

# CHAPTER 10

## Self-regulation of the advertising industry

10.1 Term of reference (h) refers to the possibility of including outdoor advertising, such as billboards, in the National Classification Scheme. This chapter outlines the current self-regulatory regime for advertising, including outdoor advertising. The chapter also discusses the arguments for and against including outdoor advertising in the National Classification Scheme.

### Regulation of advertising

10.2 In general, advertising is not subject to the National Classification Scheme, which applies only to advertising for publications, films, and computer games.<sup>1</sup> However, a system of self-regulation was established by the Australian Association of National Advertisers (AANA) in 1997.<sup>2</sup>

10.3 The AANA established the Advertising Standards Board as an independent body to consider complaints about all forms of advertising in Australia. The Advertising Standards Board comprises 20 people from a broad range of age groups and backgrounds, who are not from the advertising industry.<sup>3</sup>

10.4 The Advertising Standards Board, and its secretariat, the Advertising Standards Bureau, are funded by a voluntary levy of \$3.50 per \$10,000 of gross media expenditure, collected mainly through media-buying agencies but also directly from advertisers and advertising agencies that buy their own media space.<sup>4</sup>

### Codes of practice

10.5 The Advertising Standards Bureau administers a number of codes, including the AANA Code of Ethics, which is the AANA's core self-regulatory code:

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

The AANA Code of Ethics comprises two parts.

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

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1 Australian Association of National Advertisers, *Submission 28*, p. 4.

2 Australian Association of National Advertisers, *Submission 28*, p. 4.

3 Ms Fiona Jolly, Advertising Standards Bureau, *Committee Hansard*, 27 April 2011, p. 7.

4 Australian Association of National Advertisers, *Funding of the self regulation system*, <http://www.adstandards.com.au/self-regulation-system/funding>, (accessed 17 December 2010).

Section 2 of the Code deals with maintaining standards of taste and decency in advertising and marketing. Section 2 contains provisions dealing with the portrayal of people (including discrimination and vilification), portrayal of violence, treatment of sex, sexuality and nudity, use of language and prevailing community standards on health and safety.<sup>5</sup>

10.6 The AANA Code of Ethics is currently under review.<sup>6</sup>

10.7 In addition to the AANA Code of Ethics, the Advertising Standards Bureau administers a number of other codes, including:

- AANA Code for Advertising & Marketing Communications to Children;
- AANA Food and Beverages Advertising & Marketing Code;
- Federal Chamber of Automotive Industries Voluntary Code of Practice for Motor Vehicle Advertising;
- AANA Environmental Claims in Advertising and Marketing Code;
- Australian Food and Grocery Council Responsible Children's Marketing Initiative of the Australian Food and Beverage Industry; and
- Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children.<sup>7</sup>

10.8 The AANA codes are supplemented by practice notes, which provide further guidance to advertisers.<sup>8</sup>

10.9 The Advertising Standards Board accepts written complaints, considering them in light of all of the codes and, accordingly, may apply any part of those codes in reaching a determination. It is not limited in its considerations to issues raised in the complaint.<sup>9</sup>

10.10 Where the Advertising Standards Board upholds a complaint, the advertiser has five business days to respond, and must agree to remove or modify the advertisement in question. If the advertiser refuses to do so, the Advertising Standards Board will:

- if appropriate, refer the case report to the appropriate government agency;
- include the advertiser/marketer's failure to respond in the case report;

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5 Australian Association of National Advertisers, *Submission 28*, p. 6.

6 Australian Association of National Advertisers, *Submission 28*, p. 2.

7 Advertising Standards Bureau, *Codes we administer*, <http://www.adstandards.com.au/advertisingstandards/codesweadminister/>, (accessed 26 May 2011).

8 See Australian Association of National Advertisers, *Submission 28*, Attachment 1 for the full text of the practice notes.

