# 3

# Regulating outdoor advertising

3.1 This inquiry was tasked with considering the effectiveness of the current industry self-regulatory system, with a focus on outdoor advertising. The Committee is of the view that any regulatory model should be subject to regular review, monitoring and improvements.

3.2 This chapter considers possible models for the regulation of outdoor advertising, and a number of initiatives to provide more rigour in the regulation of outdoor advertising content.

3.3 The Committee considered different models available to regulate outdoor advertising, including:

- independent statutory regulation;
- quasi-regulation and co-regulation; and
- self-regulation.

3.4 Particular attention is given to the Classification Board, which regulates print and film media, as a possible regulatory model.

## Statutory regulation

3.5 A large number of submissions called for outdoor advertising to be regulated by the government through an independent statutory body.[1]

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1 Cancer Council Western Australia and the McCusker Centre for Action on Alcohol and Youth, *Submission 36*; Alcohol Policy Coalition, *Submission 37*; Coalition on Food Advertising for Children (CFAC), *Submission 31*; Kids Free 2B Kids, *Submission 44*; Collective Shout, *Submission 43*; Australian Council on Children and the Media, *Submission 28*; Ms Gretchen Gamble, *Submission 29*.

Many of these submitters felt that decisions by the current Advertising Standards Board did not reflect their personal view among the spectrum of opinions represented within the submissions. Collective Shout suggests that 'responsibility for regulation should be given to an independent body or authority, with power to establish a system of pre-vetting billboards before their placement'.[2]

3.6 The advertising industry opposes government regulation. The Outdoor Media Association (OMA) warned the Committee that:

> A government regulatory or co-regulatory system would be more costly and less efficient than the current system, and would add an unnecessary regulatory burden on businesses and further the impact of the resulting delays.[3]

3.7 The OMA notes that the third-party outdoor advertising industry contributes to the national gross domestic product and has contributed millions of dollars' worth of free advertising space to charities and social organisations.[4] The Committee notes the social responsibility of the industry and its contribution to community causes and charitable organisations.

3.8 The Communications Council advised that:

> We are concerned that if the existing scheme is altered or replaced – for example by a government regulatory scheme – this may result in slower determinations in response to complaints, and may act as a brake on the sector's growth, and hence its contribution to the economy and job creation.[5]

3.9 The Eros Association, the peak body for the adult industry, also opposes government regulation, saying that 'we strongly resist the creation of yet another government agency to handle the regulation of billboard advertising in Australia'.[6]

3.10 The drawbacks of government regulation are the costs of setting up and resourcing an agency to administer the regulatory system and the unlikelihood of reducing the time taken to respond to complaints.

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2 Collective Shout, *Submission 43*, p. 6.

3 Ms Charmaine Moldrich, Chief Executive Officer, Outdoor Media Association (OMA), *Committee Hansard*, Sydney, 25 March 2011, p. 2.

4 OMA, *Submission 32*, pp. 9-10.

5 Communications Council, *Submission 34*, p. 2.

6 Eros Association, *Submission 41*, p. 10.

3.11 The Committee explored the framework of an existing government authority, the Classification Board. Several submissions suggested the Classification Board as a model for determining standards and applying classification ratings to outdoor advertisements. The following section considers the Classification Board as a model of a government regulatory approach to outdoor advertising.

## Classification Board

3.12 The Classification Board is an independent statutory body established by the *Classification (Publications, Films and Computer Games) Act 1995* (Cth) (Classification Act). The Classification Board classifies films, computer games and certain submittable publications in Australia.

3.13 According to the Classification Act:

> … a submittable publication is an unclassified publication that contains depictions or descriptions that are likely to cause the publication to be classified RC (Refused Classification), are likely to cause offence to a reasonable adult to the extent that the publication should not be sold or displayed as an unrestricted publication, or is unsuitable for a minor to see or read.
>
> Publications which are likely to be classified 'Unrestricted' are not generally required to be classified. The 'Unrestricted' classification encompasses a wide range of material. Descriptions and depictions of classifiable elements may contain some detail but the impact must not be so strong as to require legal restriction.[7]

3.14 Publications that are deemed submittable but have not been submitted for classification can be called in for classification by the Director of the Classification Board. Last financial year, the Director issued 49 call-in notices but none was complied with, leading the Classification Board to refer the publishers to State and Territory law enforcement agencies.[8]

3.15 The National Classification Code stipulates that classification decisions are to be made under the following principles:

- adults should be able to read, hear and see what they want;
- minors should be protected from material likely to harm or disturb them;

7 Attorney-General's Department (AGD), *Submission 47*, p. 2.

8 AGD, *Submission 47*, p. 1.

- everyone should be protected from exposure to unsolicited material that they find offensive; and
- the need to take account of community concerns about:
  - ⇒ depictions that condone or incite violence, particularly sexual violence; and
  - ⇒ the portrayal of persons in a demeaning manner.[9]

3.16 Classification decisions are made by the Classification Board, which is:

> … deliberately appointed to be representative of the Australian community. Their terms are deliberately limited to seven years so that there is turnover … that its make-up does evolve in time and therefore reflect the evolving nature and views and moral standards of the Australian community.[10]

3.17 The Classification Board views material in its original format to make classification assessments. For example, films for cinema release are viewed on a large screen whereas DVDs are viewed on a television screen.

3.18 The National Classification Scheme operates four industry assessor schemes to complement the work of the Classification Board in the following areas:

- computer games;
- additional content;
- television series; and
- advertising for unclassified films and computer games.[11]

3.19 Industry assessors must undertake appropriate training with the Attorney General's Department to be authorised to assess material in one of the four schemes.[12] Authorised assessors commonly come from the entertainment distribution industry.

3.20 Federal and state or territory governments operate the Classification Liaison Scheme, whereby liaison officers visit publication, film and

9 The National Classification Code (May 2005).

10 Mr Chris Collett, Acting Assistant Secretary, Classification Branch, AGD, *Committee Hansard*, Canberra, 10 February 2011, p. 8.

