an online voting system. Since 2008, the advertising industry in France has implemented a system whereby any advertisement containing environmental claims should request copy advice. A French advertising industry decision in 2005 requires that if an SRO provides negative copy advice on a billboard project, the SRO should advise outdoor media companies who then make a judgment whether or not to use the advertisement.

Upheld rates

The rate of advertisements upheld across all categories increased from 5 per cent to 13.7 per cent between 2006 and 2009 which reflects a level on par with international counterparts and also reflects the Standards Board's response to changing community sensitivities. This is mostly due to 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. Preliminary statistics for 2010 indicate that the upheld rate across all categories was 10.24 per cent.

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.

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.

The Bureau is currently considering the recommendations of the Senate inquiry – Legal and Constitutional Affairs Reference Committee – *Review of the National Classification Scheme: achieving the right balance* June 2011, and the House of Representatives – Standing Committee on Social Policy and Legal Affairs – *Reclaiming Public Space: Inquiry into the regulation of billboard and outdoor advertising* July 2011 to determine the suitability of further enhancements to the advertising self-regulation system.

Continuous Improvement

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

Complaint processing

A new case management system was implemented in 2010 resulting in improvements in the efficiency and timeliness of complaint processing.

Public awareness

A major public education campaign was conducted in 2008, this was expanded and re-run in 2010 and early 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.

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 tested the Standards Board's decisions against the views of the community.

Research conducted in 2009 on community perceptions of violence in advertising and in 2010 on community perceptions of sex, sexuality and nudity in advertising.

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.

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.

Introduction of consistently dismissed category

A “consistently dismissed” category was introduced in 2010, responding to concerns that Bureau resources are 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.