

Project Manager – Review of the commercial radio standards
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AANA Submission: Review of the Commercial Radio Standards

The Australian Association of National Advertisers (AANA) welcomes the opportunity to contribute to the above review by providing comment on the *Review of the commercial radio standards Issues Paper dated February 2010*.

AANA, as the peak body for over 80 years, represents the rights and responsibilities of companies involved in the advertising, marketing and media industry contributing in excess of \$30 billion to the Australian economy annually.

Advertising plays a fundamental economic role in society. 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 content.

AANA provides the following initial comments in our capacity representing the interests of advertisers.

Summary of Recommendations:

AAAN recommends:

1. That approaches to the regulation of advertising must be 'principles based' for consistency across all media platforms. AANA highlights that there is no 'public harm' articulated for commercial radio that requires higher level of regulation and resulting regulatory compliance burden for advertisers and commercial radio stations.
2. The revision of the regulatory framework for advertisers that maximizes flexibility and promotes a 'level playing field' to ensure a competitive market. AANA is supportive of a regulatory environment that includes co-regulatory as well as self-regulatory mechanisms.
3. That commercial radio be afforded similar opportunities to other media regarding placement of advertisements, including within program material. The regulation of commercial radio should not act as a disincentive for advertisers to use this media channel.
4. The current definition of 'advertisement' used in the Advertising Standard be amended. The AANA definition is used widely throughout Australia.

General Comments

AANA supports, and reiterates, the Council of Australian Government (COAG) principles and features of good regulation particularly in relation to minimising the regulatory burden on the public and the administrative burden on government and the sectors of the community that will be affected. In the current instance, this includes advertisers and marketers.

AANA supports the current objectives of the *Broadcasting Services Act 1992*. Notwithstanding this support AANA welcomes the review of the *Broadcasting Services (Commercial Radio Current Affairs Disclosure) Standard 2000*, *Broadcasting Services (Commercial Radio Advertising) Standard 2000* (Advertising Standard) and *Broadcasting Services (Commercial Radio Compliance Program) Standard* as we consider that the now dated standards impose a regulatory burden on the commercial radio industry as well as advertisers that does not exist in other regulated media.

In relation to advertising, consideration must be given to not only changes within the commercial radio environment but also how commercial radio, and consumer expectations, fit in the broader and evolving media environment that includes not only free-to-air TV but also subscription TV and digital media including the internet.

AANA recommends the revision of the regulatory framework for advertisers that maximizes flexibility and promotes a 'level playing field' to ensure a competitive market. AANA is supportive of a regulatory environment that includes co-regulatory as well as self-regulatory mechanisms; the latter having the potential to respond to market and policy developments in a more responsive manner than regulatory changes that are increasingly less likely to 'keep up' with fast evolving market.

The commercial radio industry is the only media sector where advertisers are subject to such prescriptive disclosure and compliance requirements. We believe the current review provides an opportunity to implement an improved risk-based approach to regulation. The Productivity Commission has also recommended this approach. A risk-based approach is also consistent with the COAG principle of good regulation that government action should be effective and proportional to the issue being addressed.

15. Is regulation necessary to address the issue that advertising may not be clearly distinguishable from other program material?

16. If so, what is the most appropriate approach to address the issue that advertising is not clearly distinguishable?

17. If regulation is necessary, what is the most appropriate regulatory mechanism (codes, standards, licence conditions)?

18. If regulation is necessary, should it apply to all program formats or are different requirements appropriate to different formats?

AANA notes and supports the Productivity Commission's 2009 *Review of the Regulatory Burdens on Business* recommendation regarding the Disclosure Standard in that it should be revised to make it less prescriptive, and that it should be incorporated into the *Commercial Radio Codes of Practice*.

The regulations applicable (or not) to other media, such as television (free-to-air and subscription), the internet and print media, currently allow a greater level of flexibility to advertisers than the current regulations for the commercial radio sector.

Issues such as ensuring that the Australian public are able to distinguish advertisements including, for example, integrated advertising (within programs), can be dealt with on a 'principles' basis, eg are not prescriptive in how advertisements are to be distinguished. Self-regulatory examples include:

- the AANA *Food & Beverages Advertising & Marketing Communications Code* and *Code for Advertising & Marketing Communications to Children* both include clauses addressing the issue of distinguishing advertising and marketing communications for particular circumstances.
- The Publishers' Advertising Advisory Bureau's *Advertising Code of Practice* that states – "...only publish advertisements which: ...3. are clearly distinguishable as advertisements;...".

AANA suggests that further evidence would be required to establish the public benefit of requiring a greater level of prescription in regulation than is considered necessary for any other media.

AANA notes that the requirement to make advertising distinguishable from other radio programming is currently contained in the *Commercial Radio Codes of Practice*. AANA considers that no further restrictive regulation is necessary. We understand that there has been a high level of compliance by commercial radio and advertisers since the Advertising Standard was introduced.