11 Mr Christopher Lee, Acting Principal Legal Officer, Classification Branch, AGD, *Committee Hansard*, Canberra, 10 February 2011, p. 9.

12 AGD, *Submission 47*, p. 2.

computer game traders and distributors and provide advice about the National Classification Scheme.[13]

3.21 Publications can be classified 'Unrestricted', 'Category 1 Restricted', 'Category 2 Restricted' and 'Refused Classification'. The Classification Branch of the Attorney-General's Department advised the Committee that its Board has not received an application to classify a billboard as a publication, but that it might be possible for this to be done.[14]

3.22 The G, PG, M, MA15+, R18+, X18+ and 'Refused Classification' classifications apply to films and the G, PG, M, MA15+ and 'Refused Classification' classifications apply to computer games.

3.23 Several submitters to this inquiry suggested that, because of the public nature of outdoor advertising and its unrestricted audience, outdoor advertising should be subject to a G rating similar to that given to films and computer games.

3.24 The G rating for films and computer games means they are appropriate for a general audience. According to the *Guidelines for the Classification of Films and Computer Games*, the G category means that:

- sexual violence is not permitted;
- sexual activity should be very mild and very discreetly implied, and be justified by context
- coarse language should be very mild and infrequent, and be justified by context
- drug use should be implied only very discreetly, and be justified by context, and
- nudity should be justified by context.[15]

3.25 The inclusion of outdoor advertising in the classification scheme for films and computer games, with outdoor advertising content limited to the equivalent of a G or PG classification, was raised several times. The Australian Christian Lobby argues for:

> … outdoor advertising to have a general classification (G); this would include shop windows, billboard and bus shelter

13 Classification Website, 'National Classification Scheme' <http://classification.gov.au/www/cob/classification.nsf/Page/ClassificationinAustralia_NationalClassificationScheme#section9> viewed 25 May 2011.

14 Mr Lee, AGD, *Committee Hansard*, Canberra, 10 February 2011, p. 12.

15 AGD, *Guidelines for the Classification of Films and Computer Games*, March 2008, p. 7.

> advertising. The only exception to this may be educational advertising regarding drink-driving or smoking messages that may be deemed to be in the best interests of children.[16]

3.26 2020Women Inc, a feminist organisation, agrees 'as the images and messages on billboards are visible to the entire community, they should be included in the National Classification Scheme and a "G" rating should be applied to all billboards and outdoor advertising.'[17] Mrs Kristen Butchatsky believes that a G classification 'would not place an unhelpful "burden" on business but instead force advertisers to be more creative and imaginative rather than constantly resorting to the old mantra that "sex sells"'.[18]

3.27 However, the Castan Centre for Human Rights Law (the Castan Centre) cautions that a G classification could 'exclude advertising that is in the public interest,' such as illicit drug awareness, sexual health messages, or graphic road safety campaigns and that 'we may need a new system of classification with respect to this kind of advertising'.[19]

3.28 The Australian Association of National Advertisers (AANA) told the Committee that:

> The classification regime is not one-size-fits-all. Our view is that taking that classification scheme and laying it across billboard advertising would be a very heavy-handed way to deal with the very small percentage of advertisers who have been found in breach of the system. It would be quite a heavy-handed approach and quite a departure from the self-regulatory scheme that we have and the scheme that is in place overseas.[20]

## Quasi-regulation and co-regulation

3.29 The Australian Government's *Best Practice Regulation Handbook* describes quasi-regulation as:

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16 Australian Christian Lobby, *Submission 24*, p. 10.

17 2020Women Inc, *Submission 16*, p. 2.

18 Mrs Kristen Butchatsky, *Submission 21*, p. 2.

19 Ms Tania Penovic, Associate, Castan Centre for Human Rights Law (Castan), *Committee Hansard*, Melbourne, 4 April 2011, p. 32.

20 Ms Alina Bain, Director of Codes, Policy and Regulatory Affairs, Australian Association of National Advertisers (AANA), *Committee Hansard*, Canberra, 24 February 2011, p. 21.

> … a wide range of rules or arrangements where governments influence businesses to comply, but which do not form part of explicit government regulation. Some examples of quasi-regulation include industry codes of practice developed with government involvement, guidance notes, industry-government agreements and accreditation schemes.[21]

3.30 The Alcohol Beverages Advertising (and Packaging) Code Scheme (ABAC Scheme) comes under this definition of quasi-regulation:

> Under ABAC, guidelines for advertising have been negotiated with governments, consumer complaints are handled independently, but all costs are borne by industry. The ABAC Scheme is administered by a Management Committee which includes industry, advertising and government representatives.[22]

3.31 The alcohol industry states that the ABAC Scheme 'is world best practice for regulating alcohol advertising'.[23] The ABAC Scheme offers pre-vetting advice to alcohol advertisers for a fee.[24] The pre-vetting scheme 'sets the regulation of alcohol advertising apart from the other 98.7% of the advertising spend'.[25]

3.32 The Ministerial Council on Drug Strategy recommended in 2009 that the ABAC Scheme should be 'reformed as a mandatory co-regulatory scheme'.[26] Co-regulation is defined as:

> … the situation where industry develops and administers its own arrangements, but government provides legislative backing to enable the arrangements to be enforced. This is often referred to as the 'underpinning' of codes, standards and so on. Sometimes legislation sets out mandatory government standards, but provides that compliance with an industry code can be deemed to comply with those standards. Legislation may also provide for

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21 Australian Government, *Best Practice Regulation Handbook*, 2010, Canberra, p. 35.

22 Distilled Spirits Industry Council of Australia and Winemakers' Federation of Australia and Brewers Association of Australia and New Zealand (DSICA, WFA, BAANZ), *Submission 49*, p. 3.