9 Australian Association of National Advertisers, *Submission 28*, p. 17.

- forward the case report to media proprietors; and
- post the case report on the Advertising Standards Bureau's website.<sup>10</sup>

10.11 Non-compliant advertisements are often removed by industry participants other than the actual advertiser.<sup>11</sup>

### ***Outdoor advertising***

10.12 Outdoor advertising, including billboard advertising, is also subject to a code of ethics. The Outdoor Media Association (OMA) is the peak industry body which represents most of Australia's outdoor-media-display companies and production facilities, and some media-display asset owners. The OMA Code of Ethics incorporates the AANA Code of Ethics by reference.<sup>12</sup>

10.13 OMA represents outdoor media display companies that advertise third party products. As such, they do not represent businesses that install 'on-premise' advertisements (vehicles, billboards and other structures that advertise the business, services and products on the advertiser's property).<sup>13</sup>

10.14 OMA's members conduct internal reviews of advertisements before they are displayed, to ensure as far as possible that the advertisements do not breach an applicable code.<sup>14</sup>

10.15 Members of the public are able to complain to the Australian Standards Board about particular advertisements. The Advertising Standards Board complaint-handling process described above is no different for outdoor advertising.

### **Effectiveness of self-regulation of outdoor advertising**

10.16 In its submission to the inquiry, AANA was strongly in favour of continuing the current arrangements for advertising, arguing that self-regulation is common internationally:

Australia is not alone in having an industry self regulation system for advertising and marketing communications. A self regulatory system for advertising and marketing communications is a common feature of many other jurisdictions. These self regulatory systems apply across all media,

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10 Australian Association of National Advertisers, *Submission 28*, p. 18.

11 Ms Fiona Jolly, Advertising Standards Bureau, *Committee Hansard*, 27 April 2011, p. 8.

12 Outdoor Media Association, *Code of Ethics 2009*, [http://oma.org.au/media/Pdf/Code\\_of\\_Ethics\\_2009.pdf](http://oma.org.au/media/Pdf/Code_of_Ethics_2009.pdf), (accessed 17 December 2010).

13 Outdoor Media Association, *Submission 57*, p. 4.

14 Outdoor Media Association, *Submission 57*, p. 4.

including broadcast, print and outdoor. AANA is not aware of any jurisdictions where outdoor media is subject to a classification system.<sup>15</sup>

10.17 AANA listed a number of benefits of self-regulation, including:

- the costs of the system are borne by the advertiser and the industry – there is no cost to government;
- a self-regulatory system is flexible and can adapt easily to changes in community attitudes – by contrast, legislation is more costly, time-consuming and difficult to amend;
- self-regulation can adapt quickly and more efficiently than government regulation;
- the resolution time for complaints is faster than for co-regulatory and regulatory schemes;
- compliance with a self-regulatory system can be seen through compliance with both the letter and the spirit of the regulation; and
- industries which support self-regulation have an interest in its success – regulation through legislation would undermine this support.<sup>16</sup>

10.18 In its submission, the OMA explained the difference between 'third-party advertising', which is the industry the OMA represents, and 'on-premise advertising':

Outdoor media display companies advertise third-party products including:

- on buses, trams, taxis, pedestrian bridges, billboards and free-standing advertisement panels;
- on street furniture (e.g. bus/tram shelters, public toilets, bicycle stations, phone booths, kiosks); and
- in bus stations, railway stations, shopping centres, universities and airport precincts.

...The industry members build, clean and maintain the pedestrian bridges and street furniture, and provide other community infrastructure such as park benches, bins and bicycles.

...The OMA does not represent businesses that install 'on-premise' advertisements (vehicles, billboards and other structures that advertise the business, services and products on the advertiser's property).<sup>17</sup>

10.19 The OMA noted that on-premise advertising is more prolific than third-party advertising, citing the example of Parramatta Road, between Broadway and

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15 Australian Association of National Advertisers, *Submission 28*, p. 4.

16 Australian Association of National Advertisers, *Submission 28*, p. 6.

17 Outdoor Media Association, *Submission 57*, p. 8.

Leichhardt in Sydney, where there are about 2,140 on-premise signs compared to 14 third-party advertisements.<sup>18</sup>

10.20 The committee notes that there would seem to be a significant amount of outdoor advertisements that are not covered by the OMA Code of Ethics.

***Outdoor advertising: a special case?***

10.21 The committee notes evidence that billboards may be a special case compared to other advertisements, by virtue of their public nature. A number of witnesses highlighted the public nature of billboards and were accordingly critical of the self-regulation regime.

