

**A Submission to**

Australian Law Reform Commissions

**National Classification Scheme Review Discussion  
Paper 77**

**on behalf of**

Australian Association of National Advertisers

28 November 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.

## **Introduction**

Australian Association of National Advertisers (AANA) provides this submission to the National Classification Scheme Review.

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 Discussion Paper:

**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

## 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 Ethics<sup>1</sup> 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 Children<sup>2</sup>

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<sup>1</sup> [http://www.aana.com.au/advertiser\\_ethics\\_code.html](http://www.aana.com.au/advertiser_ethics_code.html)

<sup>2</sup> [http://www.aana.com.au/childrens\\_code.html](http://www.aana.com.au/childrens_code.html)

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

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 Code<sup>3</sup>

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 Code<sup>4</sup>

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 Code<sup>5</sup>

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.

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<sup>3</sup> [http://www.aana.com.au/food\\_beverages\\_code.html](http://www.aana.com.au/food_beverages_code.html)

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

<sup>5</sup> [http://www.aana.com.au/motor\\_vehicle\\_code.html](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 2009<sup>6</sup>
- AANA Food & Beverages: Advertising & Marketing Communications Code Practice Note launched in March 2010<sup>7</sup>
- AANA Environmental Claims in Advertising and Marketing Code Practice Note launched in December 2009<sup>8</sup>

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:** 2012 AANA Code of Ethics

**Appendix 3:** 2012 AANA Code of Ethics Practice Note

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<sup>6</sup> [http://www.aana.com.au/documents/AANAPracticeGuide-ManagingImagesofChildrenandYoungPeople\\_FinalOct2009.pdf](http://www.aana.com.au/documents/AANAPracticeGuide-ManagingImagesofChildrenandYoungPeople_FinalOct2009.pdf)

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

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

**Appendix 4:** AANA Code for Marketing & Advertising Communications to Children

**Appendix 5:** The Practice Guide: Managing Images of Children and Young People

**Appendix 6:** AANA Food & Beverages: Advertising & Marketing Communications Code

**Appendix 7:** the AANA Food & Beverages: Advertising & Marketing Communications Code Practice Note and the

**Appendix 8:** AANA Environmental Claims in Advertising and Marketing Code

**Appendix 9:** AANA Environmental Claims in Advertising and Marketing Code Practice Note

**Appendix 10:** 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.

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 four principle phases: research, consultation, revision and public release.

- **Phase 1: Research**

The Independent Review 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 standards<sup>9</sup>

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<sup>9</sup> Boddewyn - 1988

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.

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 the keep the Code simple, AANA has made a number of drafting amendments to clarify the scope and intent of the Code. The diversity of stakeholders' perspectives was carefully considered in the amendments to the Code.

Drafting amendments 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) and to proscribe the use of sexual appeal which is exploitative and degrading.

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

AANA has prepared 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 Note explains the Code objective, definitions of key terms and gives guidance as to how the Code clauses are intended to apply. The Practice Note directs the ASB to take a broad view of audience in the outdoor media environment.

The AANA Practice Note is informed by the outcome of ASB adjudications of complaints under the Code over the past 12 years.

- **Phase 3: Release**

**Release:** AANA released the revised Code of Practice and Practice Note on Monday 14 November 2011. The effective date for the revised Code of Practice is 1 January 2012.

**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 has committed 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](http://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 UPHOLD 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**

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)

<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](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](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)<sup>10</sup>.

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. Complaints Figures for Outdoor advertising**

AANA acknowledges concerns expressed by some individuals about outdoor advertising.

However, AANA notes that the level of complaint and level of breach in relation to outdoor advertising 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)<sup>11</sup>. This includes outdoor advertisements.

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%.

In terms of billboard advertisements, the figures are even lower.

- In 2010, there were around 30,000 different third party<sup>12</sup> outdoor advertisements (about 0.09% of all 33 million ads).
- In the same period, the ASB considered 67 cases about third party outdoor advertisements,.
- Eight of these were found to be in breach of the AANA Code of Ethics

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<sup>10</sup> Number of advertisements monitored by Nielsen in 2010

<sup>11</sup> Number of advertisements monitored by Nielsen in 2010

<sup>12</sup> Figures provided by the OMA who collects data on their members, third party advertisers. Non third party advertisers are for example on premise advertising.

The 9 ads found in breach of the AANA Codes represent 0.0026 of all outdoor advertisements and only 0.00002% of all advertisements run nationally.

Concerns about outdoor advertising must be considered in context of the overall levels of advertising and outdoor advertising.

Outdoor advertising comprises 0.09% of all advertisements.

The level of breaches of outdoor advertising is insignificant when compared with the overall level of outdoor advertising and the overall level of all advertising in Australia.

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.

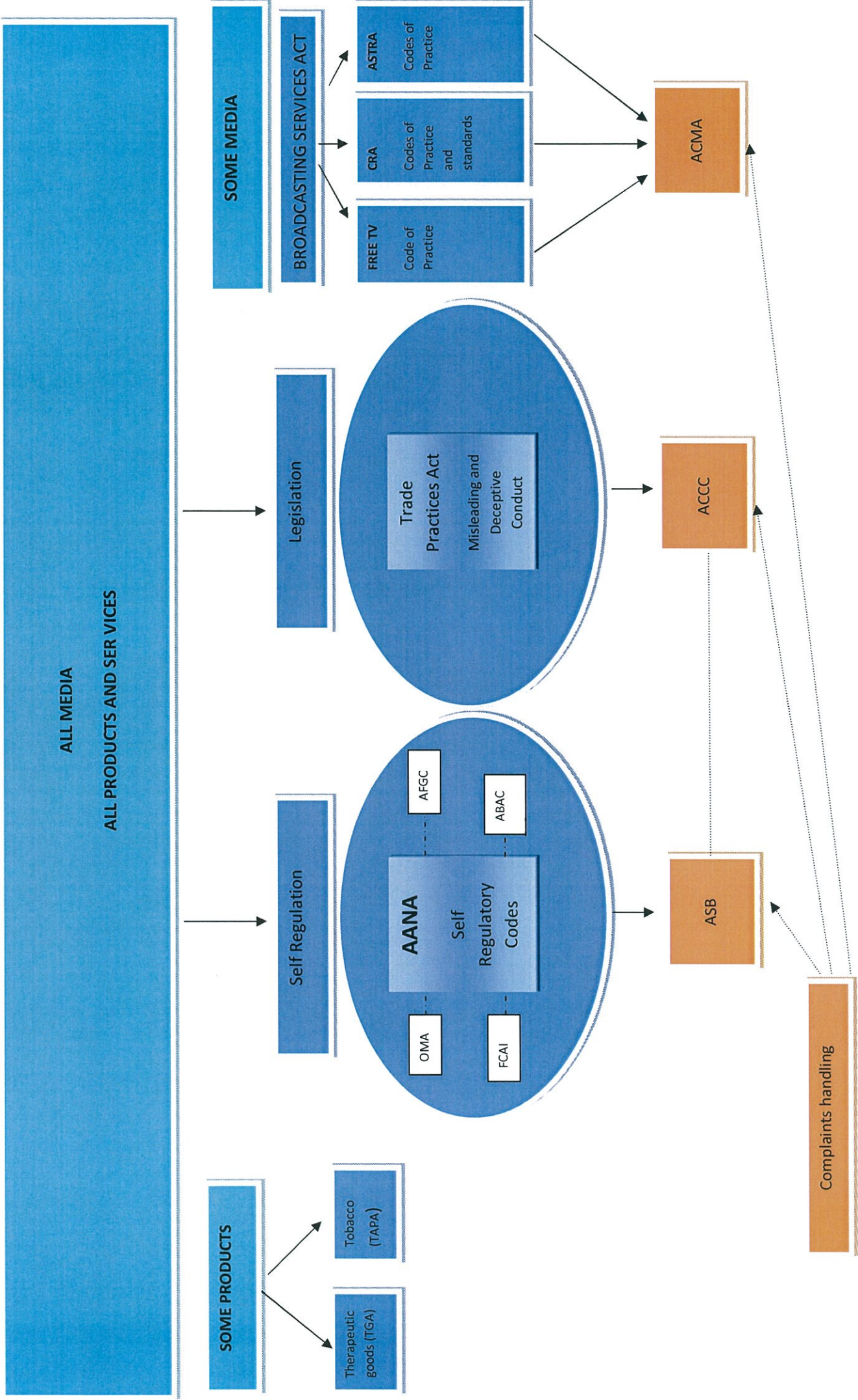
However, the industry continues to monitor all advertising including outdoor advertising, and will continue to work with consumer advocates and government to increase the level of consumer satisfaction with advertising and marketing communications.

**Australian Association of National Advertisers**

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

## **Appendix 1**

APPENDIX 1



**Australian Association of National Advertisers**

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

## **Appendix 2**

## Objectives

This Code has been adopted by the Australian Association of National Advertisers as part of advertising and marketing self-regulation. Its object is to ensure that advertisements and other forms of marketing communications are legal, decent, honest and truthful and that they have been prepared with a sense of obligation to the consumer and society and a sense of fairness and responsibility to competitors.

This Code comes into effect on 1 January 2012. It replaces the previous AANA Code of Ethics and applies to all advertising and marketing communications on and from 1 January 2012.

This Code is accompanied by Practice Notes which have been developed by AANA. The Practice Notes provide guidance to advertisers, complainants and the Advertising Standards Board (Board) in relation to this Code.

## Definitions and Interpretation

In this Code, unless the context otherwise requires:

**Advertising or Marketing Communications** means any material which is published or broadcast using any Medium or any activity which is undertaken by, or on behalf of an advertiser or marketer, and

- over which the advertiser or marketer has a reasonable degree of control, and
- that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct,

but does not include Excluded Advertising or Marketing Communications.

**Advertising or Marketing Communications to Children** means Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product. "Product" is defined in the Code for Advertising & Marketing Communications to Children as follows: **Product** means goods, services and/or facilities which are targeted toward and have principal appeal to Children.

**The Board** means the board appointed by the Advertising Standards Bureau from time to time, the members of which are representative of the community, to administer a public complaints system in relation to Advertising or Marketing Communications.

**Children** means persons 14 years old or younger and **Child** means a person 14 years old or younger.

**Excluded Advertising or Marketing Communications** means labels or packaging for products, public relations communications (corporate or consumer) and related activities and, in the case of broadcast media, any material which promotes a program or programs to be broadcast on that same channel or station.

**Medium** means any medium whatsoever including without limitation cinema, internet, outdoor media, print, radio, telecommunications, television or other direct-to-consumer media including new and emerging technologies.

**Prevailing Community Standards** means the community standards determined by the Board as those prevailing at the relevant time in relation to Advertising or Marketing Communications. Prevailing Community Standards apply to clauses 2.1 – 2.6 below. The determination by the Board shall have regard to Practice Notes published by AANA and any research conducted by the Advertising Standards Bureau.

