

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

**Report No. 47**

**Legal Affairs and Community Safety Committee**

**November 2013**

## Legal Affairs and Community Safety Committee

<b>Chair</b>	Mr Ian Berry MP, Member for Ipswich
<b>Deputy Chair</b>	Mr Peter Wellington MP, Member for Nicklin
<b>Members</b>	Miss Verity Barton MP, Member for Broadwater Mr Bill Byrne MP, Member for Rockhampton Mr Sean Choat MP, Member for Ipswich West Mr Aaron Dillaway MP, Member for Bulimba Mr Trevor Watts MP, Member for Toowoomba North
<b>Staff</b>	Mr Brook Hastie, Research Director Ms Kym Christensen, Principal Research Officer Mrs Ali Jarro, Principal Research Officer Mr Greg Thomson, Principal Research Officer Mrs Gail Easton, Executive Assistant
<b>Technical Scrutiny Secretariat</b>	Ms Renée Easten, Research Director Ms Marissa Ker, Principal Research Officer Mr Karl Holden, Principal Research Officer Ms Tamara Vitale, Executive Assistant
<b>Contact details</b>	Legal Affairs and Community Safety Committee Parliament House George Street Brisbane Qld 4000
<b>Telephone</b>	+61 7 3406 7307
<b>Fax</b>	+61 7 3406 7070
<b>Email</b>	<a href="mailto:lacsc@parliament.qld.gov.au">lacsc@parliament.qld.gov.au</a>
<b>Web</b>	<a href="http://www.parliament.qld.gov.au/lacsc">www.parliament.qld.gov.au/lacsc</a>

## Contents

<b>Abbreviations</b>	<b>iv</b>
<b>Chair's foreword</b>	<b>v</b>
<b>Recommendations</b>	<b>vi</b>
<b>1. Introduction</b>	<b>1</b>
1.1 Role of the Committee	1
1.2 Inquiry process	1
1.3 Policy objectives of the Classification of Publications (Billboard Advertising) and Other Legislation Amendment Bill 2013	2
<b>2. Existing regulation of outdoor advertising</b>	<b>3</b>
2.1 Concurrent inquiry into outdoor advertising	3
2.2 Outdoor advertising in general	4
2.3 Advertising regulation in Australia	5
2.4 The complaint resolution component of the advertising self-regulation system	9
<b>3. Examination of the Classification of Publications (Billboard Advertising) and Other Legislation Amendment Bill 2013</b>	<b>16</b>
3.1 Examination of the Bill	16
3.2 The national classification system	16
3.3 Can the classification system be used for advertising	17
3.4 Process for classifications under the Bill	21
3.5 Should the Bill be passed?	28
<b>4. Fundamental legislative principles</b>	<b>29</b>
4.1 Rights and liberties of individuals	29
4.2 Institution of Parliament	30
4.3 Explanatory Notes	30
<b>Appendix A – List of Submissions</b>	<b>32</b>
<b>Appendix B – Maps</b>	<b>33</b>

**Abbreviations**

AANA	Australian Association of National Advertisers
ACL	Australian Christian Lobby Queensland
ASB	Australian Standards Bureau
Attorney-General	The Honourable Jarrod Bleijie MP, Attorney-General and Minister for Justice
Bill	Classification of Publications (Billboard Advertising) and Other Legislation Amendment Bill 2013
Claims Board	Standards Board and the Advertising Claims Board
Committee	Legal Affairs and Community Safety Committee
Commonwealth Act	<i>Classification (Publications, Films and Computer Games) Act 1995</i> (Cth)
Department	Department of Justice and Attorney-General
DET	Department of Education and Training
EASA	European Advertising Standards Alliance
HCSC	Health and Community Services Committee
House of Representatives Committee	House of Representatives Standing Committee on Social Policy and Legal Affairs
House of Representatives Inquiry	House of Representatives Standing Committee on Social Policy and Legal Affairs tabled Reclaiming Public Space: Inquiry into the regulation of billboard and outdoor advertising
KAP	Katter's Australia Party
OMA	Outdoor Media Association
Premier	The Honourable Premier of Queensland, Honourable Campbell Newman MP

## **Chair's foreword**

This Report presents a summary of the Legal Affairs and Community Safety Committee's (Committee) examination of the Classification of Publications (Billboard Advertising) and Other Legislation Amendment Bill 2013.

The Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

On behalf of the Committee, I thank those individuals and organisations who lodged written submissions on this Bill. I also thank the Committee's secretariat for their assistance.

I commend this Report to the House.

A handwritten signature in black ink, consisting of a stylized 'I' and 'B' with a crown-like flourish above the 'I'.

Ian Berry MP

**Chair**

## **Recommendations**

### **Recommendation 1**

**28**

The Committee recommends the Classification of Publications (Billboard Advertising) and Other Legislation Amendment Bill 2013 not be passed.

