

Voluntary advertising codes

- 4.1 As detailed earlier, the current advertising self-regulatory system was established in 1998 by the Australian Association of National Advertisers (AANA). The AANA developed the AANA Advertising Code of Ethics, followed in other years by more specific codes. Some industries have developed specific advertising codes of practice, most in consultation with AANA.
- 4.2 This chapter discusses the application and interpretation of different voluntary codes that apply to outdoor advertising in Australia and against which the Advertising Standards Board (the Board) of the Advertising Standards Bureau (ASB) determines complaints. These codes are:
- AANA Advertising Code of Ethics;
 - AANA Food and Beverages Advertising and Marketing Communications Code;
 - AFGC Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children;
 - AANA Code for Marketing and Advertising Communications to Children;
 - Alcohol Beverages Advertising (and Packaging) Code;
 - Motor Vehicle Code; and
 - AANA Environmental Claims in Advertising and Marketing Code.
- 4.3 The Alcohol Beverages Advertising (and Packaging) Code Adjudication Panel assesses complaints about alcohol advertising, but the ASB also deals with general complaints about alcohol advertising that are outside the scope of the alcohol advertising code.

- 4.4 The Therapeutic Goods Advertising Code is administered by the Therapeutic Goods Advertising Code Council,¹ and the Weight Management Industry Code of Practice, administered by the Weight Management Council Australia Ltd., prohibits misleading or inaccurate advertising or marketing practices.² The Committee did not receive evidence about either of these codes.
- 4.5 Discussion of the advertising self-regulatory system during the course of this inquiry focused largely on the scope and voluntary nature of the codes and the Board's application and interpretation of the codes, particularly in relation to defining community standards.
- 4.6 The ASB notes that:
- Prevailing community standards are at the heart of all Standards Board decisions and are the reason the Standards Board is made up of members of the community. The overriding objective of the Standards Board is to make decisions relating to the AANA Code of Ethics and other AANA codes based on what it perceives are prevailing community attitudes. In this way, the Standards Board aims to draw community expectations into its consideration of the rules set out in the codes. This is frequently a difficult task, as views on the types of issues set out in the AANA codes are in many cases necessarily personal and subjective and often attract very differing views in the community.³
- 4.7 Although an analysis of Board determinations shows that the Board appears to apply prevailing community standards to general advertising complaints,⁴ 'prevailing community standards' are explicitly mentioned only in the following sections of the various codes:
- Section 2.6 of the AANA Code of Ethics, which states that advertising 'shall not depict material contrary to prevailing community standards on health and safety';
 - Section 2.1 of the AANA Code for Advertising and Marketing Communications to Children, which states that advertising to children 'must not contravene prevailing community standards'; and

1 Therapeutic Goods Advertising Code Council, <<http://www.tgacc.com.au>> viewed 20 May 2011.

2 Weight Management Council Australia Ltd, <<http://www.weightcouncil.org>> viewed 20 May 2011.

3 Advertising Standards Bureau (ASB), *Submission 27*, p. [12].

4 See, for example, ASB Case Reports 0554/10; 0164/10; 346/09; 368/04; 75/04.

- Sections 2.1 and 2.2 of the AANA Food and Beverages Advertising and Communications Code, which stipulates that advertising of food and beverages shall not be deceptive or otherwise contravene prevailing community standards, or 'encourage ... excess consumption ... by means otherwise regarded as contrary to prevailing community standards'.
- 4.8 However, no research has yet been conducted to identify or measure prevailing community standards in relation to the three specified areas of health and safety, advertising to children, and advertising food and beverages. This is despite the fact that the AANA defines 'prevailing community standards' as:
- ... community standards determined by the ASB as those prevailing at the relevant time, and based on research carried out on behalf of the ASB as it sees fit, in relation to Advertising or Marketing Communications.⁵
- 4.9 Ms Fiona Jolly, Chief Executive Officer of the ASB, advised the Committee that:
- There is a whole range of ways [to ascertain community standards]. Obviously we monitor what is in the media. They tend to report people who are dissatisfied with the system, so we are very aware of when people feel that we have not made the right decision. The board now has 20 people, and we try to make them very diverse. We bring people to the board who represent a wide range of community values, backgrounds and standards. So the board itself brings a whole diversity of what people in the community think about ads.⁶
- 4.10 The issue of determining prevailing community standards is a vexing one, as evidenced by the number of submissions arguing that the Board does not accurately reflect the standards of the community it represents. Community standards are meant to inform Board determinations of advertising complaints, however there is insufficient commitment by the Board or the ASB to regularly gauge and inform itself of prevailing community views.
- 4.11 The Committee acknowledges the range of concerns raised in the submissions regarding how community standards are defined and
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5 Australian Association of National Advertisers (AANA), 'Code of Ethics' <http://www.aana.com.au/advertiser_ethics_code.html> viewed 12 April 2011.

6 Ms Fiona Jolly, Chief Executive Officer, ASB, *Committee Hansard*, Canberra, 24 February 2011, p. 21.

applied, and whether the Board is reflecting or creating the standards it claims to represent.

- 4.12 The Committee is particularly concerned regarding how ‘prevailing community standards’ are gauged. This goes to the very heart of community concern around outdoor advertising. The need to more adequately reflect and keep in touch with community standards is considered in the following sections in relation to each of the different codes.
- 4.13 A more systemic failure in relation to the voluntary codes of advertising relates to the lack of a programmed system of review and the limited expert and public input that has gone into some reviews.
- 4.14 The Committee is pleased to note that the AANA has indicated, without specifying dates, that in future it will conduct regular and ongoing reviews of the Code and other AANA codes.⁷
- 4.15 The Committee suggests that there should be scope for public comment on code content and wording in future reviews. A regular program of review for each of the codes should be established. Further, consultation with women’s groups, public health experts, child health professionals, and road safety organisations should be a core element of the consultative process when reviewing each of the codes.

Recommendation 7— Australian Association of National Advertisers

- 4.16 **The Committee recommends that the Australian Association of National Advertisers establish a more regular program to review each of the voluntary codes of advertising, in consultation with stakeholders and relevant organisations and experts in the field.**

AANA Code of Ethics

- 4.17 The AANA advertising Code of Ethics (the Code) has been in operation since 1997. It is a voluntary code that ‘provides the overarching set of principles with which all advertising and marketing communications, across all media, should comply’.⁸

7 AANA, *Submission 17*, p. 15.

8 AANA, *Submission 17*, p. 7.

4.18 The Code comprises two sections:

■ Section 1:

- 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.

■ Section 2:

- 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, sex, age, sexual preference, religion, disability or political belief.
- 2.2 Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised.
- 2.3 Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant programme time zone.
- 2.4 Advertising or Marketing Communications to Children shall comply with the AANA's Code of Advertising and Marketing Communications to Children and section 2.6 of this Code shall not apply to advertisements to which AANA's Code of Advertising and Marketing Communications to Children applies.
- 2.5 Advertising or Marketing Communications shall only use language which is appropriate in the circumstances and strong or obscene language shall be avoided.
- 2.6 Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety.

- 2.7 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 and section 2.6 of this Code shall not apply to advertising or marketing communications to which the Federal Chamber of Automotive Industries Code of Practice applies.
- 2.8 Advertising or Marketing Communications for food or beverage products shall comply with the AANA Food and Beverages Advertising and Marketing Communications Code as well as to the provisions of this Code.⁹

4.19 AANA defines 'Advertising and Marketing Communications' as:

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 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 [product labels or packaging].¹⁰

4.20 In May 2010, AANA commissioned Dr Terry Beed to conduct the first review of the Code. The revised Code will be released following consideration of the findings of this report.¹¹

4.21 The Committee commends the AANA for conducting this review and for committing to take account of the findings of this inquiry before releasing the outcomes of the review.

4.22 However, the Committee notes that this review is the first since the Code was established in 1997, and considers that the Code should be reviewed more frequently, as recommend above. Furthermore, when conducting reviews, the AANA should seek input from relevant experts on issues such as discrimination or vilification or the impact of sexualised images on women and children, as well as from community members.