## **1. Section 1 Competitor Complaints<sup>1</sup>**

- 1.1 Advertising or Marketing Communications shall comply with Commonwealth law and the law of the relevant State or Territory.
- 1.2 Advertising or Marketing Communications shall not be misleading or deceptive or be likely to mislead or deceive.
- 1.3 Advertising or Marketing Communications shall not contain a misrepresentation, which is likely to cause damage to the business or goodwill of a competitor.
- 1.4 Advertising or Marketing Communications shall not exploit community concerns in relation to protecting the environment by presenting or portraying distinctions in products or services advertised in a misleading way or in a way which implies a benefit to the environment which the product or services do not have.
- 1.5 Advertising or Marketing Communications shall not make claims about the Australian origin or content of products advertised in a manner which is misleading.

## **2. Section 2 Consumer Complaints<sup>2</sup>**

- 2.1 Advertising or Marketing Communications shall not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.
- 2.2 Advertising or marketing communications should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people.
- 2.3 Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised.
- 2.4 Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience.
- 2.5 Advertising or Marketing Communications shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided.

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<sup>1</sup> Complaints under Section 1 are made to the Advertising Claims Board,  
<http://www.adstandards.com.au/process/claimsboardprocess>

<sup>2</sup> Complaints under Section 2 are made to the Advertising Standards Board  
<http://www.adstandards.com.au/process/theprocesssteps>

- 2.6 Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety.

### **3 Section 3: Other Codes**

- 3.1 Advertising or Marketing Communications to Children shall comply with the AANA's Code of Advertising & Marketing Communications to Children and section 2.6 of this Code shall not apply to advertisements to which AANA's Code of Advertising & Marketing Communications to Children applies.
- 3.2 Advertising or Marketing Communications for motor vehicles shall comply with the Federal Chamber of Automotive Industries Code of Practice relating to Advertising for Motor Vehicles.
- 3.3 Advertising or Marketing Communications for food or beverage products shall comply with the AANA Food & Beverages Advertising & Marketing Communications Code as well as to the provisions of this Code.

**This section does not form part of the Code of Ethics and is provided here for information only**

### **Complaints under the AANA Self Regulatory System**

Complaints about the content of an advertisement or marketing communication can be made under this Code and the other AANA Codes to the Advertising Standards Bureau.

You can make a complaint by:

- Lodging a complaint on line at:

<http://www.adstandards.com.au/process/theprocesssteps/makingacomplaint>

If your complaint is about a program (not an advertisement) on television or radio, please contact the relevant industry association.

- Writing a letter (and sending via post or fax) to:

The Advertising Standards Bureau  
Level 2  
97 Northbourne Avenue  
TURNER ACT 2612

Fax: (02) 6262 9833

Once the Advertising Standards Bureau has received your complaint, it then assesses the complaint to determine whether it can go to the Board. If accepted the advertiser/marketer is notified and a response is requested. The complaint is then considered by the Board and the advertiser and complainant are advised of the determination. A case report is then published.

The original complainant or advertiser/marketer can also ask for a review of the determination.

**Australian Association of National Advertisers**

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

### **Appendix 3**

## AANA 2012 CODE OF ETHICS Practice Note

This Practice Note to the AANA Code of Ethics is provided as a guide to interpretation to assist advertisers, their agencies and the community in understanding the AANA's intent in relation to the Code. The interpretations in this Practice Note are based on the intent of the Code and relevant determinations of the Advertising Standards Board (Board), and may be amended by the AANA from time to time<sup>1</sup>.

The Board shall have regard to this Practice Note as it expresses the AANA's intent in relation to the Code of Ethics.

For simplicity, in this practice note the word "advertisements" is used to refer to advertising or marketing communications.

### What does the Code apply to?

The Code applies to:

- all advertising or marketing communications with an Australian-customer link (ie if any or all of the customers of the product, service etc are physically present in Australia),
- sponsorship announcements such as "this program brought to you by . . .",
- advertorials and infomercials,
- community service announcements,
- in any media, including on line and social media (the Code is technology neutral), and
- whether or not consideration has been paid.

The Code does not apply to:

- labels and packaging, or
- promotions for a broadcasters' programs aired on that network (television or radio), or
- public relations communications.

### Prevailing Community Standards

The provisions in Section 2 of the Code are subject to Prevailing Community Standards. Prevailing Community Standards are determined primarily by the Board, whose members are representative of the community, on a case by case basis, as part of the complaints process. To assist advertisers and complainants, this Practice Note provides some guidance into Prevailing Community Standards. It is influenced in part by previous decisions of the Board, the AANA's intent in developing this Code and any relevant research (of the AANA or Advertising Standards Bureau as relevant).

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<sup>1</sup> Please refer to [www.aana.com.au](http://www.aana.com.au) to obtain a current version of this Practice Note

The guidance to Prevailing Community Standards may be informed in part by research conducted by the AANA. The Board should have regard to that research as reflected in this Practice Note from time to time in determining Prevailing Community Standards.

## **Two Parts of the Code**

The Code is divided into two sections. The purpose of the two sections is to differentiate between the provisions which apply to complaints by competitors (Section 1) and complaints which are brought by consumers (Section 2).

Section 1 - Competitor Complaints is intended to provide a mechanism for complainants to resolve disputes between competitors in an efficient and low cost way without the need for recourse to the courts.

Section 2 - Consumer Complaints is the section for complaints under the Code by consumers.

### **Section 1: Competitor Complaints**

- Section 1 reflects the consumer protection principles in the Australian Consumer Law (part of the Competition and Consumer Act) (ACL).
- Complaints are made to the Advertising Claims Board:  
<http://www.adstandards.com.au/process/claimsboardprocess>
- Section 1.2 reflects concepts in the ACL in relation to misleading and deceptive conduct.
- To establish that advertising or marketing communication is not misleading and deceptive an advertiser may be required to provide substantiation of any claims made. This means that an advertiser must have a reasonable basis for their claims. Substantiation may be in the form of tests, studies or expert reports depending on the type of claim made.
- The Advertising Claims Board will consider whether the information most likely to be taken from the advertisements or marketing communication by an average consumer in the target market would be reasonably regarded as truthful and honest. In testing the requirement that a advertising or marketing communication should not be designed to be misleading or deceptive, the Board will consider the advertiser's stated intention, but may also consider, regardless of stated intent, that an advertisement is by design misleading or deceptive.

### **Section 2: Consumer complaints**

- Section 2 of the Code provides the self regulatory rules around portrayal of people, violence, treatment of sex, sexuality and nudity, appropriate language and Prevailing Community Standards in advertising or marketing communications.
- **Prevailing Community Standards** apply to all parts of Section 2. This means that the Board will have regard to community standards at the time the advertisement or marketing communication was published. The Board will, in considering what community standards are at the relevant time, also have regard to any research conducted by the Advertising Standards Bureau as well as this Practice Note. There is no one test of Prevailing Community Standards. What is the Prevailing Community Standard will differ in relation to the different restrictions in relation to health and safety, nudity, language, violence and portrayal of people.

- **Relevant audience** is a relevant concept for the restrictions on treatment of sex, sexuality and nudity and language. These sections of the Code require the Board to have regard also to the media placement plan and audience measurement data.
  - **Relevant audience** is determined by regard to the media placement plan and content of the Advertising or Marketing communication. It requires the Board to examine the media plan (formal or informal). It is the audience that the advertiser intends to see the advertisement. For example the relevant audience may be grocery buyers between the ages of 20 and 35. The Board shall have regard to the audience or readership composition data for the relevant media. For example, OzTAM data can be used to inform the relevant audience for commercial free to air and subscription television.
  - **Broad view of “audience” taken by the Board.** The Board takes a broad view of the “audience” for the purposes of advertisements in public places. The Board recognises the broad nature of the audience for advertisements in public places. The Board will not just have regard to whom the advertisement is targeted; the Board also looks at who can see it and the Board will take that into consideration in their view of whether the advertisement treats sex, sexuality and nudity with sensitivity to that audience or in regards to whether the language used is appropriate for that audience.
- **Images of Children and Young People**
  - Particular care must be exercised when using images of children and young people in advertising or marketing communications.
  - Advertisers should have regard to the AANA Practice Guide: : Managing Images of Children and Young People:
 

[http://www.aana.com.au/documents/AANAPracticeGuide-ManagingImagesofChildrenandYoungPeople\\_FinalOct2009.pdf](http://www.aana.com.au/documents/AANAPracticeGuide-ManagingImagesofChildrenandYoungPeople_FinalOct2009.pdf)
- **Portrayal of people (Section 2.1).**
  - This section describes types of behaviour and restricts depictions of those types of behaviour against people within certain groups.
  - The types of behaviour are:
    - Discrimination – unfair or less favourable treatment
    - Vilification – humiliates, intimidates, incites hatred, contempt or ridicule
  - The groups are:
    - Race – viewed broadly this term includes colour, descent or ancestry, ethnicity, nationality, and includes for example ideas of ethnicity covering people of Jewish or Muslim origin
    - Ethnicity – those with a common social identity as a result of customs, traditions and belief about historical origins
    - Nationality – people belonging to a particular nation either by birth, origin or naturalisation. This can change over time so a person born in the United States who becomes a citizen of Australia by marriage may describe their nationality as both Australian and American
    - Gender – male or female characteristics

- Age – based on a person’s chronological age (ie the date they were born) and not a person’s biological age (ie physical age a person may exhibit)
  - Sexual preference – includes homosexuality, heterosexuality, bisexuality and trans sexuality
  - Religion – a person’s belief or non belief about god or the existence or non existence of god or gods
  - Disability – a current, past or potential physical, intellectual, psychiatric, or sensory illness, disease, disorder, malfunction, malformation, disfigurement or impairment, including mental illness
  - Political belief – support for or opposition of a particular political party or ideology.
- Example: An advertisement which subjected a central icon of the Catholic Faith to ridicule was found to constitute vilification on the basis of religious belief. The use of an image of Jesus on a surfboard however, was not vilification as it did not ridicule Christians. Also, an image of two gay men in an advertisement to promote safe sex where one was wearing a cross, was not vilification.
  - A negative depiction of a group of people in society may be found to breach section 2.1 even if humour is used. The depiction will be regarded as negative if a negative impression is created by the imagery and language used in the advertisement.
  - A realistic depiction of people with a disability can be acceptable, even if the advertisement is upsetting to some members of the community, where there is an important message being delivered.
  - Advertisements can suggest stereotypical aspects of an ethnic group with humour provided the overall impression of the advertisements is not a negative impression of people of that ethnicity.
  - Portraying a woman as attractive does not of itself constitute discrimination or vilification of women.
  - Images of men or women in traditional roles are not prohibited provided the major focus of the advertisement is on the product, not the role portrayed. However care should be taken if depictions suggest that such activities are “women’s work” or “work of little value”.
  - The AANA Practice Guide: Managing Images of Children and Young People<sup>2</sup> provides more information about the use of images of Children and Young People. It provides that advertisers and marketers must take reasonable steps to ensure that images of children and young people are not sexually exploitative in nature.
- **Objectification (new Section 2.2)**
    - A new section 2.2 to address concerns about the objectification of people. The new wording restricts the use of images which employ sexual appeal which is exploitative and degrading of any individual or group of people. It is not limited to images of women but applies more broadly.