## 1. Introduction

### 1.1 Role of the Committee

The Legal Affairs and Community Safety Committee (Committee) is a portfolio committee of the Legislative Assembly which commenced on 18 May 2012 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.<sup>1</sup>

The Committee's primary areas of responsibility include:

- Department of Justice and Attorney-General;
- Queensland Police Service; and
- Department of Community Safety.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation;
- the application of fundamental legislative principles; and
- for subordinate legislation – its lawfulness.

The Classification of Publications (Billboard Advertising) and Other Legislation Amendment Bill 2013 (Bill) is a Private Members' Bill introduced into the Legislative Assembly by the Member for Dalrymple, Mr Shane Knuth MP and referred to the Committee on 23 May 2013.

As no reporting date was fixed by the Legislative Assembly or Committee of the Legislative Assembly, in accordance with Standing Order 136(1) the Committee was required to report back to the Legislative Assembly by 25 November 2013.

### 1.2 Inquiry process

#### Stakeholders

The Committee wrote to a number of stakeholders on the Bill seeking written submissions on the Katter's Australia Party (KAP) legislative proposal. The Committee received nine submissions from stakeholders and the general public (see **Appendix A**).

As the Health and Community Services Committee (HCSC) was conducting a public hearing into similar issues<sup>2</sup> on 21 August 2013, the Committee determined it would not hold a public hearing on the Bill. Instead, the Chair and the Deputy Chair of the Committee sought leave from the HCSC to participate in its public hearing and question witnesses who had submitted to both the HCSC inquiry and the Committee's inquiry into the Bill.

#### Katter's Australia Party

To assist with its examination of the Bill, the Committee wrote to the Member for Dalrymple, Mr Shane Knuth MP, on 6 June 2013 setting out the examination schedule for its inquiry and inviting him to provide further comments on the Bill.

---

<sup>1</sup> *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

<sup>2</sup> Health and Community Services Committee, Inquiry into Sexually explicit outdoor advertising, <http://www.parliament.qld.gov.au/work-of-committees/committees/HCSC/inquiries/current-inquiries/outdooradv>, accessed November 2013.

The Committee wrote further to the Member for Dalrymple on 5 August 2013, inquiring as to whether a response to stakeholder submissions would be provided. No response was provided.

The Committee was subsequently advised by the Member for Dalrymple on 6 August 2013 that the Member for Condamine, Mr Ray Hopper MP would be taking the lead on the Bill on behalf of the KAP.

After receiving advice from the Member for Condamine that no further information would be provided by the KAP on the Bill, the Committee wrote to the Member for Condamine on 16 August 2013 requesting answers to a number of specific questions it had formed after its initial consideration of the Bill. A response was provided on 5 September 2013 which can be accessed on the Committee's website.

### **Government**

The Committee wrote to the Premier of Queensland, the Honourable Campbell Newman MP (Premier), seeking his assistance in coordinating a whole of Government submission on the Bill and also wrote to the Department of Justice and Attorney-General (Department) as the lead agency which would be responsible for the implementation of the policies contained in the Bill, should it be passed.

The Premier advised the Committee the Government would not be providing a submission on the Bill. Additionally, the Department advised it was unable to assist the Committee in its deliberations as the Government's position on the Bill was not known.<sup>3</sup>

### **1.3 Policy objectives of the Classification of Publications (Billboard Advertising) and Other Legislation Amendment Bill 2013**

The objectives of the Bill are to regulate billboard advertising and mobile billboard advertising and change the behaviour of the advertising and marketing industries use of moderate (Mature (M)) or strong (Mature Accompanied MA15+) content.<sup>4</sup> This is intended to be achieved through the introduction of billboard geographical classification zoning, based on existing classification ratings.

In his introductory speech, Mr Knuth MP stated *'this Bill is simple. It categorises billboards in certain areas. For example, the G-rated billboards will be used around schools, sports fields and swimming pools. This bill is about protecting our children and establishing a healthy society.'*<sup>5</sup>

---

<sup>3</sup> Letter from the Department of Justice and Attorney-General, 15 August 2013.

<sup>4</sup> *Explanatory Notes*, Classification of Publications (Billboard Advertising) and Other Legislation Amendment Bill 2013, page 1.

<sup>5</sup> *Record of Proceedings (Hansard)*, 23 May 2013, page 1799.

## 2. Existing regulation of outdoor advertising

Before going into the specifics of the Bill, it is worthwhile considering the background to the current policy debate in Queensland relating to outdoor advertising and setting out how the system of regulation of outdoor advertising currently operates.

