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Submission to
Queensland Parliament Legal Affairs and Community
Safety Committee

Classification of Publications (Billboard Advertising)
and Other Legislation Amendment Bill 2013

on behalf of

Australian Association of National Advertisers

2 August 2013

Australian Association of National Advertisers

Queensland Parliament Legal Affairs and Community Safety Committee – Classification of Publications (Billboard Advertising) and Other Legislation Amendment Bill 2013

Section 1: Executive Summary

- AANA represents Australia’s national advertisers. The advertising, marketing and media industry play a fundamental economic role in society and contribute in excess of \$30 billion to the Australian economy annually.
- AANA established the self- regulatory system for advertising and marketing communications in 1997. Since that time, new codes have been introduced and existing codes have been amended to keep pace with the ever evolving advertising, marketing and media industry.
- The Code of Ethics is the cornerstone of the advertising self-regulatory system and is supplemented by a Code of Advertising and Marketing to Children, Food & Beverages Code and Environmental Claims Code.
- AANA Codes apply to outdoor advertising and provide a mechanism for regulating and complaint adjudication already in relation outdoor advertising issues.
- The self-regulatory system is underpinned by an independent, transparent and robust complaints handling system which was established by AANA over a decade ago.
- The complaints handling system is administered by the Advertising Standards Bureau and complaints are adjudicated by the Advertising Standards Board, made up of individuals who are representative of the community and not connected to the advertising industry.
- The level of complaint and breach findings by the Board is low when compared with the level of outdoor and other advertising nationally.
- Given this low level of complaint, greater regulation of outdoor advertising is not justified. In particular, the classification system proposed in the Bill is not appropriate for the outdoor space and is not required due to the expansive self regulatory system in place.

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Section 2: Introduction

Australian Association of National Advertisers (AANA) provides this submission Queensland Parliament Legal Affairs and Community Safety Committee – Classification of Publications (Billboard Advertising) and Other Legislation Amendment Bill 2013.

AANA is the peak body and has represented national advertising for over 85 years. It represents the common interests and obligations of companies across all business sectors involved in the advertising, marketing and media industry.

AANA serves to protect the rights of consumers in ensuring advertising and marketing communications is conducted responsibly, including through its development and administration of industry codes and the self-regulatory system.

The advertising, marketing and media industry plays a fundamental economic role in society and contributes in excess of \$30 billion to the Australian economy annually.

It is the driver of consumer choice and, by promoting competition, helps consumers get better value for money. It enables innovation to be brought to market and stimulates economic growth and jobs. It provides substantial funding to support media and a variety of media content.

AANA has a strong ongoing commitment to self-regulation. AANA designed and delivered the self-regulatory component of regulation controlling advertising and marketing communications in Australia.

AANA's self-regulatory system applies to all media and all forms of advertising and marketing communications. As such, all outdoor media in Australia is subject to AANA's self-regulatory system and the complaints handling system which underpins it.

This submission comments on the following issues in response to the Bill:

Section 3: The AANA Self-Regulatory System – an overview

Section 4: Development and review of the AANA Codes

Section 5: Protections in the AANA Codes

Section 6: The Complaints Handling System

Section 7: Complaints Figures for Outdoor Advertising

Section 8: Specific Comments about the Bill

Section 3: The AANA Self-Regulatory System – an overview

a) A role for self-regulation

Self-regulation is an essential part of the Australian business landscape and contemporary society. It flourishes through strong leadership, commitment and cooperation across business, government and the community at large. Self-regulation is not the exclusive domain of any one particular body but the collective concern of many players, large and small.

The self-regulatory system for advertising and marketing communications in Australia was established by AANA in 1997. The establishment of the self-regulatory system was in response to advertisers' recognition that they have a responsibility to deliver agreed and trusted standards.

Australia is not alone in having an industry self-regulation system for advertising and marketing communications. A self-regulatory system for advertising and marketing communications is a common feature of many other jurisdictions.

The AANA system of self-regulation sits alongside and complements systems of regulation, co-regulation and self-regulation.

Regulation can be seen in the form of Federal and State legislation such as the Australian Consumer Law (Cth) and the various State Fair Trading Acts, the Therapeutics Goods Act 1989 (Cth) and the Tobacco Advertising Prohibition Act (1992).