9 AANA, 'AANA Code of Ethics' <http://www.aana.com.au/advertiser_ethics_code.html> viewed 12 April 2011.

10 AANA, 'AANA Code of Ethics' <http://www.aana.com.au/advertiser_ethics_code.html> viewed 12 April 2011.

11 AANA, *Submission 17*, p. 15.

- 4.23 The current review has found thus far 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.’¹²
- 4.24 However, the Code has been described by critics as ‘short and vague’¹³ and the Committee received many submissions arguing that the Code is inadequate and requires amending or strengthening.¹⁴ The majority of the identified shortcomings in the Code related to:
- depictions of sex, sexuality and nudity and the portrayal of women in advertising; and
 - the definition of ‘sensitivity to the relevant audience’.
- 4.25 The following sections discuss these two areas of significant concern.

Sex, sexuality, nudity, and the portrayal of women

- 4.26 Section 2.1 of the Code prohibits discrimination or vilification on the basis of sex and sexual preference and Section 2.3 of the Code advises advertisers to treat sex, sexuality and nudity with sensitivity to the relevant audience.
- 4.27 The concerns raised in the submissions to this inquiry about the use of sex and nudity and the portrayal of women in advertising reflect the level of community concern about this issue. The ASB has noted that 41 per cent of complaints received in 2009 and 45 per cent of complaints in 2010 pertained to the portrayal of sex, sexuality and nudity, and that this topic ‘was of particular concern to respondents to the ASB’s 2010 community research’ on perceptions of sex, sexuality and nudity in advertising.¹⁵
- 4.28 The Code does not define the phrase ‘treat sex, sexuality and nudity with sensitivity’ beyond its ordinary meaning. The Castan Centre for Human Rights Law (Castan Centre) states that ‘Section 2.3 is broadly worded and allows scope for a range of different interpretations’.¹⁶

12 AANA, *Submission 17*, p. 14.

13 D Harker, G Wiggs, and M Harker, ‘Responsive Advertising Regulation: A case study from New Zealand’, *Australian Journal of Political Science*, vol. 40, no. 4, 2005, p. 550.

14 Australian Council on Children and the Media (ACCM), *Submission 28*; Castan Centre for Human Rights Law (Castan Centre), *Submission 40*; Kids Free 2B Kids (KF2BK), *Submission 44*; Ms Jenna Weston, *Submission 6*; Collective Shout, *Submission 43*; Cancer Council Western Australia and the McCusker Centre for Action on Alcohol and Youth (CCMCAAY), *Submission 36*.

15 ASB, ‘Determination Summary: Portrayal of Gender in Advertising’ <<http://adstandards.com.au/files/view/?id=203>> viewed 6 January 2011, p. [4]; ASB, *Submission 27*, p. [50].

16 Castan Centre, *Submission 40*, p. 19.

- 4.29 Nor does the Code provide guidelines for determining whether advertisements comply with the Code. The ASB has published on their website an interpretation guide to determinations of complaints related to the portrayal of gender. This guide suggests that 'discreet portrayal of nudity and sexuality in an appropriate context' is acceptable but does not define 'discreet' nor explain why 'toiletries and fashion' are appropriate contexts.¹⁷ It is not clear how these guidelines have been formulated or who deemed sex and nudity relevant to the context of selling toiletries or clothing but not trucks or tools.
- 4.30 Sexual objectification of women does not appear to be considered contrary to the prohibition of discrimination or vilification. For example, ASB case number 60/10 reports that 'the majority of the Board considered that this image, although objectifying the woman, was relevant to the product and did not amount to discrimination or vilification of women.'¹⁸ Another Board determination concludes that the model in the particular advertisement was 'depicted as being a sexual object' but this 'was not demeaning and did not amount to discrimination against women'.¹⁹ The ASB interpretation guide to determinations of complaints related to discrimination and vilification does not mention sexual objectification.²⁰
- 4.31 The lack of guidelines to underpin the Code has been noted previously. In 2002, the Victorian Department of Premier and Cabinet published a report on the portrayal of women in outdoor advertising, noting 'widespread support for advertising guidelines to deal with the issue of problematic advertising imagery in relation to gender'.²¹ The report recommended the development of gender portrayal advertising guidelines, and suggested a set of draft guidelines based on Advertising Standards Canada's 1981 Gender Portrayal Guidelines.
- 4.32 As a contrast, the Classification Board has detailed notes about the types of images, suggestiveness, degree of nudity etc which are permissible at different classification levels. This approach ensures transparency as well as consistency in decision-making.

17 ASB, 'Determination Summary: Portrayal of Gender in Advertising' <<http://adstandards.com.au/files/view/?id=203>> p. [2], viewed 6 January 2011.

18 ASB, Case Report 60/10.

19 ASB, Case Report 0153/11.

20 ASB, 'Discrimination and Vilification in Advertising' <<http://adstandards.com.au/files/view/?id=202>> viewed 6 January 2011.

21 Victorian Government, *Portrayal of Women in Outdoor Advertising*, February 2002, p. 9.

4.33 In its submission, Kids Free 2B Kids (KF2BK) states that:

There are still no specific guidelines in the code of ethics that offer comprehensive and research based guidance to the ASB regarding the portrayal of women. Decisions are based on the individual board members interpretation of a narrow code ... KF2BK recommends the Standing Committee on Social Policy and Legal Affairs review the 2002 Victorian Government Gender Portrayal Guidelines for Outdoor Advertising.²²

4.34 The Committee believes that sexual objectification of men, women and children should be referred to and proscribed explicitly in the Code of Ethics.

Recommendation 8— Australian Association of National Advertisers

4.35 **The Committee recommends that the Australian Association of National Advertisers amend its Advertising Code of Ethics to proscribe sexual objectification of men, women and children.**

4.36 Another criticism of the Code is that it addresses only the content of advertising, rather than its increasing prevalence, which is increasing to a level that is causing concern. Collective Shout argues that:

We are talking about not just one billboard or ad here or there; we are talking about the cumulative impact of these messages on women and girls and also what they teach boys. They are socialising boys to see women and girls only in terms of their orifices and what they can offer sexually. That is harmful.²³

4.37 The Australian Council on Children and the Media (ACCM) agrees that the Code:

... tends to treat each billboard as an isolated instance, whereas the effect is cumulative. One woman-objectifying campaign would probably not be a problem; the problem is that there are so many campaigns, and have been for so long.²⁴

22 KF2BK, *Submission 44*, p. 4.

23 Ms Melinda Tankard Reist, Founder, Collective Shout, *Committee Hansard*, Melbourne, 4 April 2011, p. 44.

24 ACCM, *Submission 28*, p. 3.

- 4.38 Moreover, several submissions pointed out the similarities between sexualised images of women on display in public and images that are illegal under the *Sex Discrimination Act 1984* (Cth) to display in workplaces.²⁵
- 4.39 Mrs Celeste Sell reminded the Committee that many of the images in outdoor advertising would be illegal if acted out by individuals in a public place.²⁶ Reverend Ivan Ransom adds in his submission, 'if an adult parades nude in public they are arrested for indecent exposure'.²⁷
- 4.40 It was argued that the Code should be amended to reflect 'the fact that unsolicited and unwanted exposure to sexualised and pornified images is a form of sexual harassment'²⁸ and that 'pornified imagery [in public spaces] is a form of sexual harassment'.²⁹
- 4.41 The Australian Partnership of Religious Organisations describes this inquiry as an 'important matter of public concern'.³⁰ One submission maintains that 'exposure to [sexualised] material has been shown to negatively affect attitudes to women in general; it infringes basic human rights and makes equality between men and women impossible'.³¹
- 4.42 The Committee heard that the Code should address not only the offensive nature of sexualised or nude images but also the harmful influences that research has shown these images have on young people, especially women.
- 4.43 The ACCM notes that:
- ... the criteria applied under the Codes are quite narrow, and focussed on what might be offensive rather than what might be harmful (especially to children's development). It would be preferable to have ... criteria that go to the root of community concerns about sexism, sexual objectification and sex-obsession, rather than merely depictions of sexual activity or nudity.³²
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25 Castan Centre, *Submission 40*, p. 11; Collective Shout, *Submission 43*, p. 1; Mrs Kristen Butchatsky, *Submission 21*, p. 1; Ms Rosaleen Noel Commins, *Submission 8*, p. 1; Ms Maree Hawken, *Submission 22*, p. 1; 2020women Inc (2020women), *Submission 16*, p. 3; Australian Christian Lobby (ACL), *Submission 24*, p. 3.