10.22 Women's Health Victoria described outdoor advertising as 'unique in that it is consumed in public space and therefore imposed on the public, which is not offered a choice of whether or when to view'.<sup>19</sup> The Australian Christian Lobby (ACL) noted that viewers are unable to 'switch off' the content of outdoor advertising as with other forms of media such as television, radio or film.<sup>20</sup>

10.23 Professor Elizabeth Handsley, from the Australian Council on Children and the Media, described the difficulty that parents face in relation to limiting their children's exposure to billboards:

[T]hey are the most difficult form of media for parents and children to avoid being exposed to. There is really very little you can do other than just stay inside your house and stay off the main roads if you do not want to be exposed to billboards. Every other medium that you can think of, just about, you can do at least something to limit your exposure to them.<sup>21</sup>

10.24 Such lack of choice about whether a person is exposed to outdoor advertising distinguishes this form of advertising from other mediums.

10.25 In its submission, the Advertising Standards Bureau noted the importance of the 'relevant audience' test in the AANA Code of Ethics, which allows the Advertising Standards Board the flexibility to consider the different audiences that may exist for various media, locations and time zones.<sup>22</sup>

10.26 As an example of how the self-regulatory code takes into account the general audience of outdoor advertising, Ms Fiona Jolly from the Advertising Standards

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18 Outdoor Media Association, *Submission 57*, p. 8.

19 Women's Health Victoria, *Submission 16*, p. 2. See also Mr Andrew and Mrs Jody van Burgel, *Submission 6*, p.1; Mr Johann Trevaskis, *Submission 32*, p. 3.

20 Australian Christian Lobby, *Submission 25*, p. 9.

21 *Committee Hansard*, 25 March 2011, p. 65. See also Australian Council on Children and the Media, *Submission 44*, p. 5.

22 Advertising Standards Bureau, *Submission 41*, p. 12.

Bureau led the committee through the Advertising Standards Board's decision with respect to an advertisement for Bardot jeans, featuring a semi-naked woman. This advertisement appears on a bus and was the subject of complaints to the Advertising Standards Board:

Section 2.3 of the code deals with issues of sex and it states that advertising and marketing communications must treat sex, sexuality and nudity with sensitivity to the relevant audience...This is not a blanket prohibition on any sexy images or suggestions of sex. But the [Advertising Standards Board] is required to take into account whether in its view the ad treats sex or a sexualised image with sensitivity to the relevant audience...The ad sits on a bus, so it is open to a general audience...The [AANA Code of Ethics] does not prohibit sexually suggestive material. It says that ads have to treat sex, sexuality and nudity with sensitivity to the relevant audience. 'Sensitivity' does not equal zero. The [Advertising Standards Board] takes into account the broad audience and takes its view on whether or not that ad is sensitive to the relevant audience, but it certainly does look at the fact that that is on a bus and so it is available for viewing by young people, old people, liberal people, conservative people and religious people.<sup>23</sup>

### ***Community standards under advertising codes of practice***

10.27 Noting the lack of an ability to avoid outdoor advertising, a number of witnesses called for stricter regulation of the industry.

10.28 Media Standards Australia (MSA) was of the view that media industries, particularly advertisers, could not be trusted to adequately police themselves:

Media producers are hardly likely to act contrary to their own financial interests. Predictably, they have pushed the boundaries of community standards to excite interest in the controversial as a means of advertising their products. There is abundant evidence that the media drives community standards, and is not regulated by such standards.<sup>24</sup>

10.29 This point was also made by Ms Melinda Tankard Reist from Collective Shout, specifically in relation to the complaints mechanism:

You have a problem of regulatory capture because the [Advertising Standards Bureau] has vested interests to represent its member bodies. There is no separation. There is no system of pre-vetting. Again, it relies on consumers, citizens like ourselves, who have to put our time into monitoring these things, protesting and complaining, because, again, the industry has failed to regulate itself. That is why we have called for some separation where you can have a third party without a profit motive

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23 *Committee Hansard*, 27 April 2011, p. 10.