Examples of co-regulation include the Codes of Practice developed by various industry associations under the Broadcasting Services Act 1992, including the Free TV Australia Code of Practice, the Commercial Radio Codes of Practice and the ASTRA Codes of Practice.

While these Codes apply to the particular broadcasters who operate in the relevant industry, the AANA Codes apply across the board to all media and all advertisers. The AANA Codes are technology and platform neutral.

In the context of outdoor media, the members of the Outdoor Media Association (OMA) endorse the AANA Code of Ethics and other AANA Codes through their own industry Code¹. The OMA Code of Ethics is attached as Appendix 1.

The suite of advertising regulation is represented pictorially in Appendix 2.

b) The benefits of self-regulation

Self-regulation of the advertising and marketing communications industry, which

¹ http://oma.org.au/_data/assets/pdf_file/0019/2458/OMA_Code_of_Ethics_May_2012.pdf

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includes six AANA Codes, various AANA Practice Notes, and a number of industry initiatives, provides a flexible mechanism to meet the challenges of the ever-evolving advertising, marketing and media industry, along with changing consumer expectations.

The industry is experiencing a revolution in that advertisers are no longer exclusively driving consumer demand. There is a growing movement towards consumer driven marketing. This will require a quick and innovative response by companies in their advertising and marketing practices.

The response by the advertising and marketing industry is reflected in a review of the self-regulatory system (Codes and initiatives) and amendment and refinement to keep pace with the fast moving advertising and marketing environment.

There are many benefits of self-regulation which have been recognized by governments and consumer advocates alike.

The benefits of self-regulation include:

- Costs of the system are borne by the advertiser and the industry – there is no cost to Government
- A self-regulatory system is flexible. It can adapt easily to changes in community attitudes. By contrast, legislation is more costly, time consuming and difficult to amend.
- It can adapt quickly and more efficiently than government regulation
- Resolution time for complaints is faster than for co-regulatory and regulatory schemes.
- Compliance with a self-regulatory system can be seen through compliance with both the letter and the spirit of the regulation.
- Industry which supports self-regulation has an interest in its success.
- Regulation through legislation would undermine this support.

c) Industry's commitment to self-regulation

The development and industry funding of self-regulation is a testament to the commitment by industry to a robust and transparent system underpinned by a complaints handling system providing a seamless single point of entry for the consumer.

AANA while owning the codes which sit at the heart of self-regulation, also acknowledges the key input and support by all players in the advertising and marketing ecosystem.

Of relevance to this submission, is the pivotal role of the Outdoor Media Association

(OMA) which represents the outdoor media owners. OMA provides support for the system by referencing and incorporating the AANA Codes into their Code of Ethics and by committing OMA members to fully comply with the decisions of the ASB by removing material the subject of upheld complaints.

OMA, AANA and ASB recently completed a second round of interactive and nationwide training on the AANA Codes and the protections they provide around community standards.

AANA members have demonstrated their commitment to the system both in terms of the development and ongoing review of the Codes but also to compliance through the development of Adwatch. AdWatch provides AANA members with up to the date information about the latest ASB decisions to assist them in tracking and understanding revolving community standards.

d) The responsiveness of the self-regulatory system

An example of the self-regulatory system's ability to respond and move rapidly to change is the release of the AANA Best Practice Guideline: Responsible Marketing Communications in the Digital Space² which was released in November 2012.

Following a determination from the Advertising Standards Board about user generated content on a brand's facebook page, AANA sought to clarify its intent about the scope of the Codes' application.

The Best Practice Guideline reflects the collective thinking of the AANA membership around the application of the Codes in digital media and in particular to the interaction with consumers in the social media space.

The Guideline and amendments to the Code of Ethics (through the practice note), firmly reflect AANA's intent that the public should expect the same level of community standards in social media (including content generated by users) as they do in other media. The amendments reflect AANA's broader intent that the Codes are platform and technology neutral and apply across all media to all advertising and marketing communications.

Section 4: Development and review of the AANA Codes

The AANA's advertising self-regulatory scheme came into operation in 1997.

The development of the AANA self-regulatory system involved an extensive period of consultation with government, consumer representatives, and advertisers.

The launch of the AANA Code of Ethics in 1997 was the first phase of the introduction of an advertising and marketing self-regulatory system in Australia.