26 Mrs Celeste Sell, *Committee Hansard*, Sydney, 25 March 2011, p. 59.

27 Reverend Ivan Ransom, *Submission 2*, p. 1.

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

29 Ms Jenna Weston, *Submission 6*, p. 2.

30 Australian Partnership of Religious Organisations, *Submission 13*, p. 1.

31 Ms Maree Hawken, *Submission 22*, p. 1.

32 ACCM, *Submission 28*, p. 3.

4.44 Collective Shout argues that:

The AANA code of ethics should be amended to reflect the growing body of research in regard to the sexualisation of children and objectification of women. Objectification and sexualisation of women and girls should be treated as threats to the health, well-being and status of women and girls.³³

4.45 Several submissions made complaints about the Board's interpretation of community standards relating to the representation of sex, sexuality and nudity. The Castan Centres notes that:

Complaints about advertisements of a sexually suggestive nature which ... draw on pornography have been dismissed on the basis that there is no nudity, or that the degree of sexualisation is acceptable.³⁴

4.46 Collective Shout describes the contradictory reasoning of some of the Board determinations:

What we as an organisation have noticed is that the Advertising Standards Board relies on a code of ethics and, to be honest, their interpretation of the code is often very baffling; it is a very loose interpretation. The ASB's response to complaints about an advertisement which many people would recognise as being sexualised is that, 'although the ad is *mildly sexually suggestive*, it is *not sexualised*' (italics added).³⁵

4.47 The diversity of community views was reflected in the range of submissions, some of which suggested that certain outdoor advertising images were sexual and inappropriate, while others argued that they were acceptable to most community members and there should be fewer restrictions on advertising.

4.48 The Eros Association, the peak body for the adult industry, supports the need for better understanding of community standards, saying 'we believe that the ASB should have regular professional polling incorporated into its charter so that clients and government can be sure that they know how the community is thinking every year.'³⁶

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

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

35 Ms Melinda Liszewski, Representative, Collective Shout, *Committee Hansard*, Sydney, 25 March 2011, p. 60.

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

- 4.49 The recent public controversy about a sexual health campaign featuring a real-life gay couple that was displayed on Adshel bus shelters in Brisbane reveals that community opinion cannot be assessed simply by relying on complaints. In this instance, pressure organised by a lobby group resulted in the third-party outdoor media display company removing the advertisements. However, the subsequent public outcry demonstrated that other sections of the community wholeheartedly approved of the campaign. This confirms that complaint numbers are not necessarily indicative of community views and that research and regular review is required to determine community standards on sex, sexuality and nudity.
- 4.50 The ASB commissions research into general public opinions and perceptions of advertising acceptability and Board decisions. In 2007, Colmar Brunton Social Research surveyed community attitudes in relation to Board decisions of print, radio and television, but not outdoor, advertisements. The results showed that the Board was less conservative than the public in terms of representations of sex, sexuality and nudity.³⁷
- 4.51 More recent research from 2010, which included outdoor advertising, indicated that the Board 'has been largely congruent with opinions of the general public' regarding the use of sex, sexuality and nudity in advertising.³⁸
- 4.52 However, the Australian Christian Lobby (ACL) observes that this research:
- ... showed that a majority of women surveyed found objectionable a number of advertisements that received complaints that were subsequently dismissed by the Bureau.³⁹
- 4.53 The 2010 research report also identified sexual objectification of women as a factor in the general public's opinion of what makes advertising unacceptable, but concluded that:
- [this] is an interesting topic and some observations on this topic could be valuable, but ultimately unless it comes back to 'being sensitive to the audience' it is not relevant in any decision about the acceptability of an ad in relation to this section [2.3] of the code.⁴⁰

37 ASB, *Submission 27*, p. [44].

38 ASB, *Community Perceptions of Sex, Sexuality and Nudity in Advertising*, June 2010, p. 16.

39 ACL, *Submission 24*, p. 2.

40 ASB, *Community Perceptions of Sex, Sexuality and Nudity in Advertising*, June 2010, p. 85.

4.54 A paper given at a marketing conference in 2009 argued that:

... the decisions of ASB suggest a disjuncture between community perceptions and ASB applications of these principles. ... There is a need to create a more reasonable yardstick for the measurement of prevailing community attitudes, to determine whether particular ads are within or outside community standards in relation to portrayals of sexuality, vilification, violence, and offensive language.⁴¹

Sensitivity to the relevant audience

4.55 In addition to the ambiguity around the appropriate level of sex, sexuality and nudity in advertising, there is criticism relating to the 'sensitivity to the relevant audience' clause in the Code. First, criticism is directed at the lack of definition of what constitutes the 'relevant audience', particularly in outdoor advertising. Second, the Board has been criticised for its interpretation of 'relevant audience' as applied to outdoor advertising complaint determinations.

4.56 Mr Paul Tyler argues in his submission that the Code's 'lack of definition of "relevant audience" clearly poses a problem of interpretation. Is this the target audience? Is it a collective group of people exposed to the advertisement as a whole?'⁴² Even though the majority of a billboard's audience may not be offended by it, consideration needs to be given to those who are younger or more conservative who will nonetheless be subject to the advertisement.

4.57 The ASB contends that:

The board will always consider the relevant audience for any type of ad. So for an outdoor ad—a billboard, we will say—our decisions will show that what they think about this is that 'this is a billboard, it is a broad audience who can see it'. They do not look at who it is targeted to; they look at who can see it. And they will take that into consideration in their view of whether the ad treats sex, sexuality and nudity with sensitivity to that audience.⁴³

41 SC Jones and K Van Putten, *Whose Standards? An examination of community attitudes towards Australian advertising*, 2009, p. 3, <<http://duplication.net.au/ANZMAC09/papers/ANZMAC2009-151.pdf>> viewed 7 March 2011.

42 Mr Paul Tyler, *Submission 42*, p. 6.

43 Ms Jolly, ASB, *Committee Hansard*, Canberra, 24 February 2011, p. 19.

- 4.58 However, the Castan Centre claims that ‘the interpretations made by the ASB have placed insufficient emphasis on the reality that the “relevant audience” for outdoor advertising is the general public’⁴⁴ and that:

While the broad stipulation in section 2.3 that advertising ‘shall treat sex, sexuality and nudity with sensitivity to the relevant audience’ affords scope for examination of children’s interests, an analysis of the complaints determined by the Advertising Standards Board (ASB) raises concerns that these interests have been accorded insufficient weight.

... many advertisements deemed by the ASB to treat sex, sexuality and nudity with sensitivity would be considered inappropriate in the context of free to air television viewed by children.⁴⁵

- 4.59 FamilyVoice Australia queries that:

It is unclear how the Board interprets the phrase *sensitivity to the relevant audience*. Does this mean the audience likely to see the advertisement, which in this case would include children? If so, it is surprising for the Board to find that this image [of a particular advertisement that was subject to a complaint] depicted sexuality with sensitivity to children. An advertisement of this kind would not be cleared to screen during children's viewing times on television.⁴⁶

- 4.60 As KF2BK notes, ‘people who are not in the target market or “relevant” audience cannot switch off a billboard. There is only one audience for billboards - the whole population.’⁴⁷

- 4.61 The Outdoor Advertising Advisory Paper and Checklist, created by the AANA, the Communications Council and the Outdoor Media Association, cautions that ‘outdoor advertising is in all instances open to general exhibition. Therefore careful consideration should be given to the choice of content.’⁴⁸

44 Castan Centre, *Submission 40*, p. 19.

45 Castan Centre, *Submission 40*, pp. 6, 10.

46 FamilyVoice Australia, *Submission 1*, p. 2.

47 KF2BK, *Submission 44*, p. 5

48 Advertising Federation of Australia, ‘Outdoor Advertising Advisory Paper and Checklist’, c. 2001, <<http://www.communicationscouncil.org.au/public/content/ViewCategory.aspx?id=310>> viewed 4 November 2010.

