



Submission to

**Department of Communications:  
Review of the Australian Communications and Media  
Authority**

on behalf of

Australian Association of National Advertisers

10 August 2015

## **Background**

AANA represents Australia's national advertisers. 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 AANA 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.

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 AANA self-regulatory system provides appropriate community standards in relation to the regulation of advertising and marketing communications across all media. The system reflects the collective thinking of AANA members and has evolved following extensive public consultation. It is technology and platform neutral and provides a uniform set of self-regulatory restrictions to advertising and marketing communications. Brand owners who are found in breach of the restrictions, must remove the relevant marketing material, irrespective of the platform.

In evolving and developing the AANA self-regulatory system, the AANA is the respected voice for brands, and reflects brand owners' intent to meet the community's expectation for standards in advertising and marketing communications. As such, the AANA is the custodian and champion of the over-arching system of self-regulation. The system is recognised and endorsed through inclusion in other self and co-regulatory systems, whose members support the decisions of the Advertising Standards Board.

The establishment of the self-regulatory system for advertising and marketing communications in Australia was in response to advertisers' recognition that they have a responsibility to deliver agreed and trusted standards. The AANA system of self-regulation sits alongside and complements systems of regulation, co-regulation and self-regulation. Self-regulation of the advertising and marketing communications industry provides a flexible mechanism to meet the challenges of the ever-evolving advertising, marketing and media industry, along with changing consumer expectations.

## **Governance**

In terms of structure and governance of the ACMA, the AANA believes that the role of chief executive officer and chairman should be separated in order to support good decision-making. It is key to maintaining trust to eliminate any conflict of interest that could exist in combining the same person in these two key roles and to ensure that the board can provide a clear oversight of management, business plans and strategies.

## Platform neutral regulation

As the ACMA occasional paper *Evidence-informed regulatory practice-an adaptive response 2005-2015* notes, convergence has not proved to be a stable concept, either in terms of market and technology developments, or as reflected within the regulatory system. Each of the four media and communications sectors are subject to industry-specific non-converged legislation.

Similarly the ACMA's occasional paper *Six emerging trends in media and communications* published in 2014 highlighted that there are different levels of regulation according to whether the content is delivered by a broadcasting service, a datacasting service or an internet content service. That paper also noted that different requirements apply to the placement of advertising on different platforms and similarly different complaints mechanisms apply.

In an industry that operates across platforms, and particularly where consumers can access the same or similar material across a range of platforms, it is no longer appropriate for a communications regulator to address different industry sectors in different ways.

In terms of the content of advertising, the AANA Codes do not make a distinction between traditional media advertising and digital advertising. The definition of "Advertising or Marketing Communications" in the AANA codes ensures that most forms of commercial communication are captured (including user-generated comment on brand-owned social media sites) and that the codes are platform and media neutral.

The self-regulatory system has evolved to cope with the rise of digital advertising including social media. There will be future evolutions of technology that may give rise to perceived self-regulatory challenges but these can be met by future evolutions of the codes and their application to new media. In terms of consumers, again there is no need for a distinction in their minds between traditional and digital advertising. The platform neutral self-regulatory model provides for the Advertising Standards Bureau to receive all complaints without the consumer having to consider the medium in which the relevant advertisement appeared.

The AANA welcomed FreeTV Australia's recognition of the role of the AANA Codes and role of self-regulation of marketing communications as the preferred model for managing marketing communications in Australia as part of the review of the Commercial Television Industry Code of Practice. Many advertising associations also refer to, or incorporate by reference, the AANA Codes including the Australian Subscription Television and Radio Association; Commercial Radio Association; Outdoor Media Association and Alcohol Beverages Advertising Code.

When determining what combination of regulatory interventions might be needed in the future, it is important to recognise that brand owners accept responsibility for reflecting community standards in all their advertising and marketing communications across all media and activities by supporting the self-regulatory system. A key part of this system is that where marketers are held to account against prevailing community standards, complaints are heard by a body made up of individuals who are representative of the community. A regulator who seeks to make decisions based on community

standards should similarly be representative of the community, or devolve that decision making process to a more appropriate body.

The self-regulatory system is comprehensive in its coverage and it is the view of the AANA that the additional advertising and marketing regulation on broadcasting licensees through co-regulatory codes or communications legislation are no longer required.

## **Advertising to children**

AANA acknowledges the 'enduring concept' that children should be protected from content or communications that are age-inappropriate or harmful. Advertising or marketing to children requires special care and this is reflected in the AANA Code for Advertising & Marketing Communications 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 reflects the fact that children see marketing messages in many different contexts, however, unless these are particularly directed to them, they have little resonance or engagement with the child.

In addition to AANA Code of Ethics and the AANA Code for Advertising & Marketing Communications to Children, the AANA Food and Beverages: Advertising and Marketing Communication Code contains detailed requirements for advertising to children and together the Codes already provide protection for children across a wide range of issues. In this respect the AANA Codes provide safeguards, and the ability for consumer complaint if necessary, in relation to:

- Prevailing community standards
- Factual presentation
- Placement
- Sexualisation
- Safety
- Social values
- Parental authority
- Qualifying statements
- Competitions
- Popular personalities
- Premiums
- Alcohol
- Privacy
- Food and Beverages

The AANA notes that specific provisions about advertising to children in the current FreeTV Australia code of practice have been removed in the proposed new code. The AANA supports this approach because it will provide the same protection standards as previously but reduce unnecessary duplication and potential confusion.

In relation to the Children's Television Standards (CTS), there is scope for a similar approach to be taken to remove advertising obligations and for the CTS to simply refer to the strong community safeguards contained in the AANA Codes, ensuring sufficient protections for children in relation to advertising. The AANA Codes restrict the messaging within advertising directed primarily to children to ensure that such advertising is appropriate for children. As such they reflect many of the restrictions in the CTS as well as providing additional safeguards, and apply those protections across all media and platforms. Removal of the restrictions in the CTS would also reduce compliance costs and complexity.