24 Media Standards Australia, *Submission 21*, p. 6.

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assessing and making decisions about the appropriateness of this advertising.<sup>25</sup>

10.30 Ms Tankard Reist specifically expressed concerns about the degree to which outdoor advertising contributes to the objectification of women and the sexualisation of children.<sup>26</sup>

10.31 Ms Fiona Jolly rejected arguments that the Advertising Standards Board is not capable of reflecting community standards in the adjudication of public complaints. Ms Jolly informed the committee that the Advertising Standards Board comprises 20 people from a broad range of age groups and backgrounds, is gender balanced and is broadly representative of the diversity of Australian society. Furthermore, she noted that the system is responsive to community concerns:

Advertising Standards Board members are not from the advertising industry; they are community members who have shown, in their work and lives, an interest in community standards. Where the Board's view on occasion has not aligned with the community, the Board has responded and has become stricter. Where the codes do not meet the community's expectations, they are capable of fast and simple review by the AANA or other relevant industry associations.<sup>27</sup>

10.32 Ms Jolly also told the committee that the membership of the Advertising Standards Board is changed in a staggered manner over time, to ensure that new members are 'challenging the way that the [Advertising Standards] Board as a group considers the provisions of the [AANA Code of Ethics] and the community's views'.<sup>28</sup> Further, membership on the Advertising Standards Board is regularly turned over to avoid desensitisation of its members.<sup>29</sup>

10.33 Speaking specifically to claims that outdoor advertising contributes to the sexualisation of children and the objectification of women, Ms Jolly stated that the self-regulation system is effective in meeting current community standards and developing community standards around depictions of women in advertising:

As mentioned, the [Advertising Standards] Board's work is broadly in line with community standards. If the provisions of codes limit the Board's ability to reflect community standards, this information is passed to the owners of the codes for their consideration and appropriate review.<sup>30</sup>

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25 *Committee Hansard*, 27 April 2011, p. 23.

26 *Committee Hansard*, 27 April 2011, p. 21.

27 *Committee Hansard*, 27 April 2011, p. 7.

28 *Committee Hansard*, 27 April 2011, p. 9.

29 *Committee Hansard*, 27 April 2011, p. 9.

30 *Committee Hansard*, 27 April 2011, p. 7.

10.34 The contribution of outdoor advertising to the sexualisation of children and objectification of women was raised by a range of community organisations and is discussed in further detail in Chapter 11.

### **Bringing billboards within the scope of the National Classification Scheme**

10.35 Submissions and witnesses were supportive of applying the National Classification Scheme to outdoor advertisements and, particularly, of requiring outdoor advertising to be G-rated, on the basis that it is visible to a general audience.<sup>31</sup> However, the inclusion of outdoor advertising under the National Classification Scheme was not supported by the Advertising Standards Bureau or by other advertising industry participants who contributed to this inquiry. Industry participants argued that self-regulation remains the superior regulatory option.<sup>32</sup>

10.36 Organisations that supported the inclusion of outdoor advertisements under the National Classification Scheme included Salt Shakers and the Anglican Public Affairs Commission.<sup>33</sup>

10.37 The Family Council of Victoria, FamilyVoice Australia, ACL and Kids Free 2B Kids were among a number of organisations that recommended a G-rating on all outdoor advertisements, regardless of whether billboards are included in the National Classification Scheme.<sup>34</sup> ACL submitted that all outdoor advertising should be G-rated because it is a public form of media.<sup>35</sup>

10.38 The AANA Code of Ethics and other similar advertising codes do not create classification categories such as a G-rating. FamilyVoice Australia, in describing what a G-rating for outdoor advertising would involve, used the guidelines for advertising adopted in the Commercial Television Industry Code of Practice as an example. Programs and commercials screened during G-rating viewing periods on commercial broadcast television cannot include material involving, among other things, visual depiction of nudity or partial nudity or sexual behaviour, except of the most innocuous kind.<sup>36</sup> FamilyVoice Australia noted that the advertising of adult products or services was also not allowed under the G-rating.<sup>37</sup>

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31 See, for example, FamilyVoice Australia, *Submission 15*, p. 17; Kids Free 2B Kids, *Submission 63*, p. 32.

32 See, for example, Australian Association of National Advertisers, *Submission 28*, p. 6.

33 Salt Shakers, *Submission 23*, p. 13; Anglican Public Affairs Commission, *Submission 18*, p. 2.

34 FamilyVoice Australia, *Submission 15*, p. 17; Kids Free 2B Kids, *Submission 63*, p. 32; Australian Christian Lobby, *Submission 25*, p. 9; Family Council of Victoria, *Submission 22*, p. 11.