### 2.1 Concurrent inquiry into outdoor advertising

On 5 March 2013, the Clerk of the Parliament tabled an e-petition in the Legislative Assembly, sponsored by Dr Robinson MP, from 1,399 petitioners. The wording of the e-petition was as follows:

*Queensland citizens draw to the attention of the House children and young people are entitled to live in a caring and nurturing environment, protected from harm and exploitation. Parents, families and communities have the primary role in safeguarding and promoting the wellbeing of their children and young people and should be supported in carrying out their roles. Sexually explicit material displayed across outdoor advertising, in particular, through billboards and shopfront windows, raises particular concerns due to the inability of members of the public to avoid such material. The protection of children and the civility of our society is adversely affected when sexually explicit and inappropriate material pervades our outdoor advertising. Of particular concern is the inherent inability of parents to restrict exposure of children to inappropriate images and slogans. Also of concern is the degradation of women portrayed by a selection of these billboards which is currently seen as acceptable in accordance with the Advertising Standards Board Code of Ethics. Sexually explicit material displayed in public areas continues to impact and contribute to the sexualisation of Australian children.*

*Your petitioners, therefore, request the House to reassess the current self-regulation scheme and enact State legislation that will place further restrictions on outdoor and shopfront advertising with the intention of preventing the display of material that is sexually explicit, offensive and/or inappropriate for children<sup>6</sup>.*

On 3 April 2013, the Honourable Jarrod Bleijie MP, Attorney-General and Minister for Justice (Attorney-General) tabled a ministerial response to the e-petition.<sup>7</sup>

In the response, the Attorney-General advised that *'the Queensland Government understands that there is ongoing concern in the community around outdoor advertising, and is considering the current regulatory model and whether legislative reform in this area is necessary.'*<sup>8</sup>

On 17 April 2013, the Committee of the Legislative Assembly referred to the HCSC an inquiry into Sexually Explicit Outdoor Advertising. The HCSC is to report to the Legislative Assembly by 31 January 2014.

The terms of reference of the Sexually Explicit Outdoor Advertising inquiry are:

1. That the Health and Community Services Committee inquire into and report on the current regulation of outdoor advertising in Queensland and whether reform, including legislative reform, is needed to protect children from being exposed to sexually explicit and inappropriate outdoor advertising.

<sup>6</sup> E-petition No. 2009-12, *Outdoor advertising should be G-rated*, tabled 5 March 2013, <http://www.parliament.qld.gov.au/work-of-assembly/petitions/closed-e-petition?PetNum=2009>.

<sup>7</sup> Standing Order 125.

<sup>8</sup> Ministerial response to E-petition No. 2009-12, Letter from the Honourable Jarrod Bleijie MP, Attorney-General and Minister for Justice to Mr Neil Laurie, Clerk of the Queensland Parliament, dated 3 April 2013.

2. That in undertaking this inquiry, the Committee is to consider:
  - a) the sexualisation of children and other adverse impacts on children through sexually explicit outdoor advertising;
  - b) the range of outdoor advertising, including roadside billboards, shopfront windows, on public shelters and public transport, and the existing regulation of such advertising spaces;
  - c) the adequacy of the existing regulation of outdoor advertising in Queensland, focusing on the effectiveness of the regulatory model to limit children's exposure to sexually explicit images and slogans;
  - d) the regulatory framework for other forms of media including publications and television that limits children's exposure to sexually explicit and inappropriate advertising and whether such framework could be applied to outdoor advertising;
  - e) previous parliamentary and expert reports on the regulation of outdoor advertising; and
  - f) any recommendations for reform for the regulation of outdoor advertising in Queensland.
3. Further, that the committee take public submissions and consult with relevant local, Queensland and Commonwealth government agencies, business and industry groups and other key stakeholders.
4. Further, that the committee is to report to the Legislative Assembly by 31 January 2014.

In reporting on the Bill, the Committee acknowledges there is some overlap between the Bill and the HCSC inquiry into sexually explicit outdoor advertising.

While the Committee is sensitive to community concerns regarding the appropriateness of outdoor advertising, the concurrent inquiry of the HCSC leaves the Committee in the unenviable position where, although it has an obligation to examine the Bill with a view to determining whether or not to recommend the Bill be passed,<sup>9</sup> another committee is undertaking a detailed examination and inquiry of very similar issues.

While the Committee's examination of the Bill needs to be considered in the context of the broader review undertaken by the HCSC, the Committee has not considered those broader issues and has focussed its inquiry on the implications of the limited policy objectives set out in the Bill.

## **2.2 Outdoor advertising in general**

Outdoor advertising permeates most outdoor spaces. It is difficult to ignore it. Its positioning along highly frequented routes makes it virtually impossible for members of the community to avoid it.

Unlike other mediums of advertising, such as radio, television and the internet, it is impossible for the community to 'turn off' outdoor advertising.

Outdoor advertising takes on numerous forms. For example, billboards on land adjacent to busy roads, and shopfront and window displays. Advertising space can be leased on, and inside, trains, trams, buses and taxis. Purpose built third party media display sites include billboard structures, mobile billboards and displays found in shopping centres.<sup>10</sup>

Outdoor advertising is a contentious issue. It has been the subject of a number of federal inquiries in recent years and continues to be discussed in the public forum.