23 DSICA, WFA, BAANZ, *Submission 49*, p. 1.

24 ABAC Scheme, *Alcohol Advertising Pre-Vetting Service*, <http://www.abac.org.au/about/prevettingscheme/> viewed 3 May 2011.

25 DSICA, WFA, BAANZ, *Submission 49*, p. 9.

26 Ministerial Council for Drug Strategy, Communiqué 24 April 2009.

government-imposed arrangements in the event that industry does not meet its own arrangements.[27]

3.33 An example of a co-regulatory system is television program classification. The *Broadcasting Services Act 1992* (Cth) provides for industry groups to devise codes of practice in consultation with the Australian Communications and Media Authority (ACMA), who monitors the codes and deals with unresolved complaints. Most free-to-air television content is classified in-house, although ACMA is responsible for classifying television programs for children.[28]

## Self-regulation

3.34 As discussed in the previous chapter, advertising in Australia, including outdoor advertising, is currently self-regulated. This is the most common method of advertising regulation around the world, and is preferred by the advertising industry as costs to industry are low, as is the regulatory burden, which enables the industry to be 'fast-paced' and responsive, and provides scope for industry innovation and competition in advertising practices.

3.35 The Australian Government's *Best Practice Regulation Handbook* advises that self-regulation is an appropriate option for industries where 'there is no strong public interest concern, in particular no major public health and safety concerns'.[29]

3.36 Advertising stakeholders point out that they have an interest in ensuring that the self-regulatory system is effective, in order to avoid any public scrutiny that may result in stronger regulation. The AANA, Communication Council, and OMA Outdoor Advertising Advisory Paper and Checklist notes that 'self-regulation could be placed at risk if there was a perception, valid or otherwise, that the industry is not interested in addressing concerns raised by the public about advertising standards'. They advise that:

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27 Australian Government, *Best Practice Regulation Handbook*, 2010, Canberra, p. 35.

28 Australian Communications and Media Authority, 'Broadcasting codes and schemes index' <http://www.acma.gov.au/web/standard/pc=ind_reg_codes_bcast > viewed 27 April 2011; Attorney-General's Department, 'Classifying television and music' http://www.ag.gov.au/www/cob/classification.nsf/Page/Community_and_ConsumersClassifying_Television_and_Music> viewed 27 April 2011.

29 Australian Government, *Best Practice Regulation Handbook*, 2010, Canberra, p. 34.

> Whether employed alone or as part of a multi-media campaign, outdoor advertising is in all instances open to general exhibition. Therefore careful consideration should be given to the choice of content.[30]

3.37 The advertising industry claims that the low number of complaints upheld by the Board demonstrates that the self-regulatory system is working. The Communications Council argues that 'when we look at the number of advertisements out in the marketplace, the number of complaints received and the number of decisions upheld, we are talking about a very small percentage'.[31]

3.38 Five per cent of the advertising spend in Australia in 2010 went to third-party outdoor advertising.[32] This accounted for more than 30 000 different advertisements.[33] Outdoor on-premise advertising probably accounts for an additional several hundreds of thousands.

3.39 In that same year, the ASB received complaints about a total of 520 advertisements.[34] Of these, 90 were outdoor advertisements (23 on-premise signage and 67 third-party displays), and 15 of the 90 were upheld by the Board.[35]

3.40 The OMA states that 'the self-regulatory system is efficient and effective, and the small number of cases that have been upheld by the ASB do not justify government intervention into the outdoor media industry'.[36]

3.41 The ASB contends that advertisers are concerned about upholding their image, and that the publication of an advertiser's refusal to abide by Board determinations 'is generally unwelcome publicity for the advertiser and for most advertisers such publicity is a threat to brand reputation and is to be avoided'.[37]

3.42 The OMA highlighted to the Committee the role of third-party outdoor media companies in contributing to the building and upkeep of public

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30 Advertising Federation of Australia, 'Outdoor Advertising Advisory Paper and Checklist', p. [2], c. 2001, <http://www.communicationscouncil.org.au/public/content/ViewCategory.aspx?id=310> viewed 4 November 2010.

31 Mr Daniel Leesong, Chief Executive Officer, Communications Council, *Committee Hansard*, Sydney, 25 March 2011, p. 4.

32 AANA, *Submission 17*, p. 4.

33 AANA, *Submission 17*, p. 5.

34 Australian Standards Bureau (ASB), *Submission 27*, p. [49].

35 AANA, *Submission 17*, p. 5.

36 Ms Moldrich, OMA, *Committee Hansard*, Sydney, 25 March 2011, p. 2.

37 ASB, *Submission 27*, p. 10.

infrastructure, such as bus shelters, footbridges, public toilets, and kiosks.[38] These companies also have an economic interest in refusing controversial advertising that may attract graffiti or vandalism of media displays.

3.43 The OMA devised its own Code of Ethics (OMA Code) for its third-party outdoor media members. It is a voluntary code that outlines third-party outdoor media companies' responsibilities to the community and the environment.[39]

3.44 Industry advocates argue that it is in the interest of the advertisers to avoid producing advertisements that have the potential to be the subject of complaints and possibly incur the cost and inconvenience of having to be withdrawn. However, it can also be argued that the publicity generated by a complaint and assessment is an incentive for advertisers to produce offensive advertisements.[40]

3.45 Collective Shout argues in its submission that 'the advertiser … benefits from the controversy stirred up by the billboard. Advertisers … [can] deliberately exploit the self-regulation system for publicity'.[41]

3.46 Certainly Windsor Smith benefited from the public controversy surrounding one of its outdoor advertising campaigns in 2000. The company acknowledged that:

> … the publicity generated by complaints contributed to 'the best branding exercise we could have ever asked for. The media coverage was estimated to be worth more than $4 million for our brand. The reaction was absolutely fantastic for us and the shoe featured in the ad became one of our best sellers'.[42]

3.47 However, parts of the advertising industry have demonstrated a strong commitment to ensuring appropriate content in outdoor advertising. The OMA Code endorses the AANA codes, the FCAI Code and ABAC (these codes are discussed further in Chapter Four). In addition, the OMA has established Alcohol Advertising Guidelines for its members.