35 Australian Christian Lobby, *Submission 25*, p. 9.

36 See *Commercial Television Industry Code of Practice 2010*, ss. 3.8.8 and ss. 3.8.9.

37 FamilyVoice Australia, *Submission 15*, pp 17-18.



10.39 However, OMA pointed to the small number of complaints relative to the size of the industry as evidence that the system of self-regulation is in fact effective, and did not support the application of the National Classification Scheme to outdoor advertising. As Ms Charmaine Moldrich, from OMA explained:

[T]he self-regulatory system is efficient and effective, with only seven out of 30,000 ads posted last year upheld by the [Advertising Standards Board]. We have a 99.98 per cent accuracy rate which is an excellent record by any reasonable standards. It is simply a popular myth that outdoor advertising is dominated by a multitude of inappropriate images. While the OMA hopes to achieve a figure that is even closer to 100 per cent, we consider the inclusion into a National Classification Scheme would be unnecessarily costly and onerous both for government and for business.<sup>38</sup>

10.40 On the subject of requiring that outdoor advertisements comply with a G-rating, Ms Moldrich told the committee that, in the majority of cases, outdoor advertising is G-rated. However, Ms Moldrich went on to state that a G-rating does not necessarily mean that there would not be any themes of nudity, sexuality or language.<sup>39</sup> Ms Alina Bain of the AANA also made reference to this point:

Certainly under the National Classification Scheme, under the G criteria, some references to sex and some forms of nudity are permitted in that classification zone. Our view is that to apply the G classification criteria to outdoor advertising would be a very heavy regulatory stick for what is a very small number of breaches found.<sup>40</sup>

### *Complaints mechanisms for outdoor advertising*

10.41 As noted above, members of the public who feel that a particular outdoor advertisement is inappropriate are able to complain to the Advertising Standards Board. FamilyVoice Australia gave some evidence to the committee about the relative number of complaints directed at outdoor advertising:

In 2009 complaints about outdoor advertising represented 23.92% of all complaints up from just 3.67% in 2006. In 2010 four of the ten most complained-about advertisements were billboard advertisements, with between 45 and 70 complainants for each advertisement. The [Advertising Standards Board] upheld two of the complaints and dismissed two of them.<sup>41</sup>

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38 Ms Charmaine Moldrich, Outdoor Media Association, *Committee Hansard*, 7 April 2011, p. 8. See also Ms Fiona Jolly, Advertising Standards Bureau, *Committee Hansard*, 27 April 2011, p. 7.

39 *Committee Hansard*, 7 April 2011, p. 11.

40 *Committee Hansard*, 7 April 2011, p. 11.

41 FamilyVoice Australia, *Submission 15*, p. 14.

10.42 Professor Elizabeth Handsley of the Australian Council on Children and the Media also argued that the complaints-based system is ineffective, given the time it takes to process a complaint:

We have a general concern with self-regulation, particularly of advertising media, for the following reasons. An advertising campaign would normally last a number of weeks, and certainly a billboard would normally last a number of weeks—let us say four to six weeks. That is probably about the length of time it would take for someone to complain about it and for the advertising standards board to go through the process of coming to a finding of breach. It is not at all unusual to find that there is that finding of breach that comes out pretty much when the advertising campaign has run its course anyway.<sup>42</sup>

10.43 This point was also made by FamilyVoice Australia, who noted that in the case of the Advanced Medical Institute's 'Want Longer Lasting Sex' advertising campaign, the Advertising Standards Board accepted that it could take Advanced Medical Institute up to 30 days to remove all of the relevant advertisements.<sup>43</sup>

10.44 For this reason, a number of organisations, including Family Voice Australia, Collective Shout and Kids Free 2B Kids, recommended that there should be strengthened vetting of outdoor advertisements prior to them being displayed in public.<sup>44</sup>

10.45 However, the Advertising Standards Bureau defended the effectiveness of the complaints mechanism:

The vast majority of advertising and marketing communications in Australia comply with the relevant codes and do not receive any complaints, while the majority of those complained about are not found to be in breach of the codes. Where a breach is found, the Bureau has a record of nearly 100 per cent compliance by industry with Standards Board determinations — demonstrating the commitment of the vast majority of advertisers to the system and to maintaining high standards of advertising.<sup>45</sup>

10.46 Further, Ms Jolly agreed with the statement that advertisers respond 'pretty quickly' where breaches of the AANA Code of Ethics are found to have occurred.<sup>46</sup> Ms Jolly provided the committee with details of timeframes in which advertisers responded to decisions of the Advertising Standards Board, and subsequently removed or modified advertisements for which complaints were upheld:

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42 *Committee Hansard*, 25 March 2011, p. 64.