---

<sup>9</sup> Standing Order 132.

<sup>10</sup> The Parliament of the Commonwealth of Australia, House of Representative Standing Committee on Social Policy and Legal Affairs, *Reclaiming Public Space: Inquiry into the regulation of billboard and outdoor advertising*, July 2011, page 1.

### 2.3 Advertising regulation in Australia

The advertising industry across Australia (including billboard, transport and poster advertising) is currently self-regulated. The system is funded by a levy paid by the advertising industry.

The self-regulation system is reliant on the voluntary actions of advertisers in agreeing to be bound by a number of codes of the Australian Association of National Advertisers (AANA) and the Outdoor Media Association (OMA).<sup>11</sup>

The self-regulatory system for advertising and marketing communications in Australia was established by the AANA in 1997. It was established in response to advertisers' recognition that they have a responsibility to deliver agreed and trusted standards.<sup>12</sup>

In its submission to the Committee, the Australian Standards Bureau (ASB) submitted:

*The self-regulation rules are based on the belief that advertisements should be legal, decent, honest and truthful, prepared with a sense of social responsibility to the consumer and society as a whole and with due respect to the rules of fair competition. Self-regulation of advertising is not designed to set community standards, but rather to reflect community standards.*<sup>13</sup>

Additionally, the ASB maintained:

*High standards of advertising are maintained through the interaction of the various parts of the self-regulation system:*

- *through the existence and development of appropriate codes and initiatives relating to advertising standards;*
- *the voluntary compliance of advertisers;*
- *the efforts of other industry stakeholders in ensuring compliance, supporting industry education and public awareness programs, and supporting enforcement where required; and*
- *the operation of the complaint resolution process.*<sup>14</sup>

### Advertising regulations in international jurisdictions

The advertising industry is also self-regulated internationally.<sup>15</sup>

In its submission to the Committee, the AANA highlighted:

*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.*<sup>16</sup>

The ASB is a member of the European Advertising Standards Alliance (EASA), the key organisation regarding advertising self-regulation issues in Europe and beyond.<sup>17</sup>

---

<sup>11</sup> Advertising Standards Bureau, Submission No. 8, page 4.

<sup>12</sup> Australian Association of National Advertisers, Submission No. 9, page 4.

<sup>13</sup> Advertising Standards Bureau, Submission No. 8, page 17.

<sup>14</sup> Advertising Standards Bureau, Submission No. 8, page 17.

<sup>15</sup> Outdoor Media Association, Submission No. 7, page 5.

<sup>16</sup> Australian Association of National Advertisers, Submission No. 9, page 7.

<sup>17</sup> Advertising Standards Bureau, Submission No. 8, page 25.

The ASB submitted:

*EASA promotes responsible advertising and high ethical standards in commercial communication and assists members and others via initiatives such as the EASA Advertising Self-Regulatory Charter and Best Practice recommendations. Membership of EASA allows the ASB to measure its performance and operations against international standards and ensures that we have access to an appropriate best practice model for advertising complaint resolution.*

*In line with the EASA work and in our role as Deputy Chair of International Council on Advertising Self-Regulation, ASB has worked to promote advertising self-regulation in the Asia/Pacific region. In November 2012, the ASB played the lead role in organising and conducting a Dialogue on Advertising Standards-Principles and Practice held in Hanoi for APEC economies.<sup>18</sup>*

The Committee acknowledges the ASB is committed to ensuring the retention and continued functioning of the self-regulatory system and notes that it maintains best practice standards by regularly undertaking research into community standards.

As submitted by the ASB:

*The Bureau is transparent about the research it commissions into community standards. As discussed above, the research is undertaken regularly as a means to measure changing community perceptions and to assess whether the Standards Board is continuing to make decisions in line with those perceptions or needs to realign its approach to the provisions of the various codes and initiatives it administers.*

*Where Bureau research finds that determinations of the Standards Board and/or community perceptions have shifted since the previous research was undertaken, this provides an opportunity for the Standards Board to inform itself and realign its decision-making. That is, the research aims to identify areas for improvement. Finding that there are some areas that the Standards Board can improve upon does not mean the system is failing. It means the system has in place effective procedures for correcting and adapting decision-making to ensure it remains in line with community expectations.<sup>19</sup>*

The Committee notes the ASB's commitment to ensure best practice standards and the common theme amongst submitters that the self-regulation system is of a high standard which it is constantly evolving to meet community expectations.

### **The bodies representing advertisers**

#### The Australian Association of National Advertisers

The AANA represents Australia's national advertisers.

The AANA established the self-regulatory system for advertising and marketing communications in 1997.<sup>20</sup> Its codes apply to all media and all advertisers (including outdoor advertising) and are technology and platform neutral.<sup>21</sup>

---

<sup>18</sup> Advertising Standards Bureau, Submission No. 8, page 25.