4.62 The Advisory Paper and Checklist further advises that:

Particularly where outdoor advertising is located in close proximity to schools and shopping centres, it should meet established AANA *Guidelines for Advertising to Children*...⁴⁹

4.63 Moreover, the ASB's interpretation guides to determinations of complaints advise that:

Outdoor advertising is in the public domain and has a broad audience. The Board believes that messages and images presented in this medium need to be developed with a general audience in mind and has given particular attention to the placement of such advertising.⁵⁰

4.64 However, several submissions argue that the Code's reference to the 'relevant audience' should specifically address the broad audience that is exposed to outdoor advertising. Mrs Kristen Butchatsky states in her submission that:

... the statement in [section] 2.3 that the communications shall treat sex etc with *sensitivity to the relevant audience* is completely meaningless when put in the context of billboard advertising. The relevant audience for billboard advertising includes children. They may not be the 'target audience' for marketers, but they have full and complete access to these communications.⁵¹

4.65 The KF2BK agrees:

If the system is to work - there needs to be precise guidelines about what sort of images are appropriate for general exhibition in the public domain - with consideration that there is no 'relevant' audience. People who are *not* in the target market or 'relevant' audience cannot switch off a billboard. There is only one audience for billboards - the whole population. We are a 'captive' audience.⁵²

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

50 ASB, 'Determination Summary: Discrimination and Vilification in advertising' <<http://adstandards.com.au/files/view/?id=202>> p. [4], viewed 6 January 2011.

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

52 KF2BK, *Submission 44*, p. 5.

4.66 The Castan Centre states that:

Complaints under section 2.3 are determined without any consultation with child development professionals and without specific regard to parental concerns about the ... harms which may emanate from cumulative exposure to this type of material.

An examination of ASB determinations reveals that images and messages of a highly sexualised nature drawing on pornography have been considered acceptable. ... Such images may be acceptable to an audience comprising adults; they are unsuitable for an audience which includes children.⁵³

Food and beverages advertising

4.67 The AANA Food and Beverages Advertising and Marketing Communications Code (the Food and Beverages Code) contains three sections. The first section provides definitions, the second addresses advertising food and beverage products, and the third deals with advertising food and beverage products to children (14 years or younger).

4.68 'Advertising or Marketing Communications to Children' is defined in the Food and Beverage Code as advertising that:

... having regard to the theme, visuals and language used, are directed primarily to Children and are for ... any food or beverage product other than alcoholic beverages ... which is targeted toward and has principal appeal to Children.⁵⁴

4.69 Section 2 of the Food and Beverages Code addresses the general advertising of food and beverages:

- 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.

53 Ms Tania Penovic, Associate, Castan Centre, *Committee Hansard*, 4 April 2011, Melbourne, pp. 25–26.

54 AANA, 'AANA Food & Beverages Advertising & Marketing Communications Code' <http://www.aana.com.au/food_beverages_code.html> viewed 29 March 2011.

- 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 and Marketing Communications to Children.

4.70 Section 3 of the Code addresses appropriate advertising of food and beverages to 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.⁵⁵

4.71 The Food and Beverage Code has been in operation since 2007, and is based on International Chamber of Commerce principles.⁵⁶ The Food and Beverage Code will be reviewed by Dr Terry Beed following the review of the Children's Code in the second half of 2011.⁵⁷

55 AANA, 'AANA Food & Beverages Advertising & Marketing Communications Code' <http://www.aana.com.au/food_beverages_code.html> viewed 29 March 2011.

56 AANA, *Submission 17*, p. 8.

57 AANA, *Submission 17a*, p. 3.

4.72 In addition, the Australian Food and Grocery Council (AFGC) manages two self-regulatory initiatives:

- Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (QSRI) for the fast-food industry;⁵⁸ and
- Responsible Children's Marketing Initiative, which does not apply to outdoor advertising.⁵⁹

4.73 There are seven signatories to the QSRI, which commenced in 2009 in response to community concerns about the 'level of advertising ... [of] foods high in energy, fat, sugar and salt'.⁶⁰ The principles of the initiative as they apply to outdoor advertising are:

- Advertising or Marketing Communications to Children for food and/or beverages must:
 - ⇒ represent healthier choices, as determined by a defined set of Nutrition Criteria for assessing children's meals; and/or
 - ⇒ represent a healthy lifestyle, designed to appeal to the intended audience through messaging that encourages:
 - healthier choices, as determined by a defined set of Nutrition Criteria for assessing children's meals; and
 - physical activity.
- Popular Personalities or Licensed Characters must not be used in Advertising or Marketing Communications to Children for food and/or beverage products, unless such Advertising or Marketing Communications represent healthier choices or healthy lifestyles.
- Participants must not engage in any product-related communications in Australian schools, except where specifically requested by, or agreed with, the school administration, or related to healthy lifestyle activities under the supervision of the school administration or appropriate adults.
- Participants must not advertise Premium offers in any Medium directed primarily to Children unless the reference to the Premium is

58 Australian Food and Grocery Council (AFGC), *Submission 30*, p. 4.

59 AFGC, 'The Responsible Children's Marketing Initiative of the Australian Food and Beverage Industry', p. 1 <<http://www.afgc.org.au/industry-codes/advertising-kids.html>> viewed 20 April 2011.

60 AFGC, *Submission 30*, p. 5. The seven signatories are McDonald's, KFC, Pizza Hut, Hungry Jack's, Oporto, Red Rooster and Chicken Treat.

merely incidental to the food and/or beverage product being advertised in accordance with the AANA Codes.⁶¹

- 4.74 To represent 'healthier choices', QSRI meals must not comprise more than 0.4g of saturated fat per 100kJ, 1.8g of sugar per 100kJ, or 650mg of sodium.⁶² The George Institute of Global Health is nominated as an independent arbiter.⁶³
- 4.75 The participants of the QSRI undertook to conduct a review in 2010, but at the time of this report, the review has not taken place.⁶⁴
- 4.76 Before assessing an advertisement for compliance with the sections of the codes that address children, the Board first determines whether an advertisement is considered to be directed primarily to and has principal appeal to children (14 years old or younger for the Food and Beverage Code and under 14 years for the QSRI).
- 4.77 Despite these voluntary codes of advertising, high levels of concern remain about outdoor advertising for unhealthy foods. The National Preventative Health Taskforce noted that:

It is now accepted by international health agencies such as [the World Health Organization] that restrictions on food and beverage marketing directed to children should form part of a comprehensive and multifaceted strategy to address the growing problem of childhood obesity ...

There is also growing international consensus that food advertising influences children's food preferences, diet and health, and that this influence is harmful to children's health, as most advertising to children is for products high in salt, sugar and fat.⁶⁵

- 4.78 The Coalition on Food Advertising to Children (CFAC) supports the National Preventative Health Taskforce recommendation to 'reduce exposure of children and others to marketing, advertising, promotion and

61 AANA, 'Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children', <<http://www.aana.com.au/documents/QSRAInitiativeforResponsibleAdvertisingandMarketingtoChildrenJune2009.pdf>> viewed 20 April 2011.

62 AANA, 'Appendix 1 - Nutrition Criteria for Assessing Children's Meals', <<http://www.aana.com.au/documents/NutritionCriteriaforAssessingChildrensMeals.pdf>> viewed 20 April 2011.

63 AFGC, *Submission 30*, p. 6.

64 AANA, 'Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children', p. [4] <<http://www.aana.com.au/documents/QSRAInitiativeforResponsibleAdvertisingandMarketingtoChildrenJune2009.pdf>> viewed 20 April 2011.

65 National Preventative Health Taskforce, 'National Preventative Health Strategy: The roadmap for action', 30 June 2009, p. 121.

sponsorship of energy-dense nutrient-poor foods and beverages'⁶⁶ but does not believe that the current self-regulatory codes go far enough in addressing this need.