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38 OMA, *Submission 32*, p. 5.

39 OMA, 'Outdoor Media Association's Code of Ethics' <http://oma.org.au/media/Pdf/Code_of_Ethics_2009_revised.pdf> viewed 1 November 2010.

40 J Wallace, et al, 'Analysis of Market Circumstances where Industry Self-Regulation is likely to be Most and Least Effective', Tasman Asia Pacific: Canberra, May 2000, p. 54.

41 Collective Shout, *Submission 43*, p. 4.

42 A Hornery, 'Adverts controversy is a marketer's dream', *The Sydney Morning Herald*, p. 3, 28 November 2000.

3.48 The OMA state that their code was developed in recognition of the fact that:

> Outdoor advertising is a medium that reaches almost every member of the community when they are travelling outside of their home. Outdoor advertising can be seen at any time of the day or night and cannot be turned off, fast-forwarded, put aside or be left unopened.[43]

3.49 Some OMA members have created their own internal guidelines within the OMA Code and have processes in place to ensure that advertising is checked before display.

3.50 For example, Adshel has Prohibition Guidelines that prevent advertisements from being displayed on Adshel media if they contain certain material, such as religious references, political messages, defamation, imagery that resembles road signs, imagery that infringes trademarks, and sexually explicit images.[44] Moreover, Adshel restricts alcohol advertising within 300m of schools.

3.51 oOh!media has a policy that restricts advertising on oOh!media sites if they contain material that is, for example, violent, explicit, obscene, offensive, discriminatory.[45] There is also a requirement to submit advertising to oOh!media two weeks in advance for assessment against their internal code.[46]

## Committee comment

3.52 The Committee gave careful consideration to the regulatory models available, especially in light of what appears to be escalating community concern regarding outdoor advertising.

3.53 In regards to the Classification Board as a possible government regulatory approach to advertising, the Committee notes the Senate Legal and Constitutional Committee has recently tabled a report from its inquiry into the Australian film and literature classification scheme. That Senate Committee had wide-ranging terms of reference focussed on classification,

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43 OMA, 'Outdoor Media Association's Code of Ethics' <http://oma.org.au/media/Pdf/Code_of_Ethics_2009_revised.pdf> p. [1], viewed 1 November 2010.

44 OMA, *Submission 32*, p. [112].

45 OMA, *Submission 32*, p. [114].

46 OMA, *Submission 32*, p. [115].

with one point addressing the possibility of including billboards under the classification scheme.

3.54 The approach of this House of Representatives Committee on Social Policy and Legal Affairs is significantly different in that the focus is on the category of outdoor advertising. This Committee is tasked with investigating the effectiveness of the current self-regulatory arrangements to continue to regulate outdoor advertising in line with community expectations.

3.55 After careful consideration of the National Classification Scheme, the Committee has rejected the classification system as an inappropriate system for regulating outdoor advertising. The purpose of classification is to provide information on a cover about a publication, film or computer game's content, so that consumers can make an informed decision to purchase or view the item. It is not feasible to classify an outdoor advertisement that does not contain any additional content other than that which is on display.

3.56 Furthermore, publications are classified 'Unrestricted', 'Category 1 Restricted', 'Category 2 Restricted' and 'Refused Classification', rather than rated G, PG, et cetera, like films and computer games. It is apparent to the Committee that outdoor advertisements, regardless of the offensiveness of some of them, are similar in content to publications that are 'Unrestricted', such as most women's or fashion magazines.

3.57 In addition, outdoor advertisements are an effective means of conducting public health and social awareness campaigns, and if the content of such campaigns is appropriate to a public space, these should not be restricted by a G rating. Further, a regulatory scheme based on Government classification would likely place a greater financial and administrative burden on the industry, and it is consumers who would ultimately bear these costs.

3.58 The Committee failed to be convinced that a government regulatory or classification model would improve compliance or provide a more effective means of regulating the industry in line with community expectations.

3.59 The Committee recognises that under the current self-regulatory system the number of complaints for outdoor advertising is low compared to the number of outdoor advertisements that a person may see in a single day. In addition, the number of complaints about outdoor advertising that are upheld by the Board is even lower.

3.60 However, the low number of upheld complaints only supports the self-regulatory model if there are no barriers to lodging complaints and if Board decisions do in fact reflect community standards. This inquiry has found that many members of the public do not believe that this is the case. Similarly, the Committee has concerns about aspects of the current operation of the complaints and determination processes.

3.61 The Committee recognises the role of the OMA and its members in improving industry compliance and awareness, displaying social responsibility and building infrastructure that benefits the public. However, OMA represents mainly third-party media display companies rather than businesses that advertise on-premise.

3.62 On-premise outdoor advertising is much more common than third-party outdoor advertising. The OMA measured outdoor advertisements on a stretch of road in Sydney and counted only 14 third-party advertisements compared to 2 140 on-premise advertisements.[47]

3.63 Therefore, the industry peer pressure that the ASB, AANA and OMA refer to as an effective means of ensuring compliance only applies to a small slice of the outdoor advertising landscape. While industry desire to maintain and promote self-regulation may be high, there remain some 'rogue' businesses which do not comply.

3.64 Following this inquiry, the Committee is unable to endorse fully the current operation of the ASB. However, neither did the Committee find flaws in the ASB operation which it considered could be only be rectified by imposing a government regulatory model. To impose a government regulatory model as a response would be over-reactive and would not necessarily provide solutions to the current problems.

3.65 There is significant public interest and concern about the regulation of outdoor advertising, and the Committee concludes that a more rigorous system of self-regulation that is better in tune with community standards and with the unique category of outdoor advertising is the most appropriate future approach. The Committee also recognises the lower regulatory burden of self-regulation on Government and the advertising industry.