²<http://www.aana.com.au/pages/codes.html>

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It was followed in 2003 by the launch of the AANA Code for Marketing & Advertising Communications to Children and the AANA's Food and Beverages: Advertising and Marketing Communications Code in 2007.

The launch of the AANA Code for Marketing & Advertising Communications to Children and the AANA's Food and Beverages: Advertising and Marketing Communications Code were the result of a rapid response by industry to community concerns about food and beverage advertising. They were developed in consultation with consumer advocacy groups, government, media and advertising.

a) AANA Codes – an overview

AANA's self-regulatory system is comprised of a number of different codes and industry initiatives.

The AANA Code of Ethics³ is AANA's core self-regulatory code. It came into operation in 1997 following extensive consultation by AANA with consumers and consumer groups, advertisers and business and government representatives.

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

The AANA Code of Ethics comprises two parts.

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

Section 2 of the Code deals with maintaining community standards in advertising and marketing. Section 2 contains provisions dealing with the portrayal of people (including discrimination and vilification), portrayal of violence, treatment of sex, sexuality and nudity, use of language and prevailing community standards on health and safety. Section 2 also references the following AANA Codes: AANA Code for Marketing & Advertising Communications to Children, the AANA Food & Beverages: Advertising & Marketing Communications Code, and the Motor Vehicle Code.

The AANA Code of Ethics is in step with and in some cases ahead of the self-regulation of marketing communications elsewhere in the world. It shares much in common with Western Europe and North America and is ahead of systems in much of Asia and Eastern Europe.

In addition to its Code of Ethics, AANA has developed three other specialised codes to address the specific circumstances of advertising to children, the advertising of food and beverages and environmental claims in advertising.

³http://www.aana.com.au/data/Documents/Codes/Code_of_Ethics_30.11.11_FINAL.pdf

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More detail on these Codes follows:

- AANA Code for Marketing & Advertising Communications to Children⁴

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

The Code is designed to ensure that advertising and marketing communications directed at Australian children is conducted within prevailing community standards.

It was reviewed in April 2007 following a period of public consultation as described further in Section 4 (b) below. The revised Code was released in May 2008.

The Code contains provisions dealing with sexualisation of children, misleading and deceptive conduct, parental authority, competitions, premiums, food and beverage advertising and privacy.

- AANA Food & Beverages: Advertising & Marketing Communications Code⁵

The AANA's Food & Beverages Advertising & Marketing Communications Code became fully operational on 1 March 2007

It has gained international recognition as a world first.

The Code is based on International Chamber of Commerce principles, and is designed to ensure a high sense of social responsibility in advertising and marketing of food & beverage products and services in Australia.

- Environmental Claims in Advertising and Marketing Code⁶

This Code was launched on 14 September 2009.

The object of this code is to ensure that advertisers and marketers develop and maintain rigorous standards when making Environmental Claims and to increase consumer confidence to the benefit of the environment, consumers and industry.

- Motor Vehicle Code⁷

⁴<http://www.aana.com.au/data/Codes/Code-Childrenv4.pdf>

⁵http://www.aana.com.au/data/Codes/Code-Food__Beveragev4.pdf

⁶<http://www.aana.com.au/data/Documents/Codes/EnvironmentalClaimsCode-September2009.pdf>

⁷http://www.aana.com.au/data/Documents/Codes/1250483030_document_amended_code_-_final_-_oct_07.pdf

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The Voluntary Code of Practice for Motor Vehicle Advertising applies to all advertisements published or broadcast in Australia from 1 July 2004. It was adopted after a review of the original Code which came into effect in August 2002.

The Code was developed by AANA in consultation with the Federal Chamber of Automotive Industries (FCAI). It was formally adopted by the FCAI from 1 July 2004.

The Motor Vehicle Code of Practice for Motor Vehicle Advertising has been instituted by FCAI as a means of industry self-regulation of motor vehicle advertising in Australia. The primary purpose of the Code is to provide guidance to advertisers in relation to appropriate standards for the portrayal of images, themes and messages relating to road safety.

The AANA Code of Ethics, the AANA Code for Marketing & Advertising Communications to Children, the AANA Food & Beverages: Advertising & Marketing Communications Code, the AANA Environmental Claims in Advertising and Marketing Code and the Motor Vehicle Code are collectively referred to as the AANA Codes.