- 4.79 The CFAC notes that the voluntary nature of the codes is a limitation, as are the codes' complexity and narrowness.⁶⁷ As it is up to the discretion of fast food companies to sign up to the QSRI:

It is not immediately apparent to consumers that not all food product and fast food companies are signatories to these industry developed codes, and difficult for consumers to determine which companies are signatories and which are not.⁶⁸

- 4.80 The AFGC notes that some companies are reluctant to become signatories to the QSRI because they claim that they do not advertise directly to children.⁶⁹ However, children still absorb messages that are not directed specifically to them, and children certainly consume products that are advertised to adults and families.

- 4.81 The CFAC attributes the low number of complaints about food advertising to the confusing system of multiple, ambiguous and ill-defined codes. To remedy this, Cancer Council NSW has implemented a project called Junkbusters that 'is helping parents cut through the confusion of how they might complain about an advertisement that they are unhappy with'.⁷⁰

- 4.82 The CFAC believes that definitions in the codes are:

... loose and open to wilful misinterpretation ... The definition of 'primarily directed towards children' ... seems to be particularly open to manipulation when advertisers can say that the intent of the advertisement is aimed at the main grocery buyer when the advertisement clearly has great appeal for children.⁷¹

- 4.83 The CFAC brought to the Committee's attention a number of outdoor advertisements that they felt contravened, or ought to contravene, the Food and Beverages Code, through the use of a premium in the form of a

66 Coalition on Food Advertising to Children (CFAC), *Submission 31*, p. 2.

67 CFAC, *Submission 31*; Ms Clare Hughes, Nutrition Program Manager, CFAC, *Committee Hansard*, Sydney, 25 March 2011.

68 CFAC, *Submission 31*, p. 3.

69 Ms Peta Craig, Manager, Nutrition Policy and Codes, AFGC, *Committee Hansard*, Canberra, 12 May 2011, p. 8.

70 Ms Hughes, CFAC, *Committee Hansard*, Sydney, 25 March 2011, p. 29; Junkbusters, <<http://junkbusters.com.au/>> viewed 9 April 2011.

71 CFAC, *Submission 31*, p. 3.

prize, an appeal to children to 'pester' adults to make a purchase, or sponsorship of community sports programs by a fast food chain.⁷²

4.84 The CFAC also criticises the Food and Beverages Code for not including sports sponsorship, which is 'particularly confusing for children as brand placement and sports links are a subtle form of product advertising'.⁷³

4.85 Most of the current research on the relationship between advertising and children's eating habits focuses on television advertising, but Australian researchers are beginning to investigate the role of outdoor advertising as well. Dr Kelly et al studied outdoor food advertising in the vicinity of primary schools, and noted that:

Outdoor advertising is an important food marketing tool that should be considered in future debates on regulation of food marketing to children.⁷⁴

4.86 Some complaints were received about how the Board determines community standards in relation to advertising food and beverages:

I guess we are also concerned that the view of the Advertising Standards Bureau on what is community sentiment is quite different to what we think parents' view of prevailing community sentiment would be.⁷⁵

4.87 The CFAC cites research showing that parents want 'restrictions to adjust the balance of unhealthy versus healthy food advertising' and 'to be responsible for what their children are eating but at the same time they do not want to be undermined'.⁷⁶

4.88 Moreover, CFAC points out that:

The current determinations by the ASB often refer to 'prevailing community standards' however the process to determine this is not declared or whether in fact there is a monitoring process for community standards for food advertising to children.⁷⁷

72 Ms Wendy Watson, Nutrition Project Officer, CFAC, and Ms Hughes, CFAC, *Committee Hansard*, Sydney, 25 March 2011, pp. 30–32.

73 CFAC, *Submission 31*, p. 3.

74 B Kelly et al, 'The commercial food landscape: Outdoor food advertising around primary schools in Australia', *Australian and New Zealand Journal of Public Health*, vol. 32, no. 6, 2008, p. 522.

75 Ms Hughes, CFAC, *Committee Hansard*, Sydney, 25 March 2011, p. 29.

76 Ms Hughes, CFAC, *Committee Hansard*, Sydney, 25 March 2011, pp. 25, 28.

77 CFAC, *Submission 31*, p. 4.

- 4.89 The ASB has not conducted research into prevailing community standards regarding the advertising of food and beverages.

Advertising to children

- 4.90 The AANA Code for Marketing and Advertising Communications to Children (Children's Code) has been in operation since 2003.⁷⁸ The Children's Code was reviewed in 2007 and revised in 2008 in response to the Senate Committee for the Environment, Communications and the Arts' report on the sexualisation of children in the media. This revision of the Children's Code incorporated 'a direct prohibition against the sexualisation of children and a ban on the use of sexual imagery in advertising targeted at children'.⁷⁹ The Children's Code will be reviewed later this year by Dr Terry Beed.⁸⁰
- 4.91 The AANA defines 'Children' as individuals 14 years or younger. In comparison, the age of consent in most Australian states is 16, the legal age of majority is generally 17, and in some states girls can obtain contraceptive prescriptions without parental consent at age 16.
- 4.92 The definition of 'Advertising or Marketing Communications to Children' is advertising that:
- ... having regard to the theme, visuals and language used, are directed primarily to Children and are for ... goods, services and/or facilities which are targeted toward and have principal appeal to Children.⁸¹
- 4.93 The Castan Centre points out that because the Children's Code is narrow, 'a sexualised advertisement featuring a 15-year-old would fall outside the purview of that code'.⁸²
- 4.94 The Children's Code regulations that apply to outdoor advertising are:
- 2.1 Advertising and Marketing Communications to Children must not contravene Prevailing Community Standards.
 - 2.2 Advertising and Marketing Communications to Children must:

78 AANA, *Submission 17*, p. 7.

79 AANA, *Submission 17*, p. 12.

80 AANA, *Submission 17b*.

81 AANA, 'AANA Code for Advertising & Marketing Communications to Children' <http://www.aana.com.au/childrens_code.html> viewed 12 April 2011.

82 Ms Penovic, Castan Centre, *Committee Hansard*, Melbourne, 4 April 2011, p. 25.

- ⇒ not mislead or deceive Children;
- ⇒ not be ambiguous; and
- ⇒ fairly represent, in a manner that is clearly understood by Children:
 - the advertised Product;
 - any features which are described or depicted or demonstrated in the Advertising or Marketing Communication;
 - the need for any accessory parts; and
 - that the Advertising or Marketing Communication is in fact a commercial communication rather than program content, editorial comment or other non-commercial communication.
- 2.4 Advertising or Marketing Communications to Children:
 - ⇒ must not include sexual imagery in contravention of Prevailing Community Standards; and
 - ⇒ must not state or imply that Children are sexual beings and that ownership or enjoyment of a Product will enhance their sexuality.
- 2.5 Advertising or Marketing Communications to Children:
 - ⇒ 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
 - ⇒ must not advertise Products which have been officially declared unsafe or dangerous by an authorised Australian government authority.
- 2.6 Advertising or Marketing Communications to Children:
 - ⇒ must not portray images or events in a way that is unduly frightening or distressing to Children; and
 - ⇒ 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 Advertising or Marketing Communications to Children:
 - ⇒ must not undermine the authority, responsibility or judgment of parents or carers;
 - ⇒ must not contain an appeal to Children to urge their parents or carers to buy a Product for them;
 - ⇒ must not state or imply that a Product makes Children who own or enjoy it superior to their peers; and

- ⇒ 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 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' and 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 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 An Advertising or Marketing Communication to Children which includes a competition must:
 - ⇒ contain a summary of the basic rules for the competition;
 - ⇒ clearly include the closing date for entries; and
 - ⇒ make any statements about the chance of winning clear, fair and accurate.
- 2.11 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 Advertising or Marketing Communications to Children, which include or refer to or involve an offer of a Premium:
 - ⇒ should not create a false or misleading impression in the minds of Children about the nature or content of the Product;
 - ⇒ 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;
 - ⇒ must make the terms of the offer clear as well as any conditions or limitations; and
 - ⇒ must not use Premiums in a way that promotes irresponsible use or excessive consumption of the Product.
- 2.13 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 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 Advertising or Marketing Communications to Children for food or beverages must neither encourage nor promote an inactive lifestyle or unhealthy eating or drinking habits and must comply with the AANA Food and Beverages Advertising and Marketing Communications Code.
 - 2.16 Advertising or Marketing Communications to Children must comply with the AANA Code of Ethics.⁸³
- 4.95 The AANA Practice Guide to Managing Images of Children and Young People encourages advertisers to obtain personal or parental consent for an image to be taken and used, and to avoid sexually exploitative images of children and young people.⁸⁴ This practice guide refers to images in general and does not specify advertisements directed primarily to children.
- 4.96 In the same way that many people believe the 'relevant audience' definition in the Code of Ethics should reflect the inclusion of children when it comes to outdoor advertising, the main criticism of the Children's Code is that it is not applied to outdoor advertising unless the advertisement is specifically targeted at children, despite children's unmonitored exposure to such advertising.
- 4.97 Several submissions contend that at the very least children should be considered part of the audience when it comes to outdoor advertising.
- 4.98 The Castan Centre observes that 'outdoor advertising ... does not address itself to children but nevertheless commands their attention'⁸⁵ and that 'the predominant concern is that outdoor advertising material of a sexual

83 AANA, 'AANA Code for Advertising & Marketing Communications to Children' <http://www.aana.com.au/childrens_code.html> viewed 12 April 2011.