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<sup>2</sup>[http://www.aana.com.au/documents/AANAPracticeGuide-ManagingImagesofChildrenandYoungPeople\\_FinalOct2009.pdf](http://www.aana.com.au/documents/AANAPracticeGuide-ManagingImagesofChildrenandYoungPeople_FinalOct2009.pdf)

- This section proscribes objectification of men, women and children.
- In advertisements where images of children are used, sexual appeal is not acceptable and will always be regarded as exploitative and degrading. Advertisements must not state or imply that children are sexual beings and that ownership or enjoyment of the advertised product will enhance their sexuality. Children must not be portrayed in a manner which treats them as objects of sexual appeal.
- Not all images of people who are scantily clad will be unacceptable under this section. This section restricts the use of such images only if they are exploitative and degrading.
  - Exploitative means clearly appearing to purposefully debase or abuse a person, or group of person, for the enjoyment of others, and lacking moral, artistic or other values.
  - Degrading means lowering in character or quality a person or group of persons.
- **Violence (Section 2.3)**
  - Consequences of violence may also be prohibited however graphic depictions of traffic accidents or the consequences of domestic violence may be justified by the community safety message involved.
  - Sexual violence is not acceptable. For example, an advertisement for men's underwear which included an image of two women in chains, was found in breach.
  - Violence against animals is caught by this section.
  - Depiction of violence to promote a violent game may be acceptable provided it is relevant to the product advertised. For example, an advertisement for a game showing a gun is acceptable; however, a depiction of the gun pointing at another person will not usually be acceptable.
  - Realistic depictions of the consequences of violence are not acceptable, for example, showing a woman's bloodied face may not be acceptable.
  - More leeway is permitted where the depiction is stylised rather than realistic.
- **Sex, sexuality or nudity (Section 2.4)**
  - This section applies equally to images of men as well as images of women and children.
  - Images which are not permitted are those which are highly sexually suggestive and inappropriate for the relevant audience. Explicit sexual depictions in advertising, particularly where the depiction is not relevant to the product or service being advertised, are generally objectionable to the community and will offend Prevailing Community Standards.
  - Full frontal nudity and explicit pornographic language is not permitted. Images of genitalia are not acceptable. Images of nipples may be acceptable in advertisements for plastic surgery or art exhibits for example.

- Discreet portrayal of nudity and sexuality in an appropriate context (eg advertisements for toiletries and fashion) is generally permitted but note the applications of the relevant audience. More care should be taken in outdoor media than magazines, for example.
  - Advertisements which depict women or men scantily clad, are generally acceptable, if relevant to the product. For example, it is acceptable to show a woman in a bikini in advertisements for boats or sunscreen, provided the image is not sexualised.
  - Images of women in bikinis are permitted, however, unacceptable images could include those where a woman (or man) is in a suggestively sexual pose, where underwear is being pulled up or down (by the model or another person), or where there is clear sexual innuendo from the ad (e.g. depicting woman as sexual objects). Sexualised images where only the woman's torso is shown are generally found in breach. However, an image of a woman's torso in a non sexualised pose to promote a relevant healthy product, have been found to be acceptable.
  - Example. Two women kissing in advertisements was acceptable and though it may offend some people, a Prevailing Community Standard also includes tolerance. The Board determined that it did not contravene the Code.
  - Advertisements with appeal to younger people which contain sexualised images or poses are to be used with caution. Models which appear to be young should not be used in sexualised poses.
  - The use of the word "sex" does not, of itself, make an advertisement unacceptable. However, such advertisements must not contain images that are highly sexualised.
- **Language (Section 2.5)**
    - Words which are innocuous and in widespread and common use in the Australian vernacular are permitted (provided they are used in a manner consistent with their colloquial usage, for example with gentle humour, and not used in a demeaning or aggressive manner). Examples are "bugger", "shit", "pissed-off", "crap", "bloody", "cheap bastard", "bum", "honk if you did it last night".
    - The "f" word is generally not permitted, however words and acronyms that play on the 'f' word, eg wtf, but do not use the actual word are normally considered acceptable.
- **Health and Safety (Section 2.6)**
    - Images of bike riding without helmets will be contrary to prevailing community standards relating to health and safety. Similarly, advertisements depicting unsafe practices or images, such as riding down a hill in a wheelie bin, riding in a car without seat belts etc are unacceptable.
    - Motor vehicle advertisements are now subject to the health and safety section. This means that a motor vehicle advertisement cannot depict images contrary to public health and safety notwithstanding the images being unrelated to the motor vehicle advertised. For example, an advertisement for a motor vehicle which depicts a child riding a bicycle without a helmet will be considered under section 2.6.

- Bullying – the age of the people depicted in an advertisement, their relationship to each other and the nature of the communication are relevant in determining whether an advertisement constitutes bullying and is contrary to Prevailing Community Standards. For example, depictions in an advertisement of the texting of humorous images by one party in a consensual relationship will not necessarily constitute bullying particularly if the images are humorous and not sexual in nature. Regard shall be had to the Commonwealth Government's policy on bullying and cyber-bullying as an indicator of Prevailing Community Standards in this area.
- More care must be taken when the people depicted in an advertisement are children or if there is an unequal relationship between the people in the advertisement, eg student and teacher, manager and worker.

### **Section 3: Other Codes**

Section 3 of the Code references the other AANA Codes which are:

- Code of Advertising or Marketing Communications to Children  
[http://www.aana.com.au/childrens\\_code.html](http://www.aana.com.au/childrens_code.html)
- Food & Beverages Advertising & Marketing Communications Code  
[http://www.aana.com.au/food\\_beverages\\_code.html](http://www.aana.com.au/food_beverages_code.html)
- FCAI Code of Practice for Advertising of Motor Vehicles  
[http://www.aana.com.au/motor\\_vehicle\\_code.html](http://www.aana.com.au/motor_vehicle_code.html)

**Australian Association of National Advertisers**

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## **Appendix 4**

# Code for Advertising & Marketing Communications to Children

**This Code has been adopted by the AANA as part of advertising and marketing self regulation. The object of this Code is to ensure that advertisers and marketers develop and maintain a high sense of social responsibility in advertising and marketing to children in Australia.**

## 1. DEFINITIONS

In this Code, unless the context otherwise requires:

**Advertising or Marketing Communication** means:

- (a) matter which is published or broadcast using any Medium in all of Australia or in a substantial section of Australia for payment or other valuable consideration and which draws the attention of the public or a segment of it to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct; or
- (b) any activity which is undertaken by or on behalf of an advertiser or marketer for payment or other valuable consideration and which draws the attention of the public or a segment of it to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct,

but does not include Excluded Advertising or Marketing Communications.

**Advertising or Marketing Communications to Children**

means Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product.

**Advertising Standards Board**

means the board appointed by the Advertising Standards Bureau from time

to time, the members of which are representative of the community, to administer a public complaints system in relation to Advertising or Marketing Communications.

**Alcohol Products** means products which have some association with alcohol including alcoholic beverages, food products that contain alcohol or other Products that are associated in some way with alcohol including in the sense of being branded in that way.

**Children** means persons 14 years old or younger and **Child** means a person 14 years old or younger.

**Excluded Advertising or Marketing Communications** means labels or packaging for Products.

**Medium** means any medium whatsoever including without limitation cinema, internet, outdoor media, print, radio, television, telecommunications, or other direct-to-consumer media including new and emerging technologies.

**Premium** means anything offered free or at a reduced price and which is conditional upon the purchase of a regular Children's Food or Beverage Product.

**Prevailing Community Standards**

means the community standards determined by the Advertising Standards Board as those prevailing at the relevant time, and based on research carried out on behalf of the Advertising Standards Board as it sees fit, in relation to Advertising or Marketing Communications to Children.

**Product** means goods, services and/or facilities which are targeted toward and have principal appeal to Children.

## 2. CODE OF PRACTICE

### 2.1 Prevailing Community Standards

Advertising or Marketing Communications to Children must not contravene Prevailing Community Standards.

### 2.2 Factual Presentation

Advertising or Marketing Communications to Children:

- (a) must not mislead or deceive Children;
- (b) must not be ambiguous; and
- (c) must fairly represent, in a manner that is clearly understood by Children:
  - (i) the advertised Product;
  - (ii) any features which are described or depicted or demonstrated in the Advertising or Marketing Communication;
  - (iii) the need for any accessory parts; and
  - (iv) that the Advertising or Marketing Communication is in fact a commercial communication rather than program content, editorial comment or other non commercial communication.

### 2.3 Placement

Advertising or Marketing Communications to Children must not be placed in Media where editorial comment or program content, in close proximity to that communication, or directly accessible by Children as a result of the communication, is unsuitable for Children according to Prevailing Community Standards.

# Code for Advertising & Marketing Communication

## 2.4 Sexualisation

Advertising or Marketing Communications to Children:

- (a) must not include sexual imagery in contravention of Prevailing Community Standards;
- (b) must not state or imply that Children are sexual beings and that ownership or enjoyment of a Product will enhance their sexuality.

## 2.5 Safety

Advertising or Marketing Communications to Children:

- (a) must not portray images or events which depict unsafe uses of a Product or unsafe situations which may encourage Children to engage in dangerous activities or create an unrealistic impression in the minds of Children or their parents or carers about safety; and
- (b) must not advertise Products which have been officially declared unsafe or dangerous by an authorised Australian government authority.

## 2.6 Social Values

Advertising or Marketing Communications to Children:

- (a) must not portray images or events in a way that is unduly frightening or distressing to Children; and
- (b) must not demean any person or group on the basis of ethnicity, nationality, race, gender, age, sexual preference, religion or mental or physical disability.

## 2.7 Parental Authority

Advertising or Marketing Communications to Children:

- (a) must not undermine the authority, responsibility or judgment of parents or carers;
- (b) must not contain an appeal to Children to urge their parents or carers to buy a Product for them;
- (c) must not state or imply that a Product makes Children who own or enjoy it superior to their peers; and

- (d) must not state or imply that persons who buy the Product the subject of the Advertising or Marketing Communication are more generous than those who do not.

## 2.8 Price

- (a) Prices, if mentioned in Advertising or Marketing Communications to Children, must be accurately presented in a way which can be clearly understood by Children and must not be minimised by words such as "only" or "just".
- (b) Advertising or Marketing Communications to Children must not imply that the Product being promoted is immediately within the reach of every family budget.

## 2.9 Qualifying Statements

Any disclaimers, qualifiers or asterisked or footnoted information used in Advertising or Marketing Communications to Children must be conspicuously displayed and clearly explained to Children.

## 2.10 Competitions

An Advertising or Marketing Communication to Children which includes a competition must:

- (a) contain a summary of the basic rules for the competition;
- (b) clearly include the closing date for entries; and
- (c) make any statements about the chance of winning clear, fair and accurate.

## 2.11 Popular Personalities

Advertising or Marketing Communications to Children must not use popular personalities or celebrities (live or animated) to advertise or market Products or Premiums in a manner that obscures the distinction between commercial promotions and program or editorial content.

## 2.12 Premiums

Advertising or Marketing Communications to Children, which include or refer to or involve an offer of a Premium:

- (a) should not create a false or misleading impression in the minds of Children about the nature or content of the Product;
- (b) should not create a false or misleading impression in the minds of Children that the product being advertised or marketed is the Premium rather than the Product;
- (c) must make the terms of the offer clear as well as any conditions or limitations; and
- (d) must not use Premiums in a way that promotes irresponsible use or excessive consumption of the Product.