AANA has also developed a number of practice notes which sit alongside and provide further guidance for advertisers and consumers. These practice notes are:

- AANA Code of Ethics Practice Note⁸
- AANA Best Practice Guideline to Responsible Marketing in the Digital Space⁹
- Practice Guide: Managing Images of Children and Young People, launched on 15 October 2009¹⁰
- AANA Food & Beverages: Advertising & Marketing Communications Code Practice Note launched in March 2010¹¹
- AANA Environmental Claims in Advertising and Marketing Code Practice Note launched in December 2009¹²

The Practice Guide: Managing Images of Children and Young People, the AANA Food & Beverages: Advertising & Marketing Communications Code Practice Note and the AANA Environmental Claims in Advertising and Marketing Code Practice Note are collectively referred to as the AANA Practice Notes.

⁸ http://www.aana.com.au/data/AANA_in_the_News/Practice_Note_261112.pdf

⁹ http://www.aana.com.au/data/Documents/Codes/Guideline_261112.pdf

¹⁰ http://www.aana.com.au/data/Documents/Codes/AANAPracticeGuide-ManagingImageofChildrenandYoungPeople_FinalOct2009.pdf

¹¹ <http://www.aana.com.au/data/Documents/Codes/AANAFoodandBeveragesCode-PracticeNote-FinalMarch2010.pdf>

¹² <http://www.aana.com.au/data/Documents/Codes/AANAEnvironmentalClaimsCode-PracticeNote-Edit2March2010.pdf>

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The AANA Codes and the AANA Practice Notes are attached to this submission as follows:

Appendix 3: AANA Code of Ethics

Appendix 4: AANA Code of Ethics Practice Note

Appendix 5: Digital Guideline

Appendix 6: AANA Code for Marketing & Advertising Communications to Children

Appendix 7: The Practice Guide: Managing Images of Children and Young People

Appendix 8: AANA Food & Beverages: Advertising & Marketing Communications Code

Appendix 9: AANA Food & Beverages: Advertising & Marketing Communications Code Practice Note

Appendix 10: AANA Environmental Claims in Advertising and Marketing Code

Appendix 11: AANA Environmental Claims in Advertising and Marketing Code Practice Note

Appendix 12: AANA Motor Vehicle Code.

b) Amendment of the AANA Codes

The Code of Ethics and other AANA Codes are subject to a continual process of review and refinement.

In 2007 AANA amended all the AANA Codes to expand their ambit from “advertising” to “advertising and marketing communications”. This broadening of the Codes was in response to changes in the media landscape and the increasing opportunities available to advertisers and marketers.

AANA’s view was that it was no longer appropriate for the Codes to be confined to advertising (as it was traditionally understood).

The amendment was designed to ensure that all advertising and marketing communications, including those on the internet and social media sites were clearly within the ambit of the AANA Codes and the AANA’s self-regulatory system.

The AANA Code for Marketing & Advertising Communications to Children was reviewed commencing 17 April 2007.

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A number of major changes resulted following this review, including a direct prohibition against the sexualisation of children and a ban on the use of sexual imagery in advertising targeted at children.

The revised Code was launched in 2008.

c) 2010 Review of the AANA Code of Ethics

In 2010, AANA conducted a comprehensive and wide scale review of the Code of Ethics. The aim of the review was to update and where necessary develop the Code of Ethics to ensure that it continued to meet all stakeholders' requirements and expectations. A revised Code of Ethics articulated world's best practice standards against which it can be measured and administered.

The review undertaken by an independent review was launched and conducted publicly through the release of a public statement and calling of submissions. AANA also conducted a direct email and phone campaign to raise awareness of the review, secure Interviews and encourage submissions from key government Departments, industry associations, various advocacy and interest groups.

Some 55 organisations and individuals participated in the review process.

In early 2011, AANA paused the review of the Codes to participate in the review by the House of Representatives Inquiry into outdoor advertising. AANA regarded that Inquiry and the subsequent inquiry by the Senate into Classification as an important input to the Code review process.

- **Outcomes of the Review Process**

The public consultation process showed that the Code is regarded as the foundation stone of the self-regulatory system and it is widely accepted by the Australian business community.

The review process also showed that the Code is in step with and in some cases ahead of codes which underpin the self-regulation of advertising and marketing communications elsewhere in the world. It shares much in common with Western Europe and North America and it is ahead of the code development in much of Asia and Eastern Europe.