43 FamilyVoice Australia, *Submission 15*, p. 17.

44 FamilyVoice Australia, *Submission 15*, p. 18; Collective Shout, *Submission 65*, p. 15; Kids Free 2B Kids, *Submission 63*, Attachment 2, p. 32.

45 Advertising Standards Bureau, *Submission 41*, p. 4.

46 *Committee Hansard*, 27 April 2011, p. 8.

[T]he [Advertising Standards] Board meet on a particular day. My job then the next day is to call the advertiser whose ads have had complaints upheld and to advise them of the Board's decision and, once they receive the case report, which is usually that day, they have five days to let us know what their intended course of action is. Most advertisers will remove their ad within those five days. In fact, if it is TV, it basically happens the next day; outdoor media can take a little longer because of where the outdoor billboard may be. But advertisers will bring their ads down within that time frame. Their obligation is to remove the ad. There is no question about that. They do have the capacity, though, to modify the ad, if it is possible for them to remove the offensive part of the ad.<sup>47</sup>

10.47 Ms Jolly was of the view that the complaints mechanism is complemented by a very efficient enforcement function, operating on the commitment of industry and resulting in enforcement outcomes far beyond those obtainable through a legislated system.<sup>48</sup> Ms Jolly argued that:

In short, the advertising self-regulation system does reflect community views and has an effective enforcement system in place. It operates to effectively regulate outdoor advertising and, in our view, it is neither appropriate nor necessary to give responsibility for regulation of billboards to the national classification scheme.<sup>49</sup>

10.48 However, there have instances where advertisements have been found to breach the AANA Code of Ethics and advertisers have refused to remove the offending advertisement. Ms Jolly gave some examples to the committee of how the Advertising Standards Bureau has pursued these matters:

I think we have had a couple of instances this year where we have been unable to get those small businesses to remove their signage. In that case, in two instances, we have asked for the assistance of the local council—one was an ad and one was a sandwich board—in having those removed. Councils are unable to do anything because councils do not have power over content of billboards, only about the size and placement. One matter related to a bus which had signage on it, which the [Advertising Standards] Board felt breached the code. Again the local council was not able to assist; and the Victorian Roads Authority were not able to assist because it was not actually a vehicle in the sense of it being driven around. So we have written to the Victorian government asking for them to make regulations to give Victoria Police the power to act...<sup>50</sup>

10.49 The committee notes that, in the examples above, the signage on a bus which the Advertising Standards Board is pursuing is an advertisement for adult premises.

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47 *Committee Hansard*, 27 April 2011, p. 8.

48 *Committee Hansard*, 27 April 2011, p. 7.

49 *Committee Hansard*, 27 April 2011, p. 7.

50 *Committee Hansard*, 27 April 2011, p. 8.

While Ms Jolly described the advertisement as 'a bus with the image of a woman lounging on it',<sup>51</sup> the Advertising Standards Board case report is more descriptive:

This advertisement features a picture of a blonde woman in lingerie painted onto the side, front and back of a bus. The woman in the image is shown from the side, lying on her back, looking away and wearing only lingerie and high heels.<sup>52</sup>

10.50 The committee notes that, in this instance, the advertising was not associated with an OMA member.<sup>53</sup> In addition, this was one of only four cases in the last three years in which the Advertising Standards Board has had to refer decisions to government authorities to take action as the Advertising Standards Board has not been able to enforce its decision.<sup>54</sup>

10.51 Ms Jolly told the committee that the Advertising Standards Bureau is committed to continuous improvement:

Since 2005, the [Advertising Standards] Bureau has undergone substantial remodelling, including a range of initiatives to improve the transparency and accountability of our complaints-handling service.<sup>55</sup>

10.52 The committee also notes that the Senate Environment, Communications and the Arts Committee (ECA Committee) examined similar issues in 2008 in its inquiry into sexualisation of children in the contemporary media. The ECA Committee came to the conclusion that the advertising complaints mechanism required reform, and recommended a complaints clearinghouse covering both broadcast media and advertising. Specifically, the ECA Committee recommended:

The Advertising Standards Board and Free TV Australia consider establishing a media and advertising complaints clearing house whose functions would be restricted to:

- receiving complaints and forwarding them to the appropriate body for consideration;
- advising complainants that their complaint had been forwarded to a particular organisation; and
- giving complainants direct contact details and an outline of the processes of the organisation the complaint had been forwarded to.<sup>56</sup>

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51 *Committee Hansard*, 27 April 2011, p. 9.