## 2.13 Alcohol

Advertising or Marketing Communications to Children must not be for, or relate in any way to, Alcohol Products or draw any association with companies that supply Alcohol Products.

## 2.14 Privacy

If an Advertising or Marketing Communication indicates that personal information in relation to a Child will be collected, or if as a result of an Advertising and Marketing Communication, personal information of a Child will or is likely to be collected, then the Advertising or Marketing Communication must include a statement that the Child must obtain parental consent prior to engaging in any activity that will result in the disclosure of such personal information.

## 2.15 Food and Beverages

- (a) Advertising or Marketing Communications to Children for food or beverages must neither encourage nor promote an inactive lifestyle or unhealthy eating or drinking habits.
- (b) Advertising or Marketing Communications to Children must comply with the AANA Food & Beverages Advertising & Marketing Communications Code.

## 2.16 AANA Code of Ethics

Advertising or Marketing Communications to Children must comply with the AANA Code of Ethics.

An outline of the process by which complaints can be made against this Code follows.

### ADVERTISING STANDARDS BOARD COMPLAINTS PROCESS

#### Receipt of complaints

The Advertising Standards Board (**Board**) will normally only accept written complaints – by post or facsimile or via the online complaints form on the Advertising Standard Bureau (**ASB**) website ([www.adstandards.com.au](http://www.adstandards.com.au)).

All complaints received are promptly assessed as to their appropriateness for submission to the Board for determination. The Secretariat replies to all complainants informing them of the status of their complaint.

If the information provided in the letter of complaint is insufficient (in particular, if it fails to adequately identify the advertiser or marketer, product or nature of complaint) then more information is sought from the complainant.

Complaints are not forwarded to the Board if:

- The commercial communication complained about has been previously considered – however all complaints are referred to the advertiser or marketer for its consideration.
- The commercial communication complained about does not constitute an Advertising or Marketing Communication for the purposes of one of the codes ASB administers being section 2 of the AANA Code of Ethics, the AANA Food & Beverages Advertising & Marketing Communications Code, the AANA Code for Advertising & Marketing Communications to Children or the Federal Chamber of Automotive Industries' Voluntary Code of Practice for Motor Vehicle Advertising (**Codes**).

- The complaint would involve determining questions of law or questions of truth and accuracy (other than as provided for under clause 2.2 of the AANA Code for Advertising & Marketing Communications to Children and under clauses 2.1, 2.4 and 3.1 of the AANA Food & Beverages Advertising & Marketing Communications Code).
- The complaint involves trivial issues.
- The complaint involves public advocacy issues.
- The commercial communication complained about is local advertising.
- The commercial communication complained about is the subject of litigation or an order by a court or government agency.
- The complaint is about unlawful business practices.
- The commercial communication complained about has been withdrawn or discontinued before challenge.
- The complaint is about highly technical issues.
- The complaint is about label directions or basic performance of products and services not related to advertising or marketing claims.
- The complaint involves issues covered by specific industry codes, such as:
  - slimming/weight management products and services;
  - therapeutic goods;
  - alcoholic beverages; except in the case of motor vehicles.

An anonymous complaint is not sufficient to initiate a formal complaint. It can however be included as part of a complaint that has already been raised or is subsequently raised. To facilitate this, anonymous complaints are kept on file.

#### Initiating complaints

A single written complaint is sufficient to initiate a formal complaint.

#### Advising Advertiser/Marketer of complaints

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.

#### Complaint resolution

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.

# Code for Advertising & Marketing Communications to Children

If a Board member's duties to another board or organisation require that they breach their duty of loyalty or confidentiality to the Board for a period of time, then the member must disclose this position to the Board.

A general conflict with the Board would require that the member withdraw from their duties to the Board during the period that the conflict continues.

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

In relation to individual complaints, Board members will 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.

## Decisions the Board can make

### Determination – complaint upheld

A complaint is upheld if the Board determines there is a breach of one of the Codes.

### Determination – Complaint dismissed

A complaint is dismissed if the Board determines there is no breach of any of the Codes.

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

Following the Board's determination, a draft case report is promptly 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.

## Publish case report

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

## 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 should 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.

August 2009

**Australian Association of National Advertisers**

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

## **Appendix 5**

# Practice Guide Managing Images of Children and Young People

## INTRODUCTION

Concerns about the risks posed to children and young people, directly and indirectly, through the use of their images, particularly on the internet and other electronic media, have been voiced by governments and the community both internationally and in Australia.

AANA is committed to promoting best industry practice that facilitates a safe environment for children and young people. Fundamental to this commitment, is that advertisers/marketers take all reasonable steps to protect children and young people from unintended and inappropriate use of their images created for advertising or marketing communications.

AANA acknowledges and respects that children and young people:

- have a right to privacy and protection from exploitation or abuse;
- have a right to freedom of expression and involvement in the media, including advertising and marketing; and
- should not have their rights unduly restrained because of the improper actions of others.

As the interests and welfare of children and young people are paramount AANA encourages advertisers and marketers to be aware of the potential risks and take appropriate steps to address them.

This guide should be interpreted with reference to relevant Commonwealth, State and Territory legislation and regulation. For example, the circumstances where children and young people may require parental consent in addition to their own consent vary between the States and Territories and in regard to activities undertaken i.e. the requirements for working with children and censorship laws.

The information provided in this guide is of a general nature. The guide should be applied by the user with consideration of the relevance to their particular circumstances and exercise of the users own skills and care in relation to any material contained therein.

## THE PRACTICE APPROACH

### Definition

**Image** – means a representation of the likeness of a person captured, created and/or modified in any medium, including on film, electronic or digital technology.

### Key Principles

- Consent • Dignity • Security/Privacy

### CONSENT

Parents/guardians, children and young people have a right to decide whether the child or young person's image is to be taken and how that image may be used.

1. Parents/guardians, children and young people each:
  - a. must understand the nature and intended outcome of the advertising or marketing communication.
  - b. must be made aware of the way in which the image is to be used and how long the image will be displayed and distributed including on the internet and mobile technology.
  - c. must provide consent for the child or young person's image to be taken and used\*.

**\*Notes:** It is a matter of commercial judgement whether written or verbal consent is required.

For persons 15 years of age and under parent/guardian written consent is required as to the nature of full or partial nudity.

Consent is not required for images of children/young people captured incidentally and where they were not employed by or on behalf of, or did not take direction from, or on behalf of, the advertiser/marketer in the creation of the image.

### DIGNITY

Advertisers/marketers must respect the integrity of children and young people by taking action appropriate to their age and maturity to protect them from ill-treatment and exploitation, including sexual exploitation.

2. Advertisers and marketers must take reasonable steps to:
  - a. ensure a child or young person is always portrayed in a dignified and respectful manner.
  - b. clearly outline what is considered appropriate behaviour and content to those taking, creating or modifying images (eg photographer).

- c. ensure that images of children and young people are not sexually exploitative in nature, nor open to obvious misinterpretation and misuse.

- d. ensure when working with a person 15 years of age and under, and where they are to be fully or partly naked, that the parent/guardian commits to direct supervision of that person.\*\*

**\*\*Note:** Persons 16 years and over may not require parental consent for a range of matters including employment.

### SECURITY/PRIVACY

Children and young people have the right to be protected from being hurt - physically or mentally.

3. Advertisers and marketers must take reasonable steps to:
  - a. ensure that images are taken/created by authorised persons or obtained from sources where this can be ascertained.
  - b. clearly outline in a written contract to persons contracted or paid to take images: who retains the rights to the images; who retains the images taken, including arrangements made for negatives, digital files and proofs; and outline any restrictions for use and sale.
  - c. ensure all images of children are securely stored.
  - d. ensure that no identifying or contact information of the child or young person is used in the publication of, or accompanies the circulation/distribution, of images.
  - e. apply technological measures, where appropriate, to reduce the ability for unauthorised access, modification and copying of electronic/digital images.\*\*\*
  - f. provide details to parents/guardians, children or young people of who to contact and what to do if concerns or complaints of inappropriate behaviour or image use are raised.
4. Advertisers/marketers should consider using adult models, mannequins, illustrations or animation if appropriate for the circumstances.

**\*\*\*Note:** Examples include, but are not limited to, disabling the 'right mouse click' function, encoding with digital watermark, blocking unauthorised access to source data, tagging information in metadata.

**Australian Association of National Advertisers**

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

## **Appendix 6**

# Food & Beverages Advertising & Marketing Communications Code

**This Code has been adopted by the AANA as part of advertising and marketing self-regulation. The object of this Code is to ensure that advertisers and marketers develop and maintain a high sense of social responsibility in advertising and marketing food and beverage products in Australia.**

## 1. DEFINITIONS

In this Code, unless the context otherwise requires:

**Advertising or Marketing Communication** means:

- (a) matter which is published or broadcast using any Medium in all of Australia or in a substantial section of Australia for payment or other valuable consideration and which draws the attention of the public or a segment of it to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct; or
- (b) any activity which is undertaken by or on behalf of an advertiser or marketer for payment or other valuable consideration and which draws the attention of the public or a segment of it to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct,

but does not include Excluded Advertising or Marketing Communications.

**Advertising or Marketing Communications to Children**

means Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for a Children's Food or Beverage Product.

**Advertising Standards Board**

means the board appointed by the Advertising Standards Bureau from time to time, the members of which are representative of the community, to administer a public complaints system in relation to Advertising or Marketing Communications.

**Average Consumer** means a regular adult family shopper able to compare products by label-listed definition.

**Children** means persons 14 years old or younger and **Child** means a person 14 years old or younger.

**Children's Food or Beverage**

**Product** means any food or beverage product other than alcoholic beverages as defined in and subject to regulation by the Alcohol Beverages Advertising Code, which is targeted toward and has principal appeal to Children.

**Excluded Advertising or Marketing Communications** means labels or packaging for Products.

**Food or Beverage Products** means any food or beverage products other than alcoholic beverages as defined in and subject to regulation by the Alcohol Beverages Advertising Code.

**Medium** means any medium whatsoever including without limitation cinema, internet, outdoor media, print, radio, television, telecommunications, or other direct to consumer media including new and emerging technologies.

**Premium** means anything offered free or at a reduced price and which is conditional upon the purchase of a regular Product.

**Prevailing Community Standards**

means the community standards determined by the Advertising Standards Board as those prevailing at the relevant time, and based on research carried out on behalf of the Advertising Standards Board as it sees fit, in relation to the advertising or marketing of Food or Beverage Products taking into account, at a minimum, the requirements of the Australia New Zealand Food Standards Code, the Australian Dietary Guidelines as defined by the National Health and Medical Research Council and the National Physical Activity Guidelines as published by the Federal Government of Australia.

## 2. ADVERTISING OR MARKETING COMMUNICATIONS FOR FOOD OR BEVERAGE PRODUCTS

- 2.1 Advertising or Marketing Communications for Food or Beverage Products shall be truthful and honest, shall not be or be designed to be misleading or deceptive or otherwise contravene Prevailing Community Standards, and shall be communicated in a manner appropriate to the level of understanding of the target audience of the Advertising or Marketing Communication with an accurate presentation of all information including any references to nutritional values or health benefits.