AANA recommends that commercial radio be afforded similar opportunities to other media regarding placement of advertisements, including within program material. We strongly support a flexible approach that allows for creativity and innovation by advertisers and the commercial radio industry to facilitate advertising material to be distinguishable within a program. AANA does not consider that a restrictive approach assists industry or radio listeners and their communities. It is a fact that advertising revenue is fundamentally important to the economic viability of commercial radio stations. The regulation of commercial radio should not act as a disincentive for advertisers to use this media channel.

We also contend that the Australian public generally have a good understanding of advertising practice across all media formats (and the variety of advertising practices). AANA does not believe that a more prescriptive regulatory framework for commercial radio provides any real public benefit when considered in the context of media broadly. The question should be asked – why is prescriptive regulation of commercial radio more necessary or important than for any other media from a public benefit perspective?

AANA supports a 'principles' based approach to regulation of advertising that provides clarity and consistency across a growingly fragmented media environment. Maintaining a 'principles' approach across media platforms allows different media sectors and advertisers flexibility to best meet their regulatory obligations and expectations of the public. For example, the principle that advertising must be distinguishable is all that is required. Guidance and education mechanisms can be developed and promoted about how this can be done. This also provides a better means to develop and sustain a best practice approach than prescriptive regulation (which is generally much slower to evolve). An example of such an approach is the *Special Broadcasting Services Act 1991* providing for both radio and TV:

The Board:

(a) must develop and publicise guidelines on the kinds of advertisements and sponsorship announcements that it is prepared to broadcast; and

(b) may develop guidelines on other matters relating to advertisements and sponsorship announcements including:

(i) the placement of such advertisements and announcements; and

(ii) the duration of such advertisements and announcements; and

(iii) the kinds of advertising and sponsorship

19. If any transparency and separation requirements apply, should detailed rules addressing presenters and newsreaders also apply?

20. If any transparency and separation requirements apply, should detailed rules addressing cues and placement also apply?

21. If any transparency and separation requirements apply, should rules addressing particular practices also apply (e.g. live reads, interviews)?

As noted above, a principles based approach to ensure that advertising is distinguishable from program content addresses all practices and leaves the regulator (ACMA) with the discretion to determine, via its complaints handling mechanism, whether the advertisement is distinguishable or not in particular circumstances. AANA acknowledges that radio presents somewhat (although not exclusively so) unique circumstances relating to transparency and separation in the presentation of material. However, we reiterate that specific mandatory rules, such as those imposed on radio, are not required for any other media.

AANA does not believe that sufficient evidence has been presented in the consultation document to indicate that this is a significant enough issue to require regulatory redress.

22. Is the current definition of “advertisement” under the Advertising Standard the most appropriate definition, having regard to contemporary advertising practices on commercial radio?

23. If not, and a broader definition were adopted, what are potential implications for (a) listeners; (b) licensees; (c) advertisers?

AANA notes that a definition for ‘advertisement’ is not included in legislation regulating other media in Australia. Notwithstanding this, **AANA recommends** that the current definition of ‘advertisement’ used in the Advertising Standard be amended.

We note that the definition used in AANA codes is also used by free-to-air TV by way of the commercial television code under the *Broadcasting Services Act 1992*. It is also the definition used by other media self-regulatory codes such as that for subscription television sector, other self-regulatory initiatives as well as individual company/businesses codes of practice/ethics.

AANA acknowledges the challenges with the current Advertising Standard definition, as outlined in the consultation issues paper. AANA emphasises the importance of retaining ‘consideration’ in the definition as it limits legal liability of advertisers (and commercial radio licensees) where they are responsible for an advertisement and not, for example, by representations made independently by a third party.

We note that the Advertising Standard definition differs from the AANA definition in a number of respects. The AANA definition refers to *‘for payment or other valuable consideration’* and the Advertising Standard refers to *‘consideration has been provided’*; the AANA definition does not identify who the ‘consideration’ is provided to, and, the Advertising Standard draws a distinction between ‘drawing public attention to’ and ‘promoting’ whereas the AANA definition requires a link.

AANA believes that amending the definition to more closely align with the AANA definition, which is used widely throughout Australia, may reduce any complexity otherwise resulting in identifying an ‘advertisement’ or when an advertisement meets the current definition based on when ‘consideration’ was provided. Advertisers already operate with the broader AANA definition in other media and AANA considers that it is counter-productive to have different definitions of, and for advertising in different media, particularly where campaigns are implemented across a number of media, and advertisers have

to apply different definitions for the same campaign depending on the media concerned.

We look forward to the outcomes of this review.

Yours sincerely

A handwritten signature in black ink, appearing to read "Scott McClellan". The signature is fluid and cursive, with a small dot at the end.

Scott McClellan
Chief Executive Officer

14 May 2010