<sup>19</sup> Advertising Standards Bureau, Submission No. 8, pages 9-10.

<sup>20</sup> Australian Association of National Advertisers, Submission No. 9, page 6.

<sup>21</sup> Australian Association of National Advertisers, Submission No. 9, page 4.

In its written submission to the Committee, the AANA submit:

*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...*

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

*The AANA Code of Ethics 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.<sup>22</sup>*

### The Outdoor Media Association

The OMA represents the majority (90%) of Australia's third party outdoor advertising companies.<sup>23</sup> Outdoor advertising is advertising which is not associated with the premises on which it is displayed. For example, third party outdoor advertising is where an advertiser contracts with a private land owner to display an advertisement unrelated to the land owner's property.

Outdoor media companies advertise a variety of third-party products through various mediums 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.<sup>24</sup>

The OMA do not represent businesses that install on-premise advertisements that advertise the business, services and products on the advertiser's property.<sup>25</sup> The OMA submits that on-premise advertising is more prolific than third-party advertising, citing the example that in New South Wales, along Parramatta Road between Broadway and Leichhardt (an area similar to Gympie Road, Brisbane), there are about 2,140 on-premise signs compared to 14 third-party advertisements.<sup>26</sup>

The OMA is pivotal in ensuring its members comply with third party outdoor advertising requirements.<sup>27</sup> An essential component to the success of the self-regulation model is that the OMA incorporates the AANA's codes into the Code of Ethics applying to its members and committing OMA members to fully abide by the decisions of the ASB.<sup>28</sup> If a complaint is upheld by the ASB, the OMA ensures the content is removed.

<sup>22</sup> Australian Association of National Advertisers, Submission No. 9, page 7.

<sup>23</sup> Outdoor Media Association, Submission No. 7, page 4.

<sup>24</sup> Outdoor Media Association, Submission No. 7, page 4.

<sup>25</sup> Outdoor Media Association, Submission No. 7, page 4.

<sup>26</sup> Outdoor Media Association, Submission No. 7, page 4.

<sup>27</sup> Advertising Standards Bureau, Submission No. 8, page 4.

<sup>28</sup> Advertising Standards Bureau, Submission No. 8, page 4.

The OMA submit:

*The industry is entirely compliant with State and Local Government regulations, contractual requirements, and the decisions of the Advertising Standards Board. In relation to the latter, the OMA's members have been entirely co-operative on the small number of occasions when they have been asked to remove an advertisement. Advertisements found to be in breach are removed as quickly as practicable and are not re-posted.*

*In order to remove a billboard from display after an adverse finding, the following must be considered by the outdoor media display company:*

- *How is the site accessed?*
- *Are road closures necessary?*
- *Is a permit required to install a new advertisement?*
- *Does the site require any special equipment (for example, a cherry picker)?*
- *Does the site require qualified abseiling workers and/or safety protection officers?*
- *Is the site accessed through a building that is only open on weekdays, or only available for after-hours access?*
- *When can all these factors be co-ordinated to remove the display?*<sup>29</sup>

Accordingly, the OMA submits that 'depending on the particular site, it can be a complex logistical operation to remove an advertisement at short notice.'<sup>30</sup>

The OMA contends that where the ASB upholds a complaint about an advertisement, it requests the advertiser to remove the advertisement within seven days. The OMA will work with its members to remove signage within 48 hours of the receipt of an upheld complaint.<sup>31</sup> It is noted that occasionally it may take longer to remove signage if there is a logistical impediment.

The OMA maintains they have a one hundred per cent compliance rate with ABS findings and that this compliance demonstrates its commitment to the self-regulatory framework. Moreover, that '*OMA members are extremely mindful of advertisements which may be deemed controversial due to the cost involved in removing them following an upheld complaint. Due to this, members regularly reject copy from advertisers if they have concerns that it will breach any of the codes.*'<sup>32</sup> Furthermore, if an advertiser refuses to withdraw their advertisement, the OMA's members will take the advertisement down.<sup>33</sup>

The OMA submits that in contrast, on-premise advertising is generally less regulated than third-party advertising, however the structure of the sign may be similar in nature. Additionally, where on-premise advertisements are regulated, there is very little compliance with the advertising industry. The OMA cites the following example that where '*some on-premise signs along the roadside will include flashing lights or scrolling digital messages, contrary to regulatory requirements. These breaches generally continue unchecked by the relevant authority, unless a specific complaint is received by the authority. On-premise advertisers are often not aware of the various controls and regulations.*'<sup>34</sup>

---

<sup>29</sup> Outdoor Media Association, Submission No. 7, page 14.

<sup>30</sup> Outdoor Media Association, Submission No. 7, pages 14-15.

<sup>31</sup> Outdoor Media Association, Submission No. 7, page 14.

<sup>32</sup> Outdoor Media Association, Submission No. 7, page 15.