The general consensus was to keep the code simple.

- **Amendments to the Code**

The revised Code of Ethics applied to advertising and marketing communications from 1 January 2012.

AANA released a Practice Note to sit alongside the Code of Ethics and provide further detail about AANA's intent with regard to the Code of Ethics.

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[Definition of Advertising or Marketing Communications] The definition of Advertising or Marketing Communications was amended to clarify that the Code applies to all advertising or marketing communications activities, whether or not “payment or other valuable consideration” is tendered. This ensured the Code remains relevant in an increasingly digital media landscape. It also removes any ambiguity regarding the status of advertising on line and in social media.

[Discrimination and vilification - Section 2.1] The section describes types of behaviour and restricts depictions of those types of behaviour against people within certain groups. ‘Gender’ has replaced ‘sex’ as a group and the Code now includes ‘mental illness’ as a group.

[Objectification - Section 2.2] A new clause was included to proscribe objectification of people. The clause applies to images of men, women or children which use sexual appeal in a manner which is exploitative and degrading.

[Relevant Audience] The Code and Practice Note provide more detail about the relevant audience. Relevant audience is determined by examining the media plan (formal or informal) and is the audience that the advertiser intends to see the advertisement. The ASB will take a broad view of audience when considering outdoor advertisements under the language and sex and nudity provisions of the Code.

Refer to Section 4: Protections in the AANA Codes.

Section 4: Protections in the AANA Codes

a) Broad application of the Code

The Code of Ethics is platform and technology neutral.

The Code applies to material which draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct, and includes:

- all advertising or marketing communications under the reasonable control of the advertiser, whether or not consideration has been paid;
- all advertising or marketing communications with an Australian-customer link (ie if any or all of the customers of the product, service etc are physically present in Australia), and which is under the control of an Australian company;
- sponsorship announcements such as “this program brought to you by . . .”;
- advertorials and infomercials;
- community service announcements;

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- user generated content which is communicated via a site or digital platform over which the marketer has a reasonable degree of control; and
- any media, including on line and social media (the Code is technology neutral).

The Code does not apply to:

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

b) Prevailing Community Standards

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

The process and adherence of the ASB complaints board to community standards in described in the submission of the ASB. AANA refers to and supports the ASB submission in that regard.

c) Relevant Audience

Relevant audience is a relevant concept for the restrictions on treatment of sex, sexuality and nudity and language. These sections of the Code require the ASB to be informed by the media placement plan and audience measurement data.

- **Relevant audience** is informed by the media placement plan and content of the marketing material. It requires the ASB to examine the media plan (formal or informal). It is the audience that the advertiser intends to see the marking. The ASB has regard to the audience or readership composition data for the relevant media. For example, OzTAM data can be used to inform the Board that the relevant audience for commercial free to air and subscription television is grocery buyers between the ages of 20 and 35. In the case of social media, the ASB has regard to the opt-in nature of the medium and the age gating which may apply to some social media sites in determining the relevant audience.
- **Broad view of "audience" taken by the Board.** The relevant audience for outdoor media receives particular focus and definition in the Code of Ethics. For the purposes of advertisements in public places, the ASB will not only take account of the relevant audience, but it can also take a broad view of the "audience". This

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recognises the broad nature of the audience for advertisements in public places. The ASB will not just have regard to whom the advertisement is targeted (the relevant audience) but the ASB also looks at who can see it and the ASB will take that into consideration in determining their view of whether the advertisement treats sex, sexuality and nudity with sensitivity to that audience or in regards to whether the language used is appropriate for that audience.

d) Images of Children and Young People

Particular care must be exercised when using images of children and young people in marketing.

Advertisers should have regard to the AANA Practice Guide: Managing Images of Children and Young People:

http://www.aana.com.au/documents/AANAPracticeGuide-ManagingImagesofChildrenandYoungPeople_FinalOct2009.pdf

e) Portrayal of People

Section 2.1 Advertising or marketing communications shall not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.

This section describes a number of types of behaviour and restricts depictions of those types of behaviour against people within certain groups. It is a wide reaching section which reflects the community's view that advertising or marketing should not use images which treat people unfairly or less favourably or which humiliate, intimidate, incite hatred, contempt or ridicule.