84 AANA, 'Practice Guide: Managing Images of Children and Young People' <http://www.aana.com.au/documents/AANAPracticeGuide-ManagingImagesofChildrenandYoungPeople_FinalOct2009.pdf> viewed 20 May 2011.

85 Castan Centre, *Submission 40*, p. 5.

nature which addresses itself to the adult market may be inappropriate for children who are exposed to it'.⁸⁶

4.99 Ms Gabrielle Sullivan argues in her submission that:

... billboards are 24/7 static broadcast medium - meaning, everyone passing sees them regardless of whether its relevant or appropriate to them or not. Therefore ... similar classification regulations that apply to the highest common denominator for other broadcast media (e.g. daytime children's TV time) should at least apply.⁸⁷

4.100 A number of submissions observed that the stipulation that advertising should 'not undermine the authority, responsibility or judgment of parents or carers' did not seem to apply to outdoor advertising. Western Australian parliamentarians Hon. Nick Goiran and Mr Michael Sutherland point out that:

Whilst outdoor advertisements may not be directed specifically to children, because children are invariably exposed, this contradicts the intent of section 2.7 as it undermines the parent's and carer's ability to monitor children's exposure to certain materials.⁸⁸

4.101 Mr Paul Tyler notes that:

... when it comes to outdoor advertising, a parent or care giver is stripped of their right to control the exposure of children under their care to material they as a parent deem to be inappropriate.⁸⁹

4.102 The ACL argues that:

Given the fact that outdoor advertising is public, and that it can be reasonably assumed that a wide cross section of society, including children, will view such advertising, ACL maintains that [outdoor advertisers] breach their own codes of ethics every time a sexually explicit billboard is displayed. The display of sexual imagery, prominently located in public spaces with the intent of gaining brand or product exposure, clearly breaches prevailing community standards and undermines the authority of parents and carers to determine the suitability of viewing content for their children.⁹⁰

86 Castan Centre, *Submission 40*, p. 2.

87 Ms Gabrielle Sullivan, *Submission 12*, p. 2.

88 Hon. Nick Goiran MLC and Mr Michael Sutherland MLA, *Submission 19*, p. 2.

89 Mr Paul Tyler, *Submission 42*, p. 7.

90 ACL, *Submission 24*, p. 1.

- 4.103 Although the Children's Code was revised to prohibit the portrayal of children as sexual beings, the 2006 Australia Institute report, *Letting Children be Children*, notes that children can be indirectly sexualised when 'exposed to stereotypical and highly sexualised images of adults in advertising material long before they can be expected to understand or analyse these images in adult ways.'⁹¹
- 4.104 The Castan Centre recommends that:
- Revisions to the Code of Ethics pursuant to the current review may include a provision concerning the impact of advertising on children with reference to the paramount consideration of the best interests of the child. The application of such a provision may be informed by the use of current research and the involvement of parents, child health professionals and young people, where appropriate.⁹²
- 4.105 Many submissions clearly consider the exposure of children to sexualised images as being contrary to community standards. However, the 'prevailing community standards' that are referenced in the Children's Code do not apply unless the advertisement is specifically directed to, or the product has principal appeal to, children younger than 15 years of age.
- 4.106 Western Australian parliamentarians Hon. Nick Goiran and Mr Michael Sutherland argue that 'when considering advertisements which will be viewed by children, it is inadequate that the adverse effects of sexually explicit and offensive material on children are not considered'.⁹³
- 4.107 ASB's own research confirms the level of community concern about children's exposure to sex, sexuality and nudity, finding that 'parents were highly sensitive' to outdoor advertising that depicted sex, sexuality and nudity because of their 'lack of control over their child's exposure'.⁹⁴
- 4.108 The Castan Centre recommends that 'all outdoor advertising space is accessible to children and should be regulated with reference to the interests of children'⁹⁵.
- 4.109 The ASB has not conducted research into prevailing community standards regarding the advertising of food and beverages. Ms Jolly advised the

91 E Rush and A La Nauze, *Letting Children be Children: Stopping the sexualisation of children in Australia*, The Australia Institute, Discussion Paper No. 93, December 2006, p. 18.

92 Castan Centre, *Submission 40*, p. 19.

93 Hon. Nick Goiran MLC and Mr Michael Sutherland MLA, *Submission 19*, p. 1.

94 ASB, *Community Perceptions of Sex, Sexuality and Nudity in Advertising*, June 2010, pp. 19–20.

95 Castan Centre, *Submission 40*, p. 18.

Committee that the ASB does not currently have plans to conduct research into the impact of advertising on children or into community standards regarding this issue.⁹⁶

Alcohol advertising

- 4.110 Between 2005 and 2007, alcohol advertising expenditure in Australia increased from 44 per cent to 50 per cent of all beverage advertising expenditure. Over this time outdoor alcohol advertising expenditure increased from 21 per cent to 32 per cent of all alcohol advertising expenditure.⁹⁷
- 4.111 Alcohol advertising is quasi-regulated in Australia: alcohol advertising guidelines are created in consultation with the government, but the guidelines are voluntary and the alcohol industry funds the system.
- 4.112 The Alcohol Beverages Advertising (and Packaging) Code (ABAC) is administered by the ABAC Scheme and came into operation in 1998.⁹⁸ The ABAC Scheme is funded by the Brewers Association of Australia and New Zealand, the Distilled Spirits Industry Council of Australia and the Winemakers Federation of Australia.⁹⁹ The members of these three organisations are signatories to the ABAC Scheme.
- 4.113 Complaints regarding alcohol advertising are handled by the ASB, which forwards complaints to the ABAC Scheme Chief Adjudicator for assessment by the ABAC Scheme Adjudication Panel, and also considers them against the AANA Code of Ethics. The Adjudication Panel is independent of the alcohol industry, and includes at least one public health professional.¹⁰⁰
- 4.114 In 2003, the Ministerial Council on Drug Strategy (the Council) commissioned a report into the ABAC Scheme by the National Committee for the Review of Alcohol Advertising. The report did not recommend that

96 Ms Jolly, ASB, *Committee Hansard*, Melbourne, 4 April 2011, p. 5.

97 Monitoring of Alcohol Advertising Committee, *Alcohol Beverage Advertising in Mainstream Australian Media 2005 to 2007: Expenditure and exposure*, pp. 7, 10.

98 The ABAC Scheme Ltd, 'Frequently Asked Questions' <[http://www.abac.org.au/uploads/File/ABAC%20FAQ%20-%20November%202009\(1\).pdf](http://www.abac.org.au/uploads/File/ABAC%20FAQ%20-%20November%202009(1).pdf)> viewed 19 April 2011.

99 The ABAC Scheme Ltd, 'Frequently Asked Questions' <<http://www.abac.org.au/uploads/File/ABAC%20FAQ%20-%20November%202009.pdf>> viewed 19 April 2011.