<sup>33</sup> Outdoor Media Association, Submission No. 7, page 16.

<sup>34</sup> Outdoor Media Association, Submission No. 7, page 15.

The Committee recognises on-premise advertising is more prevalent than third-party advertising. Given the expanse of outdoor advertising, on-premise advertisers play a large role in displaying content that falls within the reach of the self-regulation system.

The Committee is also conscious that there can be confusion in the community about the difference between third-party advertisers and on-premise advertisers, and the ability of the self-regulation industry to regulate the latter. This confusion may have a detrimental effect on the self-regulation industry due to its inability to regulate on-premise advertisers.

## **2.4 The complaint resolution component of the advertising self-regulation system**

### **The role of the Advertising Standards Bureau**

The ASB administers a number of codes of practice in relation to advertising. The codes relevant to the Bill are the AANA Code of Ethics and the Code for Advertising and Marketing Communications to Children.<sup>35</sup> The codes apply to all advertising and marketing communications across all media.<sup>36</sup>

The ASB administers the complaint resolution component of the advertising self-regulation system. It is not underpinned by any government legislation.<sup>37</sup>

The ASB submit:

*Its purpose is that the community, industry and government have confidence in, and respect the advertising self-regulatory system and are assured that the general standards of advertising are in line with community values.*<sup>38</sup>

Additionally, it *'aims to administer a well-respected, effective and independent advertising complaints resolution service that regulates advertising standards in Australia, adjudicating both public and competitor complaints, and to ensure compliance with relevant codes.'*<sup>39</sup>

The ASB is the secretariat for the Standards Board and the Advertising Claims Board (Claims Board). The Standards Board and the Claims Board are the bodies appointed to *'adjudicate public and competitor complaints in relation to advertising and to ensure compliance with the relevant codes and industry initiatives.'*<sup>40</sup> The Standards Board and the Claims Board are addressed further in this report.

In relation to the Standards Board and the Claims Board, the ASB submitted:

*The two boards have separate and distinct roles considering public and competitor complaints about advertising against the advertising codes they administer. Members of the Standards Board are community representatives, independent of the industry and appointed following a publicly advertised application and interview process. Members of the Claims Board are legal practitioners sourced from a register of lawyers experienced in advertising and/or competition and consumer law.*<sup>41</sup>

---

<sup>35</sup> Advertising Standards Bureau, Submission No. 8, page 17.

<sup>36</sup> Advertising Standards Bureau, Submission No. 8, page 17.

<sup>37</sup> Advertising Standards Bureau, Submission No. 8, page 17.

<sup>38</sup> Advertising Standards Bureau, Submission No. 8, page 17.

<sup>39</sup> Advertising Standards Bureau, Submission No. 8, page 17.

<sup>40</sup> Advertising Standards Bureau, Submission No. 8, page 17.

<sup>41</sup> Advertising Standards Bureau, Submission No. 8, pages 17-18.

### **Role of the Standards Board**

The Standards Board role is an independent body which determines public complaints about advertising and marketing advertisements against the principles set out in the relevant AANA codes. The ASB states that the overriding objective of the Standards Board is to make decisions relating to the relevant codes based on what it perceives are prevailing community attitudes.<sup>42</sup>

The Standards Board *'makes determinations on complaints about most forms of advertising in relation to issues including the use of language, the discriminatory portrayal of people, concern for children, portrayals of violence, sex, sexuality and nudity, and health and safety'*.<sup>43</sup>

In relation to the composition of the Standards Board, the ASB contends that:

*The Standards Board comprises twenty members of the community and reflects a diverse knowledge and experience base. The Standards Board is gender balanced and members come from a broad range of age groups and backgrounds. It is independent, dedicated and diverse and as representative of the diversity of Australian society as any such group can be.*

*Individual Standards Board members do not represent any particular interest group (industry or consumer) and are individually and collectively clearly independent of the industry. On the rare occasion an individual member has a connection with a party concerned in a particular determination, that Standards Board member absents herself or himself from the meeting.*

*The Standards Board discharges its responsibilities with fairness, impartiality and with a keen sense of prevailing community values in its broadest sense. Its task is often a difficult one and the outcomes of its determinations will not and cannot please everyone.*

...

*Standards Board Members participate in twice yearly training days to reinforce codes and initiatives and highlight issues impacting on community standards in advertising.*<sup>44</sup>

The ASB argue that the composition of the board *'aims to draw community expectations into its consideration of the rules set out in the codes.'* The ASB notes that what constitutes community expectations is a difficult task, as views on the types of issues set out in the codes are subjective and often attract different viewpoints.<sup>45</sup>

The ASB submits that to address the issue of different community standards, it ensures that the membership of the Standards Board is as diverse as possible. The Standards Board comprises of members who are from *'a diverse range of ages, professional backgrounds, geographic locations, family and personal circumstances. The diversity of the current membership means that the Standards Board, as a whole, is well placed to judge current community standards and to apply those community standards to the codes that it administers.'*<sup>46</sup>

---

<sup>42</sup> Advertising Standards Bureau, Submission No. 8, page 19.