The types of behaviour are:

- Discrimination – unfair or less favourable treatment
- Vilification – humiliates, intimidates, incites hatred, contempt or ridicule

The groups are:

- Race – viewed broadly this term includes colour, descent or ancestry, ethnicity, nationality, and includes for example ideas of ethnicity covering people of Jewish or Muslim origin
- Ethnicity – those with a common social identity as a result of customs, traditions and belief about historical origins
- Nationality – people belonging to a particular nation either by birth, origin or naturalisation. This can change over time so a person born in the United States

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who becomes a citizen of Australia by marriage may describe their nationality as both Australian and American

- Gender – male or female characteristics
- Age – based on a person’s chronological age (ie the date they were born) and not a person’s biological age (ie physical age a person may exhibit)
- Sexual preference – includes homosexuality, heterosexuality, bisexuality and trans sexuality
- Religion – a person’s belief or non belief about god or the existence or non existence of god or gods
- Disability – a current, past or potential physical, intellectual, psychiatric, or sensory illness, disease, disorder, malfunction, malformation, disfigurement or impairment, including mental illness
- Political belief – support for or opposition of a particular political party or ideology.

A negative depiction of a group of people in society may be found to breach section 2.1 even if humour is used. The depiction will be regarded as negative if a negative impression is created by the imagery and language used in the advertisement.

The AANA Practice Guide: Managing Images of Children and Young People¹³ provides more information about the use of images of Children and Young People. It provides that advertisers and marketers must take reasonable steps to ensure that images of children and young people are not sexually exploitative in nature.

f) Sexual Appeal

Section 2.2 Advertising or marketing communications should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people.

Section 2.2 addresses concerns about the objectification of people. It was introduced in the review of the Code of Ethics and is a direct response by the AANA about community concerns in relation to objectification. The section restricts the use of images which employ sexual appeal which is exploitative and degrading of any individual or group of people. It is not limited to images of women but applies more broadly.

This section proscribes objectification of men, women and children.

In advertisements where images of children are used, sexual appeal is not acceptable and will always be regarded as exploitative and degrading. Advertisements must not state or imply that children are sexual beings and that ownership or enjoyment of the advertised product will enhance their sexuality. Children must not be portrayed in a manner which treats them as objects of sexual appeal.

¹³http://www.aana.com.au/documents/AANAPracticeGuide-ManagingImagesofChildrenandYoungPeople_FinalOct2009.pdf

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This section restricts the use of images if they are exploitative and degrading.

- Exploitative means clearly appearing to purposefully debase or abuse a person, or group of persons, for the enjoyment of others, and lacking moral, artistic or other values.
- Degrading means lowering in character or quality a person or group of persons.

g) Violence

Section 2.3 Advertising or marketing communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised.

The restriction on violence is a direct prohibition on the portrayal of violence. Depictions of violence are only permitted if justified in the context of the product or service advertised.

Consequences of violence may also be prohibited however graphic depictions of traffic accidents or the consequences of domestic violence may be justified by the community safety message involved.

Sexual violence is not acceptable.

A strong suggestion of menace presents violence in an unacceptable manner and breaches this section of the Code.

This restriction also extends to the following:

- Audio representations of violence
- Violence against animals
- Realistic depictions of the consequences of violence are not acceptable.

h) Sex, Sexuality and Nudity

Section 2.4 Advertising or marketing communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience.

This section applies equally to images of men as well as images of women and children. For the purposes of outdoor audience the sensitivity of a broad audience is relevant.

Images which are not permitted are those which are highly sexually suggestive and inappropriate for the relevant audience. Explicit sexual depictions, particularly where the depiction is not relevant to the product or service being advertised, are generally objectionable to the community and will offend Prevailing Community Standards.

Full frontal nudity and explicit pornographic language is not permitted. Images of genitalia are not acceptable. Images of nipples may be acceptable in advertisements for plastic surgery or art exhibits for example. Discreet portrayal of nudity and sexuality in

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an appropriate context (eg advertisements for toiletries and fashion) is generally permitted but note the applications of the relevant audience. More care should be taken in outdoor media than magazines, for example.

Advertisements which depict women or men scantily clad, are generally acceptable, if relevant to the product. For example, it is acceptable to show a woman in a bikini in advertisements for boats or sunscreen, provided the image is not sexualised. The ASB has also found it acceptable to depict women wearing underwear where they appear happy and confident and do not appear to be sexualised. The ASB has noted that it is reasonable to expect an underwear advertisement to feature imagery of underwear.