100 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. 4.

alcohol advertising be government-regulated, but neither did it recommend that the ABAC Scheme continue without enhancements.¹⁰¹ The recommended changes were incorporated into the ABAC Scheme by the end of 2005.¹⁰²

- 4.115 The report expressed concern that not all industry members are signatories to ABAC:

While those not captured [0.01 to 0.05 per cent of the industry] are very small players in the market, there is a view among the larger industry members that it is these smaller members who generally contravene the ABAC.¹⁰³

- 4.116 In 2006, the Council established a Monitoring of Alcohol Advertising Committee to monitor the regulation of alcohol advertising.¹⁰⁴ In 2009, the Council announced that:

...ABAC, which is meant to ensure that alcohol advertising is responsible and doesn't encourage underage drinking, had significant shortcomings and should be reformed as a mandatory co-regulatory scheme.¹⁰⁵

- 4.117 The Council made a number of recommendations, including:

- Mandatory pre-vetting of all alcohol advertising;
- Expanding the ABAC management committee to have a more balanced representation between industry, government and public health;
- Expanding the adjudication panel to include a representative specialising in the impact of marketing on public health;
- Expanding the coverage of the scheme to include emerging media, point-of-sale and naming and packaging; and
- Meaningful and effective sanctions for breaches of the Code.¹⁰⁶

- 4.118 At its final meeting, the Council expressed 'continuing concerns about the exposure of children to alcohol advertising' and asked the Australian National Preventative Health Agency to monitor this issue.¹⁰⁷

101 National Committee for the Review of Alcohol Advertising, *Report to the Ministerial Council of Drug Strategy. Review of the self regulatory system for alcohol advertising*, 2003.

102 DSICA, WFA, BAANZ, *Submission 49*, p. 4.

103 National Committee for the Review of Alcohol Advertising, *Report to the Ministerial Council of Drug Strategy. Review of the self regulatory system for alcohol advertising*, 2003, p. 11.

104 Ministerial Council on Drug Strategy, Communiqué 15 May 2006.

105 Ministerial Council on Drug Strategy, Communiqué 24 April 2009.

106 Ministerial Council on Drug Strategy, Communiqué 24 April 2009.

107 Ministerial Council on Drug Strategy, Communiqué 25 February 2011.

- 4.119 Alcohol industry members have assured this Committee that the ABAC Scheme made changes that addressed the above issues.¹⁰⁸
- 4.120 Unlike other industry sectors, the ABAC Scheme provides a voluntary user-pays pre-vetting scheme to its members that has been in operation since 1992.
- 4.121 Pre-vetting is a commendable measure for minimising the production of irresponsible alcohol advertising. However, not all alcohol advertisers are ABAC members. In a 2010 case, the ABAC Adjudication Panel upheld a complaint against a non-ABAC signatory but acknowledged that ‘this means that the outdoor advertising was not subject to pre-vetting prior to its showing. Further, this decision by the Panel does not have any binding force on the advertiser.’¹⁰⁹
- 4.122 The Outdoor Media Association (OMA) established placement Alcohol Advertising Guidelines for its members in 2009. These guidelines prohibit its members from accepting alcohol advertising that has not been pre-vetted by an Alcohol Advertising Pre-vetting Service.¹¹⁰ However, the Cancer Council Western Australia and the McCusker Centre for Action on Alcohol and Youth (CCMCAAY) note that these OMA guidelines do not carry sanctions and nor are they monitored for compliance.¹¹¹
- 4.123 The alcohol industry explains that pre-vetters assess potential alcohol advertisements ‘against agreed community standards’.¹¹² However, it is not clear how these standards are agreed. The Alcohol Policy Coalition (APC) suggests that:
- Community attitude surveys ... consistently show strong support for the restriction of alcohol advertising from times and in places where it is likely to reach a significant number of children and young people.¹¹³
- 4.124 A 2005 study into consumer opinion of alcohol advertising found that for those who expressed concerns, the exposure of young people to alcohol

108 Mr Stephen Swift, Executive Director, BAANZ, *Committee Hansard*, Canberra, 12 May 2011, p. 5.

109 ABAC Scheme, Determination no. 76/10, p. 4 <<http://www.abac.org.au/publications/adjudication-decisions>> viewed 19 April 2011.

110 OMA, *Submission 32*, p. [82].

111 CCMCAAY, *Submission 36*, pp. 3-4.

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

113 Alcohol Policy Coalition (APC), *Submission 37*, p. 12.

advertising was rated second behind content.¹¹⁴

- 4.125 Some submissions express concerns that the self-regulation of advertising is ineffective and not in the best interests of the public's health when it comes to alcohol, and that outdoor advertising in particular should be regulated.¹¹⁵ These submissions argue that the volume and placement of outdoor alcohol advertising need to be regulated in addition to their content.
- 4.126 The OMA Alcohol Advertising Guidelines restrict fixed advertising of alcohol within a 150m sightline of schools, except where a school is in the vicinity of a licensed outlet.¹¹⁶
- 4.127 However, the APC criticises the loopholes in these guidelines that allow alcohol advertising on transport that passes schools and allow fixed alcohol advertising in the case that a school is near a licensed venue.¹¹⁷
- 4.128 Findings from a study of outdoor alcohol advertising near schools in Chicago 'clearly suggest that exposure is associated with increased risk of future drinking and greater susceptibility to drink' and 'could suggest that the amount, not just content, of alcohol advertising is an important influence on alcohol intentions'.¹¹⁸ Another US study showed that increased exposure to alcohol advertising resulted in increased drinking among youth.¹¹⁹ Youth who were exposed to higher than the average number of alcohol advertisements consumed more than the average amount of alcohol.
- 4.129 The CCMCAAY note that young people aged 18-24 are more likely to use, and therefore be exposed to, advertisements placed in public transport areas.¹²⁰
- 4.130 The APC argues that:

... the most effective means for reducing the exposure of children

114 Department of Health and Ageing, 'Consumer Perceptions of Alcohol Advertising and the Revised Alcohol Beverages Advertising Code', October 2005, p. 18, <<http://www.alcohol.gov.au/internet/alcohol/publishing.nsf/Content/consum-percept>> viewed 28 April 2011.

115 APC, *Submission 37*; CCMCAAY, *Submission 36*. The Dalgarno Institute, *Submission 20*, goes further and recommends that alcohol advertising be banned altogether.

116 OMA, *Submission 32*, p. [82].

117 APC, *Submission 37*, p. 8.

118 K Pasch et al, 'Outdoor Alcohol Advertising near Schools: What does it advertise and how is it related to intentions and use of alcohol among young adolescents?', *Journal of Studies on Alcohol and Drugs*, July 2007, p. 594.

119 Dalgarno Institute, *Submission 20*, p. 4.

120 CCMCAAY, *Submission 36*, p. 2.

and young people to outdoor advertising is to restrict the medium generally rather than merely focussing on advertising content.¹²¹

Motor vehicle advertising

- 4.131 The AANA and the Federal Chamber of Automotive Industries (FCAI) jointly developed the Voluntary Code of Practice for Motor Vehicle Advertising (FCAI Code), which has been in operation in its current form since 2004.¹²²
- 4.132 The explanatory notes to the FCAI Code indicate that a review would be conducted in 2005 and 2006.¹²³ The Committee understands that although the type and results have not been made publicly available, a review has been conducted, and that review concluded that no changes were required to the FCAI Code.
- 4.133 The Committee received evidence from the Pedestrian Council of Australia about the FCAI Code at a public hearing in Sydney. Mr Harold Scruby, Chair of the Pedestrian Council of Australia, advised the Committee that 'the code in itself is not bad, it is the interpretation', but noted that if the FCAI 'were continually tightening up its code, no-one would be screaming for government intervention'.¹²⁴
- 4.134 There was some criticism of the 'fantasy clause' in the FCAI Code, which provides scope to display driving practices if considered to take place in a fantasy or humorous context.¹²⁵ The FCAI Code:
- ... 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.¹²⁶

121 APC, *Submission 37*, p. 9.

122 AANA, *Submission 17*, p. 8.

123 AANA, 'Voluntary Code of Practice for Motor Vehicle Advertising' <<http://www.aana.com.au/pdfs/AutoCode.pdf>> p. 3, viewed 19 April 2011.