2.2 Advertising or Marketing Communications for Food or Beverage Products shall not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets, or encourage what would reasonably be considered as excess consumption through the representation of product/s or portion sizes disproportionate to the setting/s portrayed or by means otherwise regarded as contrary to Prevailing Community Standards.

2.3 Advertising or Marketing Communications for Food or Beverage Products that include what an Average Consumer, acting reasonably, might interpret as health or nutrition claims shall be supportable by appropriate scientific evidence meeting the requirements of the Australia New Zealand Food Standards Code.

2.4 Advertising or Marketing Communications for Food or Beverage Products which include nutritional or health related comparisons shall be represented in a non misleading and non deceptive manner clearly understandable by an Average Consumer.

2.5 Advertising or Marketing Communications for Food or Beverage Products shall not make reference to consumer taste or preference tests in any way that might imply statistical validity if there is none, nor otherwise use scientific terms to falsely ascribe validity to advertising claims.

2.6 Advertising or Marketing Communications for Food or Beverage Products including claims relating to material characteristics such as taste, size, content, nutrition and health benefits, shall be specific to the promoted product/s and accurate in all such representations.

2.7 Advertising or Marketing Communications for Food or Beverage Products appearing within segments of media devoted to general and sports news and/or current affairs, shall not use associated sporting, news or current affairs personalities, live or animated, as part of such Advertising and/or Marketing Communications without clearly distinguishing between commercial promotion and editorial or other program content.

2.8 Advertising or Marketing Communications for Food and/or Beverage Products not intended or suitable as substitutes for meals shall not portray them as such.

2.9 Advertising or Marketing Communications for Food and/or Beverage Products must comply with the AANA Code of Ethics and the AANA Code for Advertising & Marketing Communications to Children.

### **3. ADVERTISING AND CHILDREN**

3.1 Advertising or Marketing Communications to Children shall be particularly designed and delivered in a manner to be understood by those Children, and shall not be misleading or deceptive or seek to mislead or deceive in relation to any nutritional or health claims, nor employ ambiguity or a misleading or deceptive sense of urgency, nor feature practices such as price minimisation inappropriate to the age of the intended audience.

3.2 Advertising or Marketing Communications to Children shall not improperly exploit Children's imaginations in ways which might reasonably be regarded as being based upon an intent to encourage those Children to consume what would be considered, acting reasonably, as excessive quantities of the Children's Food or Beverage Product/s.

3.3 Advertising or Marketing Communications to Children shall not state nor imply that possession or use of a particular Children's Food or Beverage Product will afford physical, social or psychological advantage over other Children, or that non possession of the Children's Food or Beverage Product would have the opposite effect.

3.4 Advertising or Marketing Communications to Children shall not aim to undermine the role of parents or carers in guiding diet and lifestyle choices.

3.5 Advertising or Marketing Communications to Children shall not include any appeal to Children to urge parents and/or other adults responsible for a child's welfare to buy particular Children's Food or Beverage Products for them.

3.6 Advertising or Marketing Communications to Children shall not feature ingredients or Premiums unless they are an integral element of the Children's Food or Beverage Product/s being offered.

An outline of the process by which complaints can be made against this Code follows.

## ADVERTISING STANDARDS BOARD COMPLAINTS PROCESS

### Receipt of complaints

The Advertising Standards Board (**Board**) will normally only accept written complaints – by post or facsimile or via the online complaints form on the Advertising Standard Bureau (**ASB**) website ([www.adstandards.com.au](http://www.adstandards.com.au)).

All complaints received are promptly assessed as to their appropriateness for submission to the Board for determination. The Secretariat replies to all complainants informing them of the status of their complaint.

If the information provided in the letter of complaint is insufficient (in particular, if it fails to adequately identify the advertiser or marketer, product or nature of complaint) then more information is sought from the complainant.

Complaints are not forwarded to the Board if:

- The commercial communication complained about has been previously considered – however all complaints are referred to the advertiser or marketer for its consideration.
- The commercial communication complained about does not constitute an Advertising or Marketing Communication for the purposes of one of the codes ASB administers being section 2 of the AANA Code of Ethics, the AANA Food & Beverages Advertising & Marketing Communications Code, the AANA Code for Advertising & Marketing Communications to Children or the Federal Chamber of Automotive Industries' Voluntary Code of Practice for Motor Vehicle Advertising (**Codes**).
- The complaint would involve determining questions of law or questions of truth and accuracy (other than as provided for under clause 2.2 of the AANA Code for Advertising & Marketing Communications to Children and under clauses 2.1, 2.4 and 3.1 of the AANA Food & Beverages Advertising & Marketing Communications Code).
- The complaint involves trivial issues.
- The complaint involves public advocacy issues.
- The commercial communication complained about is local advertising.
- The commercial communication complained about is the subject of litigation or an order by a court or government agency.
- The complaint is about unlawful business practices.
- The commercial communication complained about has been withdrawn or discontinued before challenge.
- The complaint is about highly technical issues.
- The complaint is about label directions or basic performance of products and services not related to advertising or marketing claims.
- The complaint involves issues covered by specific industry codes, such as:
  - slimming/weight management products and services;
  - therapeutic goods;
  - alcoholic beverages; except in the case of motor vehicles.

An anonymous complaint is not sufficient to initiate a formal complaint. It can however be included as part of a complaint that has already been raised or is subsequently raised. To facilitate this, anonymous complaints are kept on file.

### Initiating complaints

A single written complaint is sufficient to initiate a formal complaint.

### Advising Advertiser/Marketer of complaints

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.

### Complaint resolution

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.

If a Board member's duties to another board or organisation require that they breach their duty of loyalty or confidentiality to the Board for a period of time, then the member must disclose this position to the Board.

A general conflict with the Board would require that the member withdraw from their duties to the Board during the period that the conflict continues.

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

In relation to individual complaints, Board members will 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.

## Decisions the Board can make

### Determination – complaint upheld

A complaint is upheld if the Board determines there is a breach of one of the Codes.

### Determination – Complaint dismissed

A complaint is dismissed if the Board determines there is no breach of any of the Codes.

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

Following the Board's determination, a draft case report is promptly 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.

## Publish case report

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

## 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 should 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.

August 2009

**Australian Association of National Advertisers**

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

## **Appendix 7**

# Food & Beverages Advertising & Marketing Communications Code

## Practice Note

This Practice Note is an attachment to the *AANA Food & Beverages Advertising & Marketing Communications Code* as a guide to interpretation only. The interpretations offered are based on the original intent of the Code, and may be expanded by the AANA Board as considered necessary including on the advice of the Advertising Standards Bureau as informed by the experience of public complaint adjudication by the Advertising Standards Board.

### DEFINITIONS & INTERPRETATIONS

**Advertising or Marketing Communications** - Shall not include material that is exhibited without financial consideration, such as television station promotions of future programs.

**Average Consumer** - shall include any person who is purchasing goods, whether or not such persons have children or the responsibility of care for others.

**Children** - shall be regarded as persons of 14 years and under, in accord with the established practice for television, although the Board shall be cognisant that some sectors of the food & beverages industry have adopted the age of secondary school entry as their cut-off point for advertising or marketing communications.

### PART 2 – ADVERTISING OR MARKETING COMMUNICATIONS FOR FOOD OR BEVERAGE PRODUCTS

#### Section 2.1

The Board will not attempt to apply legal tests in its determination of whether advertisements are truthful and honest, designed to mislead or deceive, or otherwise contravene prevailing community standards in the areas of concern to this Code.

In testing the requirement that an advertising or marketing communication should be truthful and honest, the Board will consider whether the information most likely to be taken from the advertisement by an average consumer in the target market would be reasonably regarded as truthful and honest.

In testing the requirement that a advertising or marketing communication should not be designed to be misleading or deceptive, or otherwise contravene prevailing community standards, the Board will consider the advertiser's stated intention, but may also consider, regardless of stated intent, that an

advertisement is by design misleading or deceptive, or otherwise contravenes prevailing community standards in particular regard to stated health, nutrition and ingredient components of the food or beverage product.

Thus, a advertising or marketing communication may make reference to one or more of the nutritional values or health benefits of a product but such references must be accurate and appropriate to the level of understanding of the target audience, and must not misleadingly represent the overall nutritional or health benefits of the product

Some complaints made under this Code that the Board is better able to determine under the broader aspects of the *AANA Code of Ethics* will be considered under that Code eg complaints about matters such as language, sex and violence.

## **Section 2.2**

This section contains two separate obligations. Failure to meet either one will be considered a breach of the Code.

The Board will not apply a legal test, but consider material subject to complaint as follows:

- In testing whether an advertising or marketing communication undermines the importance of a healthy lifestyle, the Board will consider whether the communication is disparaging of healthy foods or food choices or disparaging of physical exercise.

Such disparagement need not be explicit, and the Board will consider the message that is likely to be taken by the average consumer within the target market of the communication.

- In testing whether an advertising or marketing communication encourages excess consumption through representation of products or portion sizes disproportionate to the setting portrayed, or by any other means contrary to prevailing community standards, the Board will consider whether members of the community in the target audience would most likely take a message condoning excess consumption.

The Board will also consider the age of the person shown in association with the product, recognising for example, that a teenage male may often consume more than a female or younger child and this may not be a representation that encourages excess consumption in the situation portrayed.

## **Section 2.3**

This provision is intended to be triggered by the Board when considering that an average consumer, acting reasonably, might consider statements made within an advertising or marketing communication as health or nutrition claims.

In testing whether this provision is properly triggered, the Board will apply its view of what an average consumer within the target market, might reasonably take from a communication.

Having considered that statements made within an advertisement might reasonably be taken by an average consumer as health or nutrition claims, the Board will rely on substantiation provided by the advertiser and/or appropriate expert or professional advice as to whether such claims can be properly supported by scientific evidence meeting the requirements of the Food Standards Code.

Complaints upheld on this basis, and where the Board considers the product involves a risk to public safety, may be referred to the appropriate food regulatory enforcement body.

## Section 2.4

Rather than a legal test, in testing whether a advertising or marketing communication that it finds likely to be regarded by an average consumer as making a nutritional or health related comparison, either explicitly or by implication, the Board will consider whether, in its view, such comparison is presented in a non-misleading and non-deceptive manner that is clearly understandable by an average consumer.

## Section 2.5

This section contains two separate obligations. Failure to meet either one will be considered a breach of the Code.

The Board will not apply a legal test, but consider material subject to complaint as follows:

- In testing whether an advertising or marketing communication includes reference to consumer taste or preference tests in a way implying statistical validity when no statistically valid testing had taken place, the Board will consider whether target audiences of the communication would most likely believe that the communication claimed some statistical validity.
- In testing whether an advertising or marketing communication uses scientific terms to falsely ascribe validity to a claim the Board will consider the probable view of the target audience.
- In testing the validity of any associated claim of endorsement by a scientific, health or other organisation, the Board will rely on substantiation by the advertiser. Use of scientific terms in the name of supporting organisations will not automatically constitute a breach of this section.

## Section 2.6

In testing whether any claim is included within a advertising or marketing communication, the Board will consider whether an average consumer, acting reasonably, would consider a statement as constituting a claim (i.e. an assertion or contention about the component, as against a 'claim' as defined under other legislation).