3.66 That is not to diminish the significant problems that have been identified with the current system. These must be addressed. It is the conclusion of the Committee that the current self-regulatory model should remain in place subject to further review by 30 June 2013.

47 OMA, *Submission 32*, p. 4.

3.67 At that point, it is the expectation of the Committee that the ASB and other bodies named in this report will have implemented the recommendations made here and demonstrated improved practices across the range of issues identified.

3.68 If this is not the case, then the Committee considers that an alternative advertising co-regulatory model should be instated, with particular regard to the regulation of outdoor advertising.

### Recommendation 1—Advertising and industry bodies

3.69 **The Committee recommends that the Australian Association of National Advertisers, the Advertising Standards Board, the Australian Food and Grocery Council, the Federal Chamber of Automotive Industries and the Alcohol Beverages Advertising Code Scheme report to the Attorney-General's Department by 30 December 2011 detailing their responses and how the relevant recommendations will be implemented.**

**The Committee further recommends that the Australian Association of National Advertisers, the Advertising Standards Board, the Australian Food and Grocery Council, the Federal Chamber of Automotive Industries and the Alcohol Beverages Advertising Code Scheme provide a comprehensive report to the Attorney-General's Department by 30 December 2012 detailing how the relevant recommendations contained in this report have been implemented.**

3.70 The Committee will consult with the Attorney-General's Department to review the implementation of this report's recommendations and may revisit these issues if it is not satisfied with progress made.

### Recommendation 2—Australian Government

3.71 **The Committee recommends that the Attorney-General's Department review by 30 June 2013 the self-regulatory system for advertising by evaluating the industry implementation reports and assessing the extent to which there has been effective implementation of the recommendations contained in this report.**

**If the self-regulatory system is found lacking, the Committee recommends that the Attorney-General's Department impose a self-funded co-regulatory system on advertising with government input into advertising codes of practice.**

**The Committee recommends that the Attorney-General's Department conduct five-yearly reviews of the advertising regulatory system to ensure that technological advances and changes in advertising trends are being addressed adequately in line with community expectations.**

3.72 Even though the Committee does not consider that government regulation of outdoor advertising content is warranted, the Committee expresses it strong view that the current self-regulatory system needs to be more rigorous and transparent in order to address the serious issues raised in the inquiry.

3.73 In particular the Committee acknowledges the involvement of the ASB during the inquiry, their willingness to engage in the process, and hear and address criticisms in order to improve their practices. The Committee was impressed by the commitment and professionalism of those representing the industry and their genuine desire to provide the Committee with full access to the workings of the ASB.

3.74 It is in part the professionalism of ASB representatives that has persuaded the Committee that the industry has the desire and capacity to implement the recommended changes in the time set.

3.75 The following section outlines the necessary steps to establish a more rigorous self-regulatory system that is able to reflect community standards and expectations, with particular reference to outdoor advertising.

3.76 The following two chapters outline other issues which must be addressed by the ASB and other industry bodies in order to establish a robust self-regulatory system for the future. Issues include deficiencies in the current codes, review processes and improved complaints processes.

## More rigorous self-regulation

3.77 The Committee commends the advertising self-regulatory system for responding over the years to suggestions, recommendations and research findings. However, these improvements have been largely reactive in

nature, whether to public criticism or other threats to the status quo. The Committee considers that the self-regulatory system needs to be far more forward-looking and proactive.

3.78 The advertising industry has sought to demonstrate that the self-regulatory system can be flexible and responsive in a way that legislation cannot.

3.79 For example, technological developments may result in outdoor advertising that is more intrusive, interactive and realistic. The AANA and ASB need to anticipate changes in the outdoor advertising industry that may need to be addressed in revisions to advertising codes or Board determination practices.

3.80 A more dynamic and proactive approach would likely reduce the number of complaints made and so the administrative cost of addressing complaints.

3.81 Rather than a reactive regulatory body, the AANA and ASB must establish themselves as leaders in the industry, taking on new responsibilities such as:

- addressing the particular category and concerns of outdoor advertising;
- educating and informing industry and local governments;
- keeping ahead of technological developments and changing advertising trends;
- continuously checking the pulse of community standards and amending Board determinations and industry codes accordingly;
- increasing the advisory service provided to industry; and
- monitoring their own effectiveness by surveying advertising practices.

3.82 The following sections set out a number of key initiatives to improve the effectiveness of the self-regulatory system to address community concerns regarding outdoor advertising.

## Outdoor advertising code

3.83 Outdoor advertising is a popular medium for advertisers, and is a growing market. The Media Federation of Australia explains that:

> The advertising spectrum will continue to explode with more consumer choice and an increasing amount of time is being spent

> on the many visual devices available in the market to stay connected, informed and entertained.[48]

3.84 Furthermore, the regulation of outdoor advertising should not be more lax than that of advertising in other media. The National Preventative Health Taskforce Report explains that:

> Experience from tobacco control indicates that when restrictions do not cover all media, marketing is likely to become concentrated in those media that are not covered, or not as heavily restricted … Research indicates that food marketers are responding to pressures to reduce television advertising by increasingly using print and new technologies … These other non-broadcast media are often used by children without parental supervision, making them more difficult for parents to monitor and control.[49]

3.85 The Committee is aware that regulation of advertising only in certain media can lead to a displacement of advertising to other media. At present there are debates in society about classifying the endless array of mobile phone game applications, and how to deal with the proliferation of internet advertisements that can be hosted in any country. It would be unfortunate for effective measures to be put in place in some media only to result in inappropriate material burgeoning in outdoor advertising.

3.86 Considering the unique case of outdoor advertising, which is visible to all audiences and cannot be avoided, the Committee strongly recommends that a specific code for outdoor advertising be incorporated into the advertising self-regulatory system. Such a code should be mindful of the nature of outdoor advertising given that all people, including children, do not have a choice about viewing it.