<sup>43</sup> Advertising Standards Bureau, Submission No. 8, page 19.

<sup>44</sup> Advertising Standards Bureau, Submission No. 8, page 19.

<sup>45</sup> Advertising Standards Bureau, Submission No. 8, page 3.

<sup>46</sup> Advertising Standards Bureau, Submission No. 8, page 3.

## Role of the Claims Board

The Claims Board provides a separate competitive complaint resolution service which determines complaints involving issues of truth, accuracy and legality of advertising on a user pays cost recovery basis.<sup>47</sup>

The Claims Board considers complaints which breach Part 1 of the AANA Code of Ethics. This includes complaints about the legality of an advertisement, misleading or deceptive advertisements and advertisements that contain misrepresentations likely to harm a business. Complaints received by the Claims Board are considered by a panel of legal advisors with experience and expertise in advertising and/or trade practices law.<sup>48</sup>

## Government regulation

The self-regulation system in Australia exists alongside Commonwealth and State legislation. It is noted that advertising which breaches legislation is outside the scope of the self-regulation system.

All advertising content in Australia must comply with the *Competition and Consumer Act 2010* (Cth). The Competition and Consumer Act contains the Australian Consumer Law which protects consumers from false and misleading representations and misleading and deceptive conduct. All states and territories have enacted application legislation to adopt the Australian Consumer Law, so this law applies equally in all states and territories.<sup>49</sup>

## How does self-regulation work?

All members of the public can make a complaint about advertising to the ASB. The complaint process is free.

In its written submission to the Committee, the OMA submit that the first step in the self-regulation process is as follows:

1. *Members receive [advertisement] copy and reject it – the vast majority of controversial copy does not get sent to the OMA for review as members immediately identify that it will breach one of the codes.*
2. *Members send copy to the OMA to get an opinion if they need further advice to determine whether it will breach any of the codes.*
3. *If approved the advertisements are posted and when a complaint is lodged (one complaint sets off the system), the ASB reviews the advertisement. If the complaint is upheld, OMA members will bring it down immediately, members are one hundred per cent complaint.<sup>50</sup>*

In relation to the standard of transparency of decisions of the Standards Board, the ASB submitted:

*Complaints are promptly assessed as to their appropriateness for submission to the Standards Board for determination. The Bureau, as secretariat for the Standards Board, responds to all complainants, informing them of the status of their complaint and keeps*

---

<sup>47</sup> Advertising Standards Bureau, Submission No. 8, page 19.

<sup>48</sup> Advertising Standards Bureau, Submission No. 8, page 19.

<sup>49</sup> The Parliament of the Commonwealth of Australia, House of Representative Standing Committee on Social Policy and Legal Affairs, *Reclaiming Public Space: Inquiry into the regulation of billboard and outdoor advertising*, July 2011, page 15.

<sup>50</sup> Outdoor Media Association, Submission No. 7, page 16.

*complainants and advertisers informed of the progress of complaints throughout the process via written correspondence.<sup>51</sup>*

Additionally, the ASB submitted:

*In 2010, the Bureau initiated the development of a series of 'Determination Summaries', aimed at providing a general overview of Standards Board determinations on complaints about particular issues covered by the codes. The Determination Summaries are available from the ASB website and cover topics including discrimination and vilification in advertising, use of sexual appeal in an exploitative and degrading manner and portrayal of gender in advertising.*

*The summaries are not 'how to' guides and are not intended to operate in the manner of binding legal precedents, but are designed to assist the advertising industry, consumers and the Standards Board itself in understanding how the Standards Board has viewed particular issues covered by the codes that have been the subject of complaints in the past.*

*All case reports are also made publicly available on the Bureau website promptly after determination. Case reports contain details about the complaint, a description of the advertisement, the advertiser response and the Standards Board's determination, along with a summary of the reasons for its decision.<sup>52</sup>*

The ASB advocates:

*All case reports following Standards Board determinations are published on the Bureau website. Since these documents are available to the entire community, the Bureau ensures that determinations in case reports are articulated clearly, logically and concisely.*

*The Standards Board is extremely careful to follow appropriate process in making its determinations. The introduction of the Independent Reviewer process in 2008, which allows for a request for review on the basis of a flaw in the determination or a flaw in the process the Standards Board followed, increases the Standards Board's resolve to ensure sound decision making.<sup>53</sup>*

The ASB argues that as part of its ongoing commitment to international best practice in delivering the advertising self-regulation system, it introduced the Independent Review process for Standards Board determinations in April 2008. This appeal mechanism allows the community and advertisers a way to appeal decision of the Standards Board in prescribed circumstances.<sup>54</sup>

## **Statistics**

The OMA submitted that it has nearly 100 per cent compliance with decisions of the ASB and:

*Self-regulation is effective and the industry has a proven track record of being able to be relied upon to comply with the appropriate self-regulatory frameworks. ... the OMA has acted on community concerns and has instituted a range of changes within its membership to ensure that self-regulation continues to be the most robust way of regulating content. On average, the industry posts 30,000 pieces of advertising copy in Australia each year on over 73,000 advertising faces nationally and in Queensland in 2012 over 12,000 pieces of advertising copy were displayed.<sup>55</sup>*

---

<sup>51</sup> Advertising Standards Bureau, Submission No. 8, page 21.