Advertisements with appeal to young people (under 14 years) which contain sexualised images or poses are to be used with caution. Models which appear to be young should not be used in sexualised poses.

The use of the word “sex” does not, of itself, make an advertisement unacceptable. However, such advertisements must not contain images that are highly sexualised.

AANA supports and refers the Committee to Section 3.2 of the submission of the Advertising Standards Bureau in relation to examples of advertisements the subject of complaint under Section 2.4 of the Code of Ethics.

i) Language

Section 2.5 Advertising or marketing communications shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided.

This section prohibits strong or obscene language. Use of other language must be appropriate in the circumstances including appropriate for the relevant audience and medium. For outdoor advertising a broad view of the audience is taken and the language which is permitted must be appropriate in all the circumstances to that broader audience, which may include children.

Words and phrases which are innocuous and in widespread and common use in the Australian vernacular are permitted (provided they are used in a manner consistent with their colloquial usage, for example with gentle humour, and not used in a demeaning or aggressive manner).

Examples are “bugger”, “shit”, “pissed-off”, “crap”, “bloody”, “cheap bastard”, “bum”, “honk if you did it last night” and “balls”. The “f” and “c” words are not permitted in the outdoor space.

Non verbal representations of the “f” word are also not permitted. Words and acronyms that play on the ‘f’ word, eg WTF and LFMAO, but do not use the actual word are normally considered acceptable if used in a light hearted and humorous way, are in subtitle rather than spoken word and are appropriate to the situation.

j) Health and Safety

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Section 2.6 Advertising or marketing communications shall not depict material contrary to Prevailing Community Standards on health and safety.

This is a wide reaching section which is intended to restrict a range of images which is contrary to prevailing community standards on health and safety.

The following are examples of images which are prohibited:

- bike riding without helmets
- passengers not wearing a seatbelt
- advertisements depicting unsafe practices or images, such as riding down a hill in a wheelie bin, using a mobile phone while driving or apparently hiding in a chest freezer etc are unacceptable.
- Bullying
- Depictions of smoking

Of particular concern are depictions of behaviour that children may imitate. For example an advertisement promoting the taking of photos of best friends in their underwear may give legitimacy to younger people to upload images of themselves in underwear and that this is contrary to prevailing community standards.

Motor vehicle advertisements are also subject to the health and safety section. This means that a motor vehicle advertisement cannot depict images contrary to public health and safety notwithstanding the images being unrelated to the motor vehicle advertised. For example, an advertisement for a motor vehicle which depicts a child riding a bicycle without a helmet will be considered under section 2.6.

This section also applies to images which depict bullying. The age of the people depicted in an advertisement, their relationship to each other and the nature of the communication are relevant in determining whether an advertisement constitutes bullying and is contrary to Prevailing Community Standards. Care must be taken when the people depicted in an advertisement are children or if there is an unequal relationship between the people in the advertisement, eg student and teacher, manager and worker.

k) AANA Code of Advertising and Marketing to Children

AANA acknowledges that advertising or marketing to children requires special care and this is reflected in the AANA Code of Advertising to Children.

The restrictions in the Code apply to all advertising and marketing communication which is primarily directed to children 14 years old or younger. This recognizes that advertising must be targeted toward children in a specialized way to engage or resonate with children. In other words, only advertising which is speaking directly to a child is subject to the restrictions in the Code. This reflects the fact that children see marketing messages in many difference contexts, however, unless these are particularly directed to them, they have little, if any resonance or engagement with the child.

The Code provides an outright prohibition on the use of sexual imagery in advertising or

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marketing communications to children. It provides:

Section 2.4 Advertising or marketing communications to children:

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

This section of the Code was included following a review of the Children’s Code in 2008 to specifically address community concerns about the sexualisation of children.

Section 5. The Complaints Handling System

AANA refers to and supports the separate submission of the Advertising Standards Bureau in relation to the complaints handling system, composition of the board and process. AANA in addition notes the following for the committee.

a) Establishment of the ASB

The AANA Codes are underpinned by a transparent complaints adjudication system administered independently by the Advertising Standards Bureau. The system is funded by advertisers and accessible free of charge by the community.