Once a claim relating to a material characteristic of a promoted product is established, the Board will need to determine whether such a claim can be substantiated by the product alone, rather than its consumption in combination with other products.

The Board will also need to consider whether the claim is accurate in its representations about the product, and will usually do so on the basis on information provided on the packaging or otherwise provided by the advertiser.

Visual or textual representation of a 'suggested serving' will not, on its own, represent grounds for finding a advertisement or marketing communication in breach of the Code.

Any taste or nutrition claims relating to the product as consumed with an external ingredient (eg cereal consumed with milk) must be clearly distinguished as being a claim for the product as consumed with such external ingredient/s.

## Section 2.7

In testing whether the use of a personality contravenes the Code, the Board will consider whether the target audience would see a clear distinction between advertising and editorial or program content.

In testing the matter of target audience, the Board will not rely solely on the advice of the advertiser, but also consider the placement of the material or, in the case of broadcast media, the program within which it appears.

For any advertising or marketing communication directed towards children the Board will:

- consider whether children within the target audience would be likely to see a clear distinction between advertising and editorial or program content.
- exercise particular sensitivity in relation to younger children, taking special notice of target audience and time zones, recognising that while an advertisement might be placed between sections of editorial or program content, or between separate editorial material or programs, this might not represent a clear distinction for very young children.

This section does not apply to 'product placement' within films or programs.

## **Section 2.8**

In its determination of whether any advertising or marketing communication portrays a product as suitable as a substitute for a meal when it is not intended or suitable for such use, the Board will consider whether an average consumer, acting reasonably, would consider that the communication presents the product as suitable as a meal replacement. In determining whether such meal is intended or suitable for use as a meal replacement the Board will apply its view of what a reasonable consumer might think.

## **Section 2.9**

In its determination of all complaints, the Board will automatically consider them under the provisions of the *AANA Code of Ethics* and the *AANA Code for Advertising & Marketing Communications to Children* as well as the *AANA Food & Beverages Advertising & Marketing Communications Code*.

# **PART 3 – ADVERTISING & CHILDREN**

## **Section 3.1**

In its determination of whether any advertising or marketing communication is directed towards children, the Board will apply the same criteria as used in considering complaints under the *AANA Code for Advertising & Marketing Communications to Children*.

The Board will consider the advertiser's stated intent but will also make an evaluation based on its own review of the advertising or marketing communication material and the product being promoted.

This section contains a number of separate obligations. Failure to comply with any one will be considered a breach of the Code. Again, the Board will not apply a legal test, but consider material subject to complaint as follows:

- In testing whether a advertising or marketing communication is properly designed and delivered in a manner to be understood by children comprising the target audience, the Board will apply its own view of what it considers a reasonable child of the target audience would understand from the advertisement.

- In testing whether an advertising or marketing communication is misleading or deceptive or seeks to mislead or deceive in relation to any nutritional or health claims, the Board will form its own view on the information likely to be taken from a communication by a reasonable child of the target audience.
- In testing whether an advertising or marketing communication employs ambiguity, the Board will form its own view of what it considers a reasonable child of the target audience would understand from the communication.
- In testing whether an advertising or marketing communication incorporates a misleading or deceptive sense of urgency, the Board will form its own view of what a reasonable child of the target audience would understand from the communication.
- In testing whether a advertising or marketing communication features practices such as price minimisation inappropriate to the age of the intended audience, the Board will form its own view of what a reasonable child of the target audience would understand from the communication.

### **Section 3.2**

In testing whether an advertising or marketing communication improperly exploits children's imagination in ways which might reasonably be regarded as based upon an intent to encourage excessive consumption, the Board need not rely exclusively on evidence of actual intent, but form its own view of what a reasonable child of the target audience would understand from the communication.

### **Section 3.3**

In testing whether a advertising or marketing communication contains an explicit or implied message that ownership or consumption of a particular product would provide particular positive or negative outcomes, the Board will form its own view of what a reasonable child of the target audience would understand from the communication.

### **Section 3.4**

In testing whether an advertising or marketing communication contains information or depictions that would undermine the role of a parent or other responsible adult in guiding a child's diet and lifestyle, the Board will form its own view of what a reasonable child of the target audience would understand from the communication.

### **Section 3.5**

In considering whether a advertising or marketing communication contains an appeal or encouragement to children to urge parents or other adults to buy particular products for them, the Board will form its own view of what a reasonable child of the target audience would understand from the communication and, in addition, will form a view inclusive of the following pointers:

- Although children may be expected to exercise some preference over the foods and beverages they consume, an advertising or marketing communication must be prepared with a due sense of responsibility and should not directly encourage children to urge the purchase of particular products for them.
- An advertising or marketing communication must not give children cause to pester or otherwise make a nuisance of themselves in relation to the promoted products. [As an example, in a

supermarket setting, a child should not be portrayed asking for a particular product or putting it into a shopping trolley without asking, while voice or text messages must not include such urging as "Ask Mummy to buy you one."]

### **Section 3.6**

This section contains two separate obligations. Failure to meet either one will be considered a breach of the Code.

The Board will not apply a legal test, but consider material subject to complaint as follows:

- In testing whether an advertising or marketing communication features ingredients or premiums that are not an integral part of the product or service, the Board will consider whether the ingredient or premium is given undue prominence by way of being made the dominant feature or otherwise occupies more than half of the advertisement.
- In testing whether an advertising or marketing communication features ingredients that are not an integral element of the product being offered, the Board will consider whether attributes claimed for the product are wholly dependent on its consumption in association with ingredients that are not integral to the promoted product. In determining whether something is an 'integral' element of a product, the Board will consider whether the element is necessary to the completeness of the product or service being offered.
- In testing whether an advertising or marketing communication features a premium that is not an integral element of the product being offered, the Board will use the definition of premiums contained in the *AANA Code for Advertising & Marketing Communications to Children*.

In both tests, the Board will consider whether the advertising or marketing communication features inclusions in a manner that accords them undue prominence in relation to the product being promoted, taking account of the fact that it is not the intention of this clause to prohibit legitimate promotion of special offers, but rather to impose a reasonable limit, based on the Board's representation of prevailing community standards, on the extent to which an average child within the target audience might regard the advertising or marketing communication being for a featured ingredient or premium rather than the product itself.

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**Appendix 8**

# Environmental Claims in Advertising and Marketing Code

**This Code has been adopted by the AANA as part of advertising and marketing self-regulation. The object of this code is to ensure that advertisers and marketers develop and maintain rigorous standards when making Environmental Claims in Advertising and Marketing Communications and to increase consumer confidence to the benefit of the environment, consumers and industry.**

Providing clear, straightforward, environmental information, as outlined in this code, has benefits for consumers and business alike. By providing information about the environmental impacts and qualities of products and services, environmental claims (sometimes called 'green' claims) help consumers make informed buying choices. They also help raise awareness of the issues, enhance consumer understanding and improve product standards overall. At the same time businesses can enhance their credentials and demonstrate to the community at large their willingness to be accountable for upholding these standards.

## PRINCIPLES

AANA supports the following principles for environmental claims.

Claims should be:

- Truthful and factual
- Relevant to the product or service and its actual environmental impacts, and
- Substantiated and verifiable.

## DEFINITIONS

In this Code, unless the context otherwise requires:

**Advertising or Marketing Communication** means:

- (a) matter which is published or broadcast using any Medium in all of Australia or in a substantial section of Australia for payment or other valuable consideration and which draws the attention of the public or a segment of it to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct; or

- (b) any activity which is undertaken by or on behalf of an advertiser or marketer for payment or other valuable consideration and which draws the attention of the public or a segment of it to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct,

but does not include Excluded Advertising or Marketing Communications.

### Advertising Standards Board

means the board appointed by the Advertising Standards Bureau from time to time, the members of which are representative of the community, to administer a public complaints system in relation to Advertising or Marketing Communications.

**Authoritative (organisation, initiative, program)** means a source of expert information, advice, assistance and includes, but is not limited to, government, industry bodies, scientific/technical organisations, independent certification schemes, international or national standards setting organisations.

## Environment includes:

- (a) ecosystems and their constituent parts, including people and communities; and
- (b) natural and physical resources; and
- (c) the qualities and characteristics of locations, places and areas.

**Environmental Aspect** means the element of a product, a component or packaging or service that interacts with or influences (or has the capacity to interact with or influence) the Environment.

**Environmental Claim** means any representation that indicates or suggests an Environmental Aspect of a product or service, a component or packaging of, or a quality relating to, a product or service.

**Excluded Advertising or Marketing Communications** means a label or packaging for Products,

**Medium** means any medium whatsoever including without limitation cinema, internet, outdoor media, print, radio, telecommunications, television or other direct-to-consumer media including new and emerging technologies.

# Environmental Claims in Advertising and Marketing Code

## CODE OF PRACTICE

### 1 TRUTHFUL AND FACTUAL PRESENTATION

Environmental Claims in Advertising or Marketing Communications:

- i. shall not be misleading or deceptive or be likely to mislead or deceive.
- ii. must not be vague, ambiguous or unbalanced.
- iii. must display any disclaimers or important limitations and qualifications prominently, in clear, plain and specific language.
- iv. must be supported by evidence that is current and reflects legislative, scientific and technological developments.
- v. that make any claim relating to future matters or commitments must be based on reasonable grounds.
- vi. must not lead the consumer to conclude a business has voluntarily adopted an environmental practice if that practice has been legally mandated.
- vii. must not imply a product or service is endorsed or certified by another organisation when it is not.
- viii. must represent the attributes or extent of the environmental benefits or limitations as they relate to a particular aspect of a product or service in a manner that can be clearly understood by the consumer. Relevant information should be presented together.

- ix. must reflect the level of scientific or authoritative acceptance of matters relating to any claim; claims should not imply wide acceptance if this is not the case. Where evidence is inconclusive this should be reflected in the Advertising or Marketing Communication.
- x. that use scientific terminology, technical language or statistics must do so in a way that is appropriate, clearly communicated and able to be readily understood by the audience to whom it is directed. Publication of research results must identify the researcher and source reference unless there is an obligation of confidence or compelling commercial reason not to do so.

### 2 A GENUINE BENEFIT TO THE ENVIRONMENT

Environmental Claims must:

- i. be relevant, specific and clearly explain the significance of the claim.
- ii. not overstate the claim expressly or by implication.
- iii. in comparative advertisements, be relevant and balanced either about the product/service advertised or class of products or services, with which it is compared.
- iv. not imply that a product or service is more socially acceptable on the whole. The use of Environmental Claims must not reduce the importance of non-environment attributes / detriments of a product or service.
- v. not imply direct relationship to social initiatives of a business where there is no correlation to environmental benefits or attributes or improvements to a product or service.

### 3 SUBSTANTIATION

- i. Environmental Claims must be able to be substantiated and verifiable. Supporting information must include sufficient detail to allow evaluation of a claim.
- ii. Environmental Claims must meet any applicable standards that apply to the benefit or advantage claimed.
- iii. The use of unqualified general claims of environmental benefit should be avoided unless supported by a high level of substantiation or associated with a legitimate connection to an authoritative source.
- iv. Environmental Claims and comparisons that are qualified or limited may be acceptable if advertisers can substantiate that the product/service provides an overall improvement in environmental terms either against a competitor's or their own previous products.
- v. Claims relating to sponsorships, approvals, endorsement or certification schemes must be current.
- vi. The use of any symbol or logo must be explained unless the symbol is required by law, or is underpinned by regulations or standards, or is part of an authoritative certification scheme.
- vii. Substantiation information should be readily accessible, or made available in a timely manner in response to a reasonable written request.
- viii. Testimonials must reflect genuine, informed and current opinion of the person giving the testimonial.