124 Mr Harold Scruby, Chair and Chief Executive Officer, Pedestrian Council of Australia (PCA), *Committee Hansard*, Sydney, 25 March 2011, p. 43.

125 Mr Scruby, PCA, *Committee Hansard*, Sydney, 25 March 2011, p. 42.

126 AANA, 'Voluntary Code of Practice for Motor Vehicle Advertising' <<http://www.aana.com.au/pdfs/AutoCode.pdf>> p. 2, viewed 19 April 2011.

- 4.135 The draft National Road Safety Strategy 2011-2020 recommends that the Government work 'with the vehicle industry to strengthen regulation of vehicle advertising to avoid display and promotion of unsafe and illegal behaviours.'¹²⁷

Committee concluding comments

- 4.136 In relation to these codes, the Committee makes the following comments and recommendations.

Assessing community standards

- 4.137 The effectiveness of the self-regulatory system based on voluntary codes of advertising standards will best be measured by the extent to which the Board is able to accurately reflect 'prevailing community standards'.
- 4.138 The Committee notes that the Code of Ethics, the Food and Beverages Code, the Children's Code and ABAC all refer to prevailing community standards, yet there is no regular research or review process to determine these standards. The Committee commends the ASB for recently commissioning research into community perceptions of sex, sexuality and nudity in advertising and other topics. Such research should be conducted on a regular basis.
- 4.139 Research needs to be undertaken to determine community standards in relation to health and safety, advertising of food and beverages, advertising to children, and advertising of alcohol. The ASB should include these topics in its research agenda to ensure that community standards, particularly in relation to out-of-home advertising, are accurately reflected by the Board.
- 4.140 The ABAC Scheme should similarly conduct research for the benefit of the ABAC adjudicators.
- 4.141 The Committee considers that the development of a specific code for outdoor advertising, as recommended earlier, and the application of this code to Board determinations will assist in addressing some community concerns about the type of advertising occupying public spaces. However, it is paramount that the ASB conduct research on a regular basis to

127 Australian Transport Council, *National Road Safety Strategy 2011-2020: Draft for consultation*, 1 December 2010, p. 40.

determine community standards, and that this research distinguish the standards regarding outdoor advertising.

Recommendation 9— Advertising Standards Bureau

4.142 The Committee recommends that the Advertising Standards Bureau, in conjunction with relevant industry bodies, conduct research every two years into:

- community perceptions of the use of sex, sexuality and nudity in advertising in general and specifically in outdoor advertising;
- prevailing community standards on health and safety in advertising in general and specifically in outdoor advertising;
- prevailing community standards on the advertising of food and beverages;
- prevailing community standards on advertising to children; and
- prevailing community standards on the advertising of alcohol.

These findings should be reflected accordingly in determinations by the Advertising Standards Board.

Recommendation 10— Alcohol Beverages Advertising Code

4.143 The Committee recommends that the Alcohol Beverages Advertising Code Scheme conduct research every two years into prevailing community standards on the advertising of alcohol.

This research should include particular reference to outdoor advertising and the findings should be reflected accordingly in Alcohol Beverages Advertising Code panel determinations.

Children

4.144 The Committee believes that the advertising industry has a good grasp of how to advertise to children appropriately. However a consistent concern through the inquiry was that children are exposed to inappropriate outdoor advertising that is not aimed at them but nonetheless visible to

them and capable of having a negative impact on their physical or psychological well-being.

- 4.145 The Committee considers that a specific code for practice for outdoor advertising, as recommended earlier, is essential in order to recognise children as the unintended audience of all outdoor advertising and the need to moderate advertisements accordingly.
- 4.146 In regards to advertising that is directed to children, the Committee commends the AANA for amending its Children's Code to address the issue of sexualisation of children in advertising media. Whilst noting that the AANA Practice Guide to Managing Images of Children and Young People does not specify the audience for such images, the Committee notes that restrictions to sexualised images of children as contained in the Children's Code are only explicitly applied to advertising directed to children.
- 4.147 The Committee is of the opinion that all advertising, regardless of the audience, should avoid portraying children in any sexual manner. The AANA should give consideration to including a similar clause to Section 2.4 of the Children's Code in the Code of Ethics for all advertisements, including those primarily directed at adults, and in particular outdoor advertisements.

Alcohol

- 4.148 The Committee notes the level of concern over a number of years about the limited effectiveness of alcohol advertising regulation. The Committee is very conscious of the physical, emotional and financial cost of alcohol-related illness, accidents and violence to the Australian public. Australian governments invest large funds in public health awareness campaigns but lack the same level of advertising resources as the alcohol industry.
- 4.149 The Committee notes that the ABAC Scheme has cooperated with previous recommendations made to it, and commends its pre-vetting system. The Committee encourages the ABAC Scheme to expand its membership to the entire alcohol industry.
- 4.150 The Committee recognises that the OMA's Alcohol Advertising Guidelines are a step in the right direction. However, when the loopholes are taken into account, the initiative seems to be little more than a token gesture. A more significant and responsible action would be to limit alcohol advertising in the outdoor medium, given its inevitable exposure to children.

Recommendation 11—Australian governments

- 4.151 **The Committee recommends that the Monitoring of Alcohol Advertising Committee continue to monitor alcohol advertising and report annually to the Intergovernmental Committee on Drugs.**

The Committee further recommends that the Intergovernmental Committee on Drugs oversee the operation of the Alcohol Beverages Advertising Code Scheme and provide reports every two years of its assessed effectiveness to Health ministers.

Motor vehicles

- 4.152 As with alcohol advertising, the Committee recognises the physical, emotional and financial cost of motor vehicle accidents related to speed and dangerous driving practices, and the investments made by Australian government in road safety campaigns.
- 4.153 As such, the motor vehicle industry needs to advertise their products in a manner that does not counteract the efforts of road safety education. The Committee suggests that the motor vehicle industry continue to consult with road safety authorities to ensure that the voluntary advertising code maintains a high standard.

Recommendation 12— Federal Chamber of Automotive Industries

- 4.154 **The Committee recommends that the Federal Chamber of Automotive Industries conduct transparent reviews of the Voluntary Code of Practice for Motor Vehicle Advertising every two years in consultation with road safety authorities and government representatives, and publish the findings of the reviews on the Federal Chamber of Automotive Industries website.**

Sports sponsorship

- 4.155 The Committee considers sponsorship that involves the obvious display of products or product names to be a form of advertising and is disappointed that this is not included in any of the voluntary codes relating to the advertising of food and beverages. Sponsorship implies that the event condones the product when in fact it may not have any relevance to the event.

- 4.156 The Committee notes that the food and beverages industry has taken commendable steps in implementing initiatives that require advertisers to consider the messages and audience of advertisements for food products and meals that are high in fat, sugar or salt. The Committee encourages those initiatives to expand their membership so that they may have some credibility as 'industry' regulations.
- 4.157 Advertising regulations and guidelines should ideally address all forms of advertising to be effective and consistent. While noting that a review of the Responsible Children's Marketing Initiative (RCMI) is scheduled for 2012,¹²⁸ the Committee recommends that more immediate action be taken by the AFGC to ensure that outdoor advertising is included in the RCMI definition of 'media'.

Recommendation 13— Australian Association of National Advertisers

- 4.158 The Committee recommends that the Australian Association of National Advertisers amend the Australian Association of National Advertisers Food and Beverage Code to include sports sponsorship as a form of advertising and therefore subject to advertising codes of practice. This should be implemented by 30 October 2011.

Recommendation 14— Australian Food and Grocery Council

- 4.159 The Committee recommends that the Australian Food and Grocery Council act immediately to include outdoor advertising in the definition of 'media' as it applies to the Responsible Children's Marketing Initiative.

The Committee recommends that this should be in place by 30 October 2011, notwithstanding that a review of the Responsible Children's Marketing Initiative is scheduled for 2012.

The Committee further recommends that the Australian Food and Grocery Council amend both the Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children and the Responsible Children's Marketing Initiative to include sports sponsorship as a form of advertising. This should be implemented by 30 October 2011.

¹²⁸ AFGC, *Submission 30*, p. 7.