3.87 People may not support the product or, in the case of public awareness campaigns, even the message of the advertisement. However the presentation of the advertisement should not itself be offensive to generally held community standards or be inappropriate to be viewed by children.

3.88 As pointed out in the Senate report on the sexualisation of children in the media:

> The real inability of parents to prevent the exposure of their children to billboard advertising would be a legitimate

48 Media Federation of Australia, *Submission 26*, p. 2.

49 National Preventative Health Taskforce, 'National Preventative Health Strategy: The roadmap for action', 30 June 2009, p. 122.

> justification for the ASB and outdoor media advertisers and marketers treating this as a special case under the current system of self-regulation.[50]

3.89 In addition, the ever-present and unsolicited nature of advertising in the public sphere has led to concerns about the cumulative impact of the exposure to certain advertising content.

3.90 The Coalition on Food Advertising to Children discusses a 2008 study of outdoor food and beverage advertisements near primary schools in New South Wales, which found that 80 per cent were for products that are surplus to daily nutritional requirements.[51]

3.91 With regard to alcohol advertising, industry members are:

> … very keen on a form of regulation that evaluates the way a single marketing practice is promoted and published, rather than regulation that in general restricts the volume of commercial communication of alcohol marketing.[52]

3.92 The Committee believes that when the Board takes into account prevailing community standards in its decision-making, community concerns about the prevalence of outdoor advertising in the public domain should be considered. In particular this should be a consideration when assessing outdoor advertisement with sexualised images or stereotypes.

3.93 Opponents of sexual objectification of women in outdoor media point out that the cumulative nature of exposure to such material is more significant than exposure to a single instance.

3.94 This is reflected in Commonwealth discrimination legislation, which in some cases has acknowledged that the cumulative impact of certain workplace incidents can result in sexual or racial discrimination in the conditions of employment. The Australian Human Rights Commission noted that 'significantly, conduct which, of itself, might not be discriminatory, may contribute to a work environment that is detrimental to women and give rise to liability for discrimination.'[53]

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50 Senate Standing Committee on Environment, Communications and the Arts, *Sexualisation of Children in the Contemporary Media*, Commonwealth of Australia: Canberra, June 2008, p. 73.

51 CFAC, *submission 31*, p. 4.

52 Attributed to M Kuunders in SC Jones, D Hall and G Munro, 'How Effective is the Revised Regulatory Code for Alcohol Advertising in Australia?', *Drug and Alcohol Review*, January 2008, p. 30.

53 Australian Human Rights Commission, 'The Right to a Discrimination-Free Workplace', July 2008 <http://www.hreoc.gov.au/legal/publications/dfw.html#5> viewed 5 May 2011.

3.95 Anti-discrimination legislation for the workplace is designed to ensure a workspace that is amenable to all and free from offensive images. There are obvious parallels to ensuring the amenity of public spaces. Hence the cumulative impact of certain types of advertising and images should be considered when assessing their appropriateness for outdoor advertising and ensuring that they do not contribute to a hostile and discriminatory public environment.

3.96 The Committee concludes that recognising outdoor or out-of-home advertising as a special category will provide a more effective self-regulatory regime that can respond to community concerns in this area.

3.97 In addition the Committee notes that there is not clear legislation regarding the display of racist or sexualised images in the public space. The Committee recommends that the Attorney-General's Department investigate how such displays may be brought under the scope of discriminatory practice.

### Recommendation 3— Australian Association of National Advertisers

3.98 **The Committee recommends that the Australian Association of National Advertisers introduce a code of practice for out-of-home advertising and for use by the Advertising Standards Board when determining complaints about out-of-home advertising. The code of practice should recognise that out-of-home advertisements:**

- **occupy public space and have the potential to affect the amenity of that space for some community members;**
- **can be viewed by an unrestricted audience, regardless of their target audience; and**
- **have a cumulative impact on the community through the social messages they convey.**

### Recommendation 4—Australian Government

3.99 **The Committee recommends that the Attorney-General's Department investigate, through its anti-discrimination legislation consolidation project, how to include the unrestricted display of racist or sexualised images in the public space under the scope of discriminatory practice.**

## Copy advice and pre-vetting

3.100 The European Advertising Standards Alliance (EASA), of which the ASB is a member, describes advertising copy advice as 'non-binding, pre-publication advice' that is 'one of the key elements of a self-regulatory system'.[54]

3.101 A European Union roundtable on advertising self-regulation identified copy advice as a basic component of a best practice self-regulatory system, and recommended it 'particularly for media where advertising copy may have so short a shelf-life to negative adjudications. Copy advice should ideally be provided free of charge.'[55]

3.102 The roundtable further noted that:

> The principle purpose of copy advice is to prevent problems before they happen; this benefits not only the advertiser, agency and media immediately concerned, but also the wider advertising industry, by avoiding complaints and being seen to promote social responsibility.[56]

3.103 Providing copy advice, or a pre-vetting service, for outdoor advertising campaigns minimises the negative effect of controversial advertisements being displayed while complaints directed against it are being assessed.

3.104 As the Castan Centre notes:

> The absence of a vetting mechanism places the onus on complainants to address concerns about outdoor advertising. It furthermore enables the most inappropriate advertisements to remain on public display for the duration of the complaints determination process.[57]

3.105 The ASB does not have a formal system of pre-vetting advertisements, although there are some informal arrangements in the advertising industry. The AANA has a copy advice system for members who request

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54 European Advertising Standards Alliance, *Advertising Self-regulation in Europe and Beyond: A reference guide to self-regulatory systems and codes of advertising practice,* European Advertising Standards Alliance: Brussels, 2010, p. 50.

55 EU Roundtable on Advertising Self-regulation, *Self-Regulation in the EU Advertising Sector: A report of some discussion among interested parties*, July 2006, p. 5 <http://ec.europa.eu/dgs/health_consumer/self_regulation/index_en.htm> viewed 1 November 2010.