52 Advertising Standards Board, Case Report, Case Number 0225/10, <http://122.99.94.111/cases/0225-10.pdf>, (accessed 11 June 2011).

53 Ms Fiona Jolly, Advertising Standards Bureau, *Committee Hansard*, 27 April 2011, p. 10.

54 Advertising Standards Bureau, *Submission 41*, p. 26.

55 *Committee Hansard*, 27 April 2011, p. 7.

56 Senate Environment, Communications and the Arts Committee, *Sexualisation of children in the contemporary media*, June 2008, p. 60.

10.53 The committee notes that no action has been taken with respect to the ECA Committee's recommendation.

### *Case studies*

#### *Bardot Denim and Sprite advertisements*

10.54 While the committee discussed a number of specific outdoor advertisements during the course of the inquiry, two specific examples were used as case studies for the committee to gain an understanding of the complaints mechanisms of the advertising industry self-regulatory code and the decision-making of the Advertising Standards Board. The committee also sought the views of a number of witnesses on these advertisements.

10.55 The advertisements were for 'Bardot Denim', for placement on buses, and an outdoor advertisement for 'Sprite':

**Figure 10.1: Advertisement for Bardot Denim**



**Figure 10.2: Advertisement for Sprite**

10.56 Complaints in relation to both advertisements were made to the Advertising Standards Board. In both cases, the Advertising Standards Board considered whether the advertisement breached section 2.3 of the AANA Code of Ethics (treat sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant programme time zone). For the Bardot Denim advertisement, the Advertising Standards Board also considered section 2.1 of the AANA Code of Ethics (advertising 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). The complaints against both advertisements were dismissed.

10.57 The Advertising Standards Board's decision on the Bardot Denim advertisement stated:

The [Advertising Standards] Board noted that the image is on the back of a bus and is able to be seen by a broad audience.

The Board considered that while some members of the community may find this advertisement to be inappropriate, the images of model posing wearing the product was relevant to the product.

The Board considered that while the ad does depict some nakedness, the nudity does not expose any private areas at all. The Board noted that the model's breasts are not visible and her pose is only mildly sexually suggestive.

Although available to a broad audience, the Board determined that the advertisement was not sexualised, did not contain inappropriate nudity and

did treat sex, sexuality and nudity with sensitivity to the relevant audience and that it did not breach section 2.3 of the Code.<sup>57</sup>

10.58 In the case of the Sprite advertisement, the Advertising Standards Board's decision stated:

The [Advertising Standards] Board viewed the advertisement and considered the pose of the woman to be so ridiculous that it was an obvious and clever use of self-referential humour. The Board also felt that the image was actually mocking inappropriate use of sex, sexuality and nudity in advertising. The Board further considered that the image was appropriate for the target audience.<sup>58</sup>

10.59 In relation to both the Bardot Denim and Sprite advertisements, Ms Jolly stated:

In our view, it is not possible to regulate so that no-one in the community is offended, and we argue that it is also not appropriate or necessary to do so. The two decisions you have referred to are two decisions out of 500 decisions that the [Advertising Standards Board] makes and we have an appropriate and balanced way to meet the broad community's expectations and standards, with 20 members of the community from diverse backgrounds, locations, professions, religious views and life experience who can apply the provisions of the code. Different people have different views, but what we do is make sure that the system works in a number of ways. We have a diverse board.<sup>59</sup>

10.60 Ms Moldrich from the OMA stated that 'the public have every right to complain about these ads'. Ms Moldrich went on to note that there is a complaints process in place, and the Advertising Standards Board dismissed the complaints. She concluded that she is 'neither happy nor sad' about the Advertising Standards Board's decision, but that she respected its decision.<sup>60</sup>

10.61 Media Standards Australia (MSA) made the following criticism of the Advertising Standards Board's decision on the Sprite advertisement:

The woman holding the bottle near the tops of her legs is a very sexual image. Holding the bottle elsewhere would not have given a visual message as strong as this. We see many ads with bikini-clad woman, but this one adds the words 'sexy' to the message, and includes the image of the neck of the bottle near her crotch. Despite the views of the [Advertising Standards] Board, this renders the ad very suggestive and quite disgusting!!!