September 2009

**Australian Association of National Advertisers**

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

## **Appendix 9**

# Environmental Claims in Advertising and Marketing Code

## Practice Note

This Practice Note is an attachment to the AANA *Environmental Claims in Advertising and Marketing Code* (the Code) as a guide to interpretation only. Not all sections have attributed notes as they are considered self-evident. The interpretations offered are based on the original intent of the Code, and may be expanded by the AANA Board as considered necessary including on the advice of the Advertising Standards Bureau as informed by the experience of public complaint adjudication by the Advertising Standards Board (ASB) and subsequent review and amendments of this Practice Note.

This Practice Note alone should not be relied on to address every aspect of the Code. Please refer to the Code, Edition 1, September 2009, for all provisions.

Given the range of industry sectors and environmental issues to which the Code applies and the dynamic political, regulatory, technical and social environment in which it will operate, rules that relate to specific concerns tend to become quickly out-of-date. The Code provides general principles, and not overly prescriptive rules. AANA considers that a Practice Note is an appropriate format for providing up-to-date advice on specific issues.

A number of international and national examples of guidance documents are available and are useful references to assist in the interpretation of the Code. **Attachment 1**, which is not exhaustive, includes relevant examples.

### DEFINITIONS & INTERPRETATIONS

#### *Advertising or marketing communications*

The definition of 'advertising or marketing communication' in the Code does not include 'labels and packaging' (also refer to definition of 'excluded communications'). Notwithstanding, images of labels or packaging contained within an 'advertising or marketing communication' will be considered to be an element of that 'advertising or marketing communication'.

#### *Environmental Claim*

AANA acknowledges there are currently many interpretations, and no universal consensus, of what an 'environmental claim' is. AANA considers it useful to include a definition in order to clarify the scope of the Code.

An environmental claim in relation to goods or services, their consumption/ use/ interaction or their disposal may include representations that state or imply:

- benefit to the environment; or
- no effect on the environment; or
- no or only limited effect on the environment in itself or if used or delivered in a particular way.

Environmental claims may be made in relation to single or multiple attributes or all product or service attributes such as those based on full life-cycle assessment.

## 1 – TRUTHFUL AND FACTUAL PRESENTATION

**Section i -** *shall not be misleading or deceptive or be likely to mislead or deceive.*

An advertisement may be misleading or deceptive directly or by implication or through emphasis, comparisons, contrasts or omissions. It is not the intent for the ASB to apply legal tests in its determination of whether advertisements are, or likely to, mislead or deceive, or otherwise contravene prevailing community standards in the areas of concern to the Code.

Advertising ‘puffery’ or ‘hyperbole’ etc may be acceptable where the ‘advertising or marketing communication’ would not reasonably be understood to be literally true. Such statements do not require substantiation.

In testing the requirement that advertisements and/or marketing communications should not be designed to be misleading or deceptive, or otherwise contravene prevailing community standards, the ASB will consider the advertiser’s stated intention, but may also consider, regardless of stated intent, that an advertisement is by design misleading or deceptive, or otherwise contravenes the Code in regard to the stated or implied environmental claim.

**Section ii -** *must not be vague, ambiguous or unbalanced.*

Advertisers should accurately consider the overall impression they convey to the general public.

**Section iii -** *must display any disclaimers or important limitations and qualifications prominently, in clear, plain and specific language.*

A disclaimer can clarify, expand or reasonably qualify a representation but should not contradict, diminish or retract it. One matter that may be considered to contribute to a potential contradiction, diminution or retraction of a representation is the failure to mention a relevant matter in an advertisement.

As a general guideline, the main body of the advertisement, apart from the disclaimer, should be capable of standing alone without being misleading.

**Section iv -** *must be supported by evidence that is current and reflects legislative, scientific and technological developments.*

AANA acknowledges the dynamic nature of legislative, scientific and technological developments. AANA also recognises there may be various options that advertisers and marketers may take in meeting environmental aims, thus promoting innovation.

The intent of this section is not to require a consensus view in relation to scientific or technological matters; it is that advertisers and marketers support the claim with sufficient substantiation. What advertisers and marketers consider to be sufficient will vary from organisation to organisation, and in the circumstances, and is, ultimately, a commercial decision for the advertiser or marketer.

**Section v -** *that make any claim relating to future matters or commitments must be based on reasonable grounds.*

Claims relating to future matters carry the risk that the substance of those claims may not eventuate. However, even if the future matter does not come to pass, the Code will only be breached if, when the statement as to that future matter was made, there was no reasonable ground for believing that the state would come to pass. The fact that a person may believe in a particular state of affairs does not necessarily mean that there are reasonable grounds for the belief. Care needs to be taken with any claim that relates to a future matter to satisfy the requirement that there is a reasonable basis for the belief prior to making a claim.

**Section vi -** *must not lead the consumer to conclude a business has voluntarily adopted an environmental practice if that practice has been legally mandated.*

Self-evident.

**Section vii -** *must not imply a product or service is endorsed or certified by another organisation when it is not.*

Self-evident.

**Section viii -** *The environmental claim must not be extended, or implied to be extended, to a whole product or service when it relates only to one aspect of the product eg packaging or energy use, or service.*

An environmental claim must represent the attributes or extent of the environmental benefits or limitations as they relate to a particular aspect of a product or service in a manner that can be clearly understood by the consumer. For example, if the claim relates to the:

- packaging only, but not the use of that product, the claim should not imply that it relates to the product as well as the packaging;
- energy use in the manufacture of a product only the claim should not imply that it relates to the energy use in the manufacture of the packaging as well.

**Section ix -** *must reflect the level of scientific or authoritative acceptance of matters relating to any claim; claims should not imply wide acceptance if this is not the case. Where evidence is inconclusive this should be reflected in the Advertising or Marketing Communication.*

An environmental claim may be able to be substantiated (as required by the Code, see section iv above), but there is a dispute among relevant authorities as to the veracity, accuracy or completeness of the matter, or the claim is not widely accepted by the relevant scientific or technical community. In these circumstances, in addition to being satisfied that the claim is substantiated, the advertising or marketing communication needs to make it clear that the claim is not widely accepted. Section x is also relevant, as it is necessary to clearly identify the particular source that is relied on when there is scientific or authoritative disagreements.

**Section x -** *That use of scientific terminology, technical language or statistics must do so in a way that is appropriate, clearly communicated and able to be readily understood by the audience to whom it is directed. Publication of research results must identify the researcher and source reference unless there is an obligation of confidence or compelling commercial reason not to do so.*

This section is intended to be read as two mutually exclusive parts.

Scientific or technical terminology or presentation of statistics should be relevant and used in a way that can be readily understood by the intended audience without specialist knowledge. Irrelevant data and scientific terminology should not be used to make claims appear to have a scientific basis they do not possess. Technical terminology and jargon should not be used to 'blind with science' and to make simple claims sound impressive.

Publication of (published or unpublished) research results includes, but is not limited to, any direct or indirect reference to the research, a direct or indirect quote from the research, or paraphrasing the research results.

## **PART 2 – A GENUINE BENEFIT TO THE ENVIRONMENT**

**Section i -** *be relevant, specific and clearly explain the significance of the claim.*

Self-evident.

**Section ii -** *not overstate the claim expressly or by implication.*

Advertisers and marketers should avoid making or implying significant environmental benefit if the benefit is not significant. Consideration should be given to whether there is sufficient disclosure of any negative impacts. For example, whether negative impacts have been withheld which, if known, would diminish the positive attribute.

**Section iii -** *in comparative advertisements, be relevant and balanced either about the product/service advertised or class of products or services, with which it is compared.*

Any comparative claim should be specific and make clear the basis for the comparison. Points of comparison, where appropriate, should reflect a body of evidence including recognised benchmarks or standards where appropriate.

Comparisons should be made with like products, and if there are a number of different models or options, there must be a clear statement as to which product is in fact being compared. Consideration should be given to quantifying the claims for example by use of percentages or absolute values, making comparisons against comparable products/services serving similar functions or making a claim against the advertisers own prior products/services or processes or another organisation's products/services or processes.

**Section iv -** *not imply that a product or service is more socially acceptable on the whole. The use of Environmental Claims must not reduce the importance of non-environment attributes/detriments of a product or service.*

Consideration should be given to the relationship of the environmental claims to other aspects of a product/service. For example, advertisers should use care not to imply a product or service is more socially acceptable overall by implying another non-environmental attribute/detriment is of lesser importance such as a product that is perceived by consumers to be better for them when there are community health concerns about the use of that product.

Also refer to AANA *Code of Ethics* clause 2.6 Advertisements shall not depict material contrary to prevailing community standards on health and safety.

**Section v -** *not imply direct relationship to social initiatives of a business where there is no correlation to environmental benefits or attributes or improvements to a product or service.*

Environmental claims should not be made in a manner that implies, directly or indirectly, a correlation between the environmental aspects of the product/service and any social initiative of the advertiser when none exists. For example, the advertising of a "partnership" with or "sponsorship" of an environmental group should not imply that the partnership has improved environmental aspects of the company's product/services where this is not the case.

### **PART 3 – SUBSTANTIATION**

**Section i -** *Environmental Claims must be able to be substantiated and verifiable. Supporting information must include sufficient detail to allow evaluation of a claim.*

Advertisers and marketers should have a reasonable basis for making a claim and therefore should hold appropriate, balanced, comprehensive and credible evidence to substantiate all express and implied claims.

Information to support a claim may include, but is not limited to, documentary evidence or data evidencing conformity with an identified standard, research, studies, or an expert independent audit. There is no requirement to use third party verification or certification before an environmental claim is made. An advertiser's own internal procedures may be able to provide the necessary substantiation.

In testing the validity of any claim the ASB will only rely on information/material provided by the advertiser and the complainant. The ASB may seek expert advice to assist in the consideration of material provided in relation to the complaint. It is not the intent for the ASB to act as an arbiter of scientific fact, or of philosophical approaches to understanding or addressing environmental concerns.

**Section ii -** *Environmental Claims must meet any applicable standards that apply to the benefit or advantage claimed.*

This section does not apply where standards exist that are not legally mandated i.e. the standard is a voluntary standard, however, the section will apply in circumstances where the advertiser represents voluntarily compliance with a specified voluntary standard.

**Section iii -** *The use of unqualified general claims of environmental benefit should be avoided unless supported by a high level of substantiation or associated with a legitimate connection to an authoritative source.*

An unqualified general environmental claim may convey that the product or service has far-reaching environmental benefits or conveys to consumers a broad range of environmental attributes it does not have. Unqualified claims (stated or implied), such as 'green' or 'eco friendly' should therefore be evidenced with a high level of substantiation, for example, such as that based on a full life-cycle assessment.