56 EU Roundtable on Advertising Self-regulation, *Self-Regulation in the EU Advertising Sector: A report of some discussion among interested parties*, July 2006, p. 19 <http://ec.europa.eu/dgs/health_consumer/self_regulation/index_en.htm> viewed 1 November 2010.

57 Castan Centre, *Submission 40*, p. 6.

it, which was 'put in place following the Senate inquiry into the sexualisation of children. It is a very informal process and it is available at present just for AANA members. It is not widely used'.[58]

3.106 OMA members have 'internal vetting systems' in place for advertising accepted for display.[59] The Alcohol Beverages Advertising Code Scheme offers a pre-vetting service for a fee.

3.107 The Communication Council advises that it offers 'non-legal advice to agencies where questions arise around the taste, decency and/or risks associated by communications campaigns, prior to their appearance in various channels, including outdoor media.'[60]

3.108 Collective Shout argues that a regulatory body should have the 'power to establish a system of pre-vetting billboards before their placement'.[61] The Castan Centre states that pre-vetting might improve the self-regulatory system, noting that 'while the vetting of all advertisements is one option, a more targeted process may direct itself to particular products or services or to advertisers who have been the subject of prior complaint'. The Castan Centre further recommends that the ASB, a committee of the ASB, or an agency similar to the Classification Board perform this function.[62]

3.109 Pre-vetting does not preclude advertisements from being subject to complaints, including upheld complaints, but minimises the likelihood of this happening and enables obvious breaches to be detected before display. The Committee envisages that outdoor advertising pre-vetting would provide advice on whether the advertisement is likely to comply with outdoor advertising regulations and, with reference to similar advertisements in similar media, advise whether complaints are likely to be received.

3.110 The OMA noted to the Committee that pre-classified advertisements on television 'get the majority of complaints to the ASB and still they have complaints that are upheld'.[63] However, the classification requirement for television commercials is to determine timeslot programming, not their acceptability by the community. This in-house classification service, which

58 Ms Bain, AANA, *Committee Hansard*, Canberra, 24 February 2011, p. 15.

59 Ms Moldrich, OMA, *Committee Hansard*, Sydney, 25 March 2011, p. 12.

60 Communications Council, *Submission 34*, p. 4.

61 Collective Shout, *Submission 43*, p. 6.

62 Castan Centre, *Submission 40*, pp. 18, 19.

63 Ms Linda Black, Senior Policy Adviser, OMA, *Committee Hansard*, Sydney, 25 March 2011, p. 20.

is paid for by the advertiser, does not constitute legal advice and is not a substitute for ensuring compliance with relevant legislation and codes.[64]

3.111 Given that some outdoor advertisements such as billboards can take time to remove following any complaint being upheld, and during any consideration of a complaint they continue to be seen by a large and unrestricted audience, the Committee considers that a non-binding copy advice or pre-vetting service should be available.

### Recommendation 5— Advertising Standards Bureau

3.112 **The Committee recommends that the Advertising Standards Bureau introduce a transparent copy advice service, which provides independent advice on the suitability of proposed advertisements, for all outdoor advertising.**

## Monitoring

3.113 The EASA has issued a Best Practice Recommendation on Advertising Monitoring, which discusses 'how to target monitoring on specific sectors, media or issues which have attracted high levels of complaint' and notes that monitoring gives a self-regulatory system 'a proactive role in ensuring advertising code compliance'.[65]

3.114 Unlike the Australian self-regulatory system, the UK Advertising Standards Authority has a compliance and monitoring team that conducts regular compliance surveys of specific industry sectors, such as alcohol, gambling and cosmetics advertising, and proactively monitors advertising for breaches of the advertising codes.[66]

3.115 Monitoring advertising for breaches is a way of minimising the impact of unacceptable advertising on the public, and could address public reluctance to lodge complaints. According to EASA:

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64 Free TV, *Commercials Advice* <http://www.freetv.com.au/content_common/pg-cad-about-cad.seo> viewed 4 May 2011.

65 European Advertising Standards Alliance, *Advertising Self-regulation in Europe and Beyond: A reference guide to self-regulatory systems and codes of advertising practice,* European Advertising Standards Alliance: Brussels, 2010, p. 50.

66 Advertising Standards Authority, 'Monitoring Compliance' <http://www.asa.org.uk/ASA-action/Monitoring-compliance.aspx> viewed 11 May 2011.

> To be truly effective, a [self-regulatory system] cannot afford to restrict its activities to responding to complaints: if it does, its interventions will inevitably be haphazard and lack consistency of thoroughness.[67]

3.116 In relation to the current Australian system, the Salvation Army Australian Southern Territory (Salvation Army) submits that 'the system at present relies on the public's constant vigilance and commitment to lodge complaints'.[68]

3.117 Compliance surveys can identify overall compliance rates without relying on the public to report outdoor advertising or have knowledge of applicable codes. Measuring compliance rates across different sectors can inform monitoring and education practices. For example, training can be directed at an industry that has low outdoor advertising compliance rates, and more focused monitoring can be targeted on that sector to check whether compliance improves.

3.118 The Committee was interested in the Classification Board's industry assessor schemes and liaison scheme. These appear to be a means of establishing good industry liaison and being proactive in monitoring the content of classifiable material.

3.119 Elements from both of these schemes could improve the advertising self-regulatory system. Industry assessors perform a similar role to the provision of copy advice and the liaison scheme enhances businesses' understanding of their responsibilities and obligations under the relevant regulations.

3.120 The Committee suggests that the ASB investigate these options as mechanisms to be more active in their regulation rather than relying on complaint responsiveness from the public.

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67 European Advertising Standards Alliance, *Advertising Self-regulation in Europe and Beyond: A reference guide to self-regulatory systems and codes of advertising practice,* European Advertising Standards Alliance: Brussels, 2010, p. 242.