AANA sponsored the formation of the Advertising Standards Bureau and Board in 1998, since then it has operated under separate management, funded by a levy on advertising administered by the Australian Advertising Standards Council Ltd.

With advertisers, marketers and media sharing a common interest in promoting consumer confidence in and respect for advertising and marketing communications, the self-regulatory system has industry-wide backing. Complaints about advertising are determined by the Advertising Standards Board, while competitive complaints are referred to the Advertising Claims Board.

b) Complaints submission process

The Advertising Standards Board (Board) accepts written complaints – by post or facsimile or via the online complaints form on the Advertising Standards Bureau (ASB) website (www.adstandards.com.au).

All complaints received are assessed as to their appropriateness for submission to the Board for determination. As the Board secretariat, the ASB replies to all complainants informing them of the status of their complaint.

Once a complaint has been accepted by the ASB, the advertiser/marketer is notified about the complaint, provided with a copy of the complaint and is requested to provide a written response and copies of the relevant advertising or marketing communication within sufficient time to allow the complaint to be dealt with at the next meeting of the Board.

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If an advertiser/marketer fails to provide a response to the complaint within the specified period or any extension of it, the Board may consider the complaint and the advertising or marketing communication in question without the advertiser/marketer response.

c) Transparent and Robust Complaints Handling system

The complaints handling system is transparent and robust. It is well recognised in Australia by consumers and advocates alike. The ASB reports a high level of consumer awareness of the advertising complaints system.

The process and adherence of the ASB when adjudicating complaints is described in the submission of the ASB. AANA refers to and supports the ASB submission in that regard.

A google search for “complaints about advertising” lists the Advertising Standards Bureau.

Many advertising associations and media websites direct complainants to the ASB.

Section 6. Complaints Figures for Outdoor Advertising

AANA acknowledges concerns expressed by some individuals about outdoor advertising.

However, AANA notes that the level of complaint and level of breach in relation to outdoor advertising is minimal in the context of the level of national advertising.

In 2012 there were some 33 million national ads across all media (this does not include ads on regional/local media)¹⁴. This includes outdoor advertisements.

On average, the ASB considers complaints about approximately 600 ads per year, about 0.0018% of all national ads (as monitored by Nielson). Of the 600 considered by the ASB, around 80 or 13.3% (of the 600) were upheld. The total upheld complaints out of the total number of ads are around 0.00024%.

In terms of outdoor advertisements, the figures are even lower. On average there are around 30,000 different third party¹⁵ outdoor advertisements (about 0.09% of all 33 million ads).

Of the total numbers of advertisements complained about to the ASB the percentage in the outdoor space is relatively low vis a vis the number of ads in the outdoor space. Further the figures in 2012 across all categories of outdoor were very low.

¹⁴Number of advertisements monitored by Nielson in 2012.

¹⁵Figures are provided by Outdoor Media Association who collects data on behalf of their members, third party advertisers. Non third party advertisers are for example on premise advertising etc.

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	2010	2011	2012
Billboard	9.69%	26.35	4.80
Poster	1.99%	7.43%	1.88%
Transport	0.76%	3.67%	1.49%
Outdoor	8.40%	1.67%	1.38%

The level of breach findings of outdoor ads is even lower and is insignificant when compared with the overall level of outdoor advertising and the overall level of all advertising in Australia.

The self-regulatory system and complaints handling system is robust, transparent and well recognised by consumers. The low level of complaint and even lower level of breach findings, indicate a negligible level of consumer concern.

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

Section 6. Specific Comments about the Bill

- The self regulatory system as described above is expansive and provides adequate community standards across all media.
- It is platform and technology neutral and applies to all advertising and marketing communications irrespective of the platform. In addition, the nuances of the particular media are considered in relation to the “relevant audience” which is an important concept underpinning the Code of Ethics.
- The AANA self regulatory system provides that for outdoor media, a broad view of audience is applied.
- Further regulation of outdoor is not required.
- In particular the regulation in the Bill is not a suitable alternative or addition to the self regulatory system.
- Previous inquiries have failed to be convinced that government regulatory or classification model would improve compliance or provide a more effective means of regulatory the industry.
- The classification system proposed by the Bill reflects the ratings specified in the Commonwealth Classification (Publications, Films and Computer Games) Act. The ratings in that Act have been specifically developed for films and computer games. They are not designed or intended to apply to advertising generally or outdoor advertising specifically.