Unqualified claims, if they relate to an authoritative source, are not considered to necessarily require similar evidentiary material as those claims where they do not relate to an authoritative source. For example, where a claim is made relating to participation in a government program that happens to be titled with what could be considered an unqualified term, for instance, the Commonwealth Governments Green Car Innovation Fund.

Use (by themselves) of scientific terms, business names, trademarks that may be considered to be an unqualified general claim will not automatically constitute a breach of this section. However, use of such terminology in an advertisement may contribute to an 'advertising or marketing communication' to imply an environmental claim.

**Section iv -** *Environmental Claims and comparisons that are qualified or limited may be acceptable if advertisers can substantiate that the product/service provides an overall improvement in environmental terms either against a competitor's or their own previous products.*

An environmental claim should be relevant to the particular product or service and relate only to the environmental aspects that exist or are likely to be realised during that product or service's life.

**Section v -** *Claims relating to sponsorships, approvals, endorsement or certification schemes must be current.*

Self-evident.

**Section vi -** *The use of any symbol or logo must be explained unless the symbol is required by law, or is underpinned by regulations or standards, or is part of an authoritative certification scheme.*

Symbols or logos should only be used in an advertisement when the source of the symbol or logo is clearly indicated, and there is no confusion over the meaning.

In the case of symbols and logos associated with non-accredited certification schemes, special consideration should be given to any explanation of the scheme as it may have no independent audit or monitoring and therefore be open to question regarding achieving stated outcomes.

**Section vii -** *Substantiation information should be readily accessible, or made available in a timely manner in response to a reasonable written request.*

Consumers must be provided with all information reasonably necessary for them to make an informed purchase decision.

Advertisers have a variety of avenues available for making such information available to consumers, for example, websites, brochures, labels, shelf-talkers; such information does not need to be included in the advertising or marketing communications itself.

**Section viii -** *Testimonials must reflect genuine, informed and current opinion of the person giving the testimonial.*

Self-evident.

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(This is not an exhaustive list. The references are included to provide additional information to assist advertisers and marketers to comply with the Code)

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**Appendix 10**



**FEDERAL CHAMBER OF AUTOMOTIVE INDUSTRIES**

# **VOLUNTARY CODE OF PRACTICE FOR MOTOR VEHICLE ADVERTISING**

## **EXPLANATORY NOTES**

### **CONTEXT**

The Voluntary Code of Practice for Motor Vehicle Advertising (the Code) has been instituted by the Federal Chamber of Automotive Industries (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.

Vehicle occupant protection and road safety are primary concerns for the automotive industry in the design and operation of all motor vehicles supplied to the Australian market. FCAI endorses the National Road Safety Strategy and acknowledges the importance of increased road safety awareness in the Australian community and fully supports the efforts of all relevant Commonwealth, State and Territory authorities to secure this outcome.

### **DATE OF COMMENCEMENT**

This revised version of the Code is to be applied to all advertisements for motor vehicles published or broadcast in Australia from 1 July 2004.

### **SCOPE AND COVERAGE OF THE CODE**

The Code is to be applied to all forms and mediums for advertising of motor vehicles in Australia. This includes television, radio, print media, cinema, billboards and Australian domain internet websites.

### **GUIDANCE TO ADVERTISERS**

The FCAI supports a responsible approach to advertising for motor vehicles. FCAI asks advertisers to be mindful of the importance of road safety and to ensure that advertising for motor vehicles does not contradict road safety messages or undermine efforts to achieve improved road safety outcomes in Australia.

Advertisers should ensure that advertisements do not depict, encourage or condone dangerous, illegal, aggressive or reckless driving. Moreover, advertisers need to be

mindful that excessive speed is a major cause of death and injury in road crashes and accordingly should avoid explicitly or implicitly drawing attention to the acceleration or speed capabilities of a vehicle.

FCAI acknowledges that advertisers may make legitimate use of fantasy, humour and self-evident exaggeration in creative ways in advertising for motor vehicles. However, such devices should not be used in any way to contradict, circumvent or undermine the provisions of the Code.

In particular, it is noted that use of disclaimers indicating that a particular scene or advertisement was produced under controlled conditions; using expert drivers; that viewers should not attempt to emulate the driving depicted; or expressed in other similar terms, should be avoided. Such disclaimers cannot in any way be used to justify the inclusion of material which otherwise does not comply with the provisions of the Code.

Advertisers should avoid references to the speed or acceleration capabilities of a motor vehicle (for example, "0-100 km/h in 6.5 seconds"). Other factual references to the capabilities of the motor vehicle (for example, cylinder capacity, kilowatt power of the engine, or maximum torque generated) are acceptable, provided that they are presented in a manner that is consistent with the provisions of the Code.

The Code contains a specific clause (clause 3) relating to the use of motor sport, simulated motor sport and similar vehicle testing or proving activities in advertising. It is acknowledged that motor sport plays a crucial role in brand promotion and the development and testing of crucial technologies, many of which result in safer vehicles. Accordingly the Code seeks to ensure that advertisers can continue to legitimately make use of motor sport in advertising, provided that care is taken to ensure that depictions of speed, racing and other forms of competitive driving are clearly identified as taking place in this context. FCAI urges also advertisers to avoid any suggestion that depictions of such vehicles participating in motor sport, or undertaking other forms of competitive driving are in any way associated with normal on-road use of motor vehicles.

In addition, it is noted that the Code contains a clause (clause 4) relating to the depiction of off-road vehicles which have been designed with special features for off road operation. This clause provides some limited flexibility allowing advertisers to legitimately demonstrate the capabilities and performance of such vehicles in an off-road context. In so doing however, care should be taken to ensure that all other provisions and the underlying objectives of the Code are still adhered to. In particular, advertisers should be mindful to ensure that advertisements for such vehicles do not involve the depiction of 'excessive' or 'unsafe' speed. Equally, advertisers should avoid portrayal of images of off-road driving which could otherwise be construed as being unsafe.

In interpreting and applying the Code, FCAI asks that advertisers take into account both the explicit and implicit messages that are conveyed by an advertisement. Advertisers should make every effort to ensure that advertisements not only comply with the formal provisions of the Code but are also consistent with the objectives and guidelines expressed in these Explanatory Notes which accompany the Code.

## **COMPLIANCE AND ADMINISTRATION**

Assessment of compliance with the Code is to be administered by the Advertising Standards Board (ASB). The ASB will review all public complaints made against advertisements for motor vehicles under the terms of the Code.

In administering the Code, the ASB is to give relevant advertisers the opportunity to present such evidence as they deem appropriate in defence of an advertisement under review, prior to making any determination in relation to its consistency, or otherwise, with the provisions of the Code.

The ASB will ensure that all complaints are considered in a timely fashion. As a general rule the panel should finalise its determination within one calendar month of a complaint having been received. Where necessary the ASB may be required to meet more frequently to ensure the timely consideration of complaints.

The ASB will arrange prompt publication of the reasons for all decisions on its website. An annual report on the outcomes of the complaint process will be compiled and published.

Companies may also seek an opinion, from the ASB, on whether the content of a planned advertisement meets the Code, prior to finalisation and release of the advertisement.

FCAI and ASB will work to increase public awareness of the Code and the complaints process.

## **CONSULTATION**

In developing the Code, FCAI has undertaken an extensive process of consultation with a wide range of stakeholders, including representatives of the following:

- (a) The Federal Government and its agencies (including the Australian Transport Safety Bureau);
- (b) Relevant State and Territory Government authorities;
- (c) The National Road Safety Strategy Panel (which comprises representatives of police services, road safety authorities, motoring organisations and industry groups);
- (d) The Australian Automobile Association;
- (e) The Australian Association of National Advertisers; and
- (f) The Advertising Standards Bureau Limited.

## **REVIEW OF THE CODE**

FCAI will undertake a review of the current version of the Code, (in consultation with all parties listed above) commencing in December 2005. The process of this review should be completed by end-March 2006.

## CODE OF PRACTICE FOR MOTOR VEHICLE ADVERTISING

### 1. DEFINITIONS

In this Code, the following definitions apply:

- (a) *Advertisement*: means matter which is published or broadcast in all of Australia, or in a substantial section of Australia, for payment or other valuable consideration and which draws the attention of the public, or a segment of it, to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly that product, service, person, organisation or line of conduct.
- (b) *Off-road vehicle*: means a passenger vehicle having up to 9 seating positions including that of the driver having been designed with special features for off-road operation, consistent with the requirements of the definition for such a vehicle as provided in the Australian Design Rules (MC category). An off-road vehicle will normally have 4 wheel drive.
- (c) *Motor sport*: means racing, rallying, or other competitive activities involving motor vehicles of a type for which a permit would normally be available under the National Competition Rules of the Confederation of Australian Motor Sport, or other recognised organising body.
- (d) *Motor vehicle*: means passenger vehicle; motorcycle; light commercial vehicle and off-road vehicle.
- (e) *Road*: means an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving or riding of motor vehicles.
- (f) *Road-related area*: means an area that divides a road; a footpath or nature strip adjacent to a road; an area that is not a road and is open to the public and designated for use by cyclists or animals; an area that is not a road and that is open to or used by the public for driving, riding or parking motor vehicles.

### 2. GENERAL PROVISIONS

Advertisers should ensure that advertisements for motor vehicles do not portray any of the following:

- (a) Unsafe driving, including reckless and menacing driving that would breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast dealing with road safety or traffic regulation, if such driving were to occur on a road or road-related area, regardless of where the driving is depicted in the advertisement.

[*Examples*: Vehicles travelling at excessive speed; sudden, extreme and unnecessary changes in direction and speed of a motor vehicle; deliberately and unnecessarily setting motor vehicles on a collision course; or the apparent and deliberate loss of control of a moving motor vehicle.]

- (b) People driving at speeds in excess of speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast.
- (c) Driving practices or other actions which would, if they were to take place on a road or road-related area, breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast directly dealing with road safety or traffic regulation.

[*Examples:* Illegal use of hand-held mobile phones or not wearing seatbelts in a moving motor vehicle. Motorcyclists or their passengers not wearing an approved safety helmet, while the motorcycle is in motion.]

- (d) People driving while being apparently fatigued, or under the influence of drugs or alcohol to the extent that such driving practices breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast dealing directly with road safety or traffic regulation.
- (e) Deliberate and significant environmental damage, particularly in advertising for off-road vehicles.

### **3. USE OF MOTOR SPORT IN ADVERTISING**

Without limiting the general application of clause 2, advertisers may make use of scenes of motor sport; simulated motor sport; and vehicle-testing or proving in advertising, subject to the following:

- (a) Such scenes should be clearly identifiable as part of an organised motor sport activity, or testing or proving activity, of a type for which a permit would normally be available in Australia.
- (b) Any racing or competing vehicles depicted in motor sport scenes should be in clearly identifiable racing livery.

### **4. DEPICTION OF OFF-ROAD VEHICLES**

An advertisement may legitimately depict the capabilities and performance of an off-road vehicle travelling over loose or unsealed surfaces, or uneven terrain, not forming part of a road or road related area. Such advertisements should not portray unsafe driving and vehicles must not travel at a speed which would contravene the laws of the State or Territory in which the advertisement is published or broadcast, were such driving to occur on a road or road related area.