It is also hard to see how the ad was 'mocking inappropriate use of sex, sexuality and nudity in advertising'. The target audience would not be

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57 Advertising Standards Bureau, answers to questions on notice, 6 May 2011.

58 Advertising Standards Bureau, answers to questions on notice, 6 May 2011.

59 *Committee Hansard*, 27 April 2011, p. 10.

60 *Committee Hansard*, 7 April 2011, p. 15.



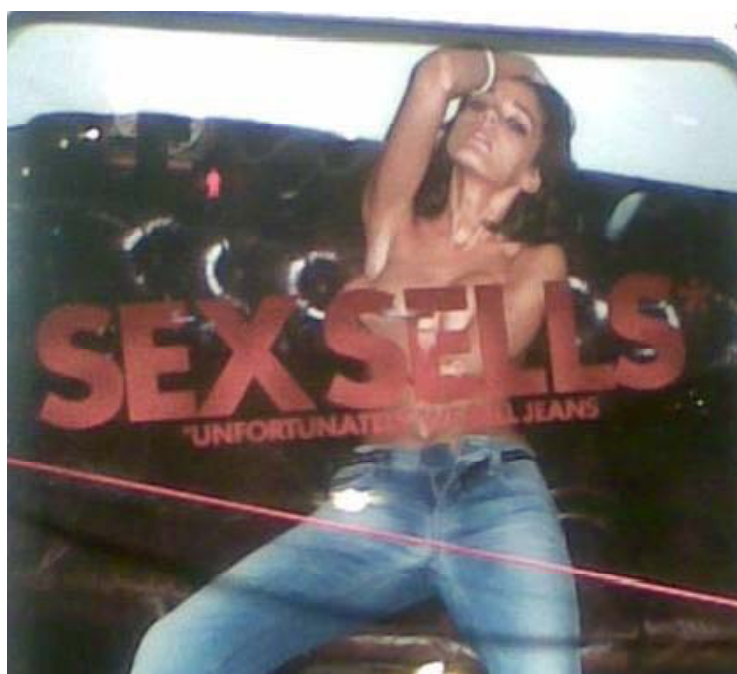
viewing the ad with an idea of discerning the advertisers' intent to mock anything.<sup>61</sup>

10.62 In relation to the Bardot Denim advertisement, MSA questioned why, even if the ad was only 'mildly' sexually suggestive, it was nevertheless allowed to remain in a public place.<sup>62</sup>

### *Diesel Clothing advertisement*

10.63 In a further example of concerns about complaints-handling, Kids Free 2B Kids provided the committee with a case report involving its complaint about an advertising campaign for Diesel Clothing Australia:

**Figure 10.3: Diesel Clothing 'Sex Sells' Campaign**



10.64 The complaint details included the following:

The response from Diesel head office when contacted by one of the parents is typical of the industry. The response was condescending and lacked awareness and understanding about the impacts of the early sexualisation of children.

Sherri, a mother of 7 and 5 yr old girls was taking the youngest to Kinder with the eldest in tow and was confronted with questions pertaining to the above slogan.

Sherri feeling that this billboard was inappropriate contacted Diesel head office to air her concern. After being handballed a couple of times she was

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61 Media Standards Australia, answer to question on notice, received 21 April 2011.

62 Media Standards Australia, answer to question on notice, received 21 April 2011.



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put in contact with who they felt were the appropriate party to handle this type of issue.

Bernard from head office returned Sherrie's call saying, whilst laughing.... "it should be seen as an opportunity to discuss sex and sexual issues with your daughter and she should be open-minded and take it with a grain of salt. We don't want censorship in Australia."

Bernard appeared to find the whole issue both very amusing and a positive reflection on the overall campaign...<sup>63</sup>

10.65 Kids Free 2B Kids noted in the complaint that they would like to see the industry become proactively responsible for what children are exposed to in public.<sup>64</sup>

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63 Kids Free 2B Kids, *Submission 63*, Attachment 2, p. 21.

64 Kids Free 2B Kids, *Submission 63*, Attachment 2, p. 21.