68 The Salvation Army Australia Southern Territory (Salvation Army), *Submission 11*, p. 5.

### Recommendation 6— Advertising Standards Bureau

3.121 **The Committee recommends that the Advertising Standards Bureau conduct and publish annual random compliance surveys of outdoor advertising across specific industries and specific elements of advertising codes, such as:**

- **the food and beverage sector;**
- **the alcohol sector;**
- **outdoor advertising that portrays children;**
- **advertising at event venues and sportsgrounds; and**
- **outdoor advertising that portrays sex, sexuality or nudity.**

**The Committee also recommends that Advertising Standards Board members take on a formal monitoring role of outdoor advertising and self-initiate investigations where warranted. The Committee considers that the compliance surveys would inform the monitoring role.**

## New technologies

3.122 The advent of new technologies is already changing the landscape and impact of outdoor advertising, and will continue to do so in the future. The OMA's website indicates that outdoor advertising can be produced with holograms, three-dimensional displays, animated neon, and inflatables, among other products.[69]

3.123 JCDecaux boasts outdoor advertising displays that can transmit a range of information to consumers on the spot via Bluetooth or mobile phone technology.[70] Smartphones have the ability to transform two-dimensional images from billboards into animated images.[71]

3.124 The Salvation Army recognises that:

> Technological advances have also changed the nature and level of sophistication available for advertising purposes. Growing

69 OMA, <http://oma.org.au/what-makes-good-outdoor/> viewed

70 JCDecaux, <http://www.jcdecaux.com.au/innovate/mobile-interactivity> viewed 9 May 2011.

71 S Sakr, BBC News, *Augmented reality goes beyond gimmicks*, 3 May 2011 <http://www.bbc.co.uk/news/business-13262407> viewed 3 May 2011.

> prosperity in Australia has also resulted in children, tweens and teenagers becoming a significant marketing target cohort.[72]

3.125 The Communications Council suggests that 'new technology developments may create opportunities for advertisers to become more targeted in outdoor campaigns, considering time slots and likely audience in preparing outdoor campaigns'.[73]

3.126 Some consideration was given to utilising digital billboards to restrict certain advertisements to time zones when children would be unlikely to be in public, such as late evening. However, the OMA notes that this may not be cost-efficient: 'If we are only talking about .02 per cent that are in question, do you really want to have a whole system of time-of-day viewing for that .02 per cent?'[74] Furthermore, digital display infrastructure is more expensive.[75]

3.127 However, as technological advancements are made and infrastructure becomes more affordable, it is likely that outdoor media will embrace new methods of drawing attention to advertisements.

3.128 The Committee urges the ASB to take a proactive approach to monitoring these developments and respond appropriately with guidelines and codes as required.

## Conclusion

3.129 This inquiry was prompted by concerns that outdoor advertising content is not in line with community standards of what is acceptable for display in the public space that we all use. Outdoor advertising is a unique form of advertising because it affords consumers very little choice about viewing it.

3.130 If consumers do not approve of advertisements on television, radio or in print, they can change channels, stations or the page. Outdoor advertising cannot be avoided, and nor can children's exposure to it be controlled or moderated by parents.

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72 Salvation Army, *Submission 11*, p. 3.

73 Communications Council, *Submission 34*, p. 6.

74 Ms Black, OMA, *Committee Hansard*, Sydney, 25 March 2011, p. 22.

75 Ms Moldrich, OMA, *Committee Hansard*, Sydney, 25 March 2011, p. 22.

3.131 The Committee set out to investigate the self-regulatory system for advertising in Australia, and to determine whether it can address community concerns about outdoor advertising.

3.132 The advertising industry, as well as specific industry sectors such as alcohol and food producers, was helpful in outlining to the Committee the self-regulatory system that applies to advertising and the various industry-initiated schemes that aim to bolster self-regulation. These stakeholders are keen to demonstrate that self-regulation is effective and that the status quo should remain unchanged.

3.133 On the other hand, the Committee heard from a number of passionate individuals and advocacy groups who object to the content and unavoidable nature of outdoor advertising on a number of grounds. Many parents are concerned that their children are exposed to sexualised images and messages that they are not mature enough to digest. Many women in particular are angered by the prevalence of sexual objectification in advertising images, and the messages that these send in the public space. The Committee finds it difficult to see how such images can ever be in the public interest.

3.134 Groups advocating for measures to reduce rates of obesity, especially in children, are displeased that outdoor food advertising is counteracting public health campaigns. Similarly, organisations that educate the public on the potential negative impacts of inappropriate alcohol intake are incensed by outdoor advertising that appears to target young people.

3.135 The Committee concluded that there are significant concerns about the content and volume of advertising that appears in public. However, the self-regulatory system has its advantages and is not unworkable. The Committee conclude that more rigour and leadership should be incorporated to strengthen the system and address the concerns specific to outdoor advertising.

3.136 The advertising self-regulatory system should formally acknowledge that outdoor advertising constitutes a unique medium with certain characteristics that require additional attention. A code of practice for outdoor advertising is needed for the industry to demonstrate this recognition.

3.137 Furthermore, a more proactive Advertising Standards Bureau is needed to provide more comprehensive oversight of outdoor advertising in the form of a copy advice service—to eliminate blatantly unacceptable advertising copy from being produced—and a regular monitoring role.

3.138 The Committee notes that the industry does act to deflect criticisms of shortcomings in the self-regulatory system, but expects to see more proactive behaviour that anticipates changes in the public mood or possible implications of technological advancements in the outdoor advertising medium. The Committee believes that the advertising industry has had many chances to prove that self-regulation works, and asserts that this is the last chance.

3.139 The Committee considers that the Government has a responsibility to regularly revisit this issue as it is a matter of public concern that affects all of us as we occupy, utilise, meet in, enjoy and travel through *our* public spaces.