<sup>52</sup> Advertising Standards Bureau, Submission No. 8, pages 21-22.

<sup>53</sup> Advertising Standards Bureau, Submission No. 8, page 22.

<sup>54</sup> Advertising Standards Bureau, Submission No. 8, page 20.

<sup>55</sup> Outdoor Media Association, Submission No. 7, page 15.

The following table outlines the number of complaints the industry has generated over the past three years:<sup>56</sup>

OMA members complaints upheld	Number	Percentage of all outdoor ads	Percentage of complaints to the ASB (Billboards)	In the top ten ads most complained about	AANA Guideline contravened
2011	8	.02%	26.35%	3	Sex, sexuality and nudity
2012	3	.01%	4.80%	0	1, violence, 2 health and safety
2013*no breaches to date	0	0	-	-	-

The OMA submit it ran 30,000 advertisements nationally in 2013. Of those 30,000 advertisements, 12,000 ran in Queensland. Only three advertisements or 0.01 per cent of the 30,000 advertisements breached the code.<sup>57</sup>

#### Is the advertising self-regulation system successful?

The majority of submitters strongly argue the advertising self-regulation system is successful and that government regulation is not needed. They outlined their reasons as follows:

The ASB submitted:

*Australia's system of advertising self-regulation is recognised as world class... It recognises that advertisers share an interest in promoting consumer confidence in and respect for general standards of advertising.*

*Self-regulation of the advertising industry has been achieved by establishing a set of rules and principles of best practice to which the industry voluntarily agrees to be bound. These rules are expressed in a number of advertising codes and industry initiatives. The rules are based on the belief that advertisements should be legal, decent, honest and truthful, prepared with a sense of social responsibility to the consumer and society as a whole and with due respect to the rules of fair competition. Self-regulation of advertising is not designed to set community standards, but rather to reflect community standards.*

*The system is funded by advertisers agreeing to a levy being applied to their media expenditures and is well supported by all parts of the industry – advertisers, advertising agencies, media buyers, media operators and industry associations.*

*The system meets world best practice in self-regulation and operates, at no cost to the consumer, on the principles of accessibility, transparency, responsiveness and robust decision making.<sup>58</sup>*

<sup>56</sup> Outdoor Media Association, Submission No. 7, page 15.

<sup>57</sup> *Transcript of Proceedings (Hansard)*, Public Briefing, Health and Community Services Committee: Inquiry into the Sexually Explicit Outdoor Advertising, 30 July 2013, page 4.

<sup>58</sup> Advertising Standards Bureau, Submission No. 8, page 17.

The Committee notes the ASB's argument that regulatory intervention is not required or justified for the less than one per cent of advertisements which have been complained about and have failed to comply with the system in more than fourteen years of operation.<sup>59</sup>

The ASB also highlighted:

*Regardless of an advertiser's reaction to a Standards Board determination, in the vast majority of cases where code breaches are found, advertisers quickly ensure that their advertisement is removed or modified. Very few advertisers require more encouragement to comply. However, if necessary the Bureau has developed a range of enforcement actions to ensure compliance with Standards Board decisions.*

*... If a complaint indicates that an advertisement may breach government regulations or has broken the law, the Bureau can refer the case report to an appropriate government agency or industry body that has the authority to withdraw the advertisement. This can be done without a case going to the Standards Board for consideration.<sup>60</sup>*

The Committee notes the ASB's arguments that the vast majority of advertisements do not receive any complaints; the majority of advertisements complained about are not found to be in breach of community standards; and the ASB's success with ensuring compliance where the Standards Board upholds complaints about an advertisement is nearly one hundred per cent.<sup>61</sup>

The OMA submitted that government regulation does not appear reasonably justified where in 2012 only 0.01 per cent of third-party advertisements have been the subject of an adverse finding by the ASB and for the first six months of 2013, no complaints have been upheld.<sup>62</sup>

The OMA went further to argue the effectiveness of the current self-regulatory system is demonstrated by:

- *the small number of cases upheld by the ASB, relative to the large number of advertisements displayed (0.01 per cent in 2012);*
- *the industry's compliance with findings of the ASB; and*
- *the steps taken by the industry to respond to community concerns about content in 2011 after two federal inquiries.<sup>63</sup>*

The OMA contend:

*The benefits of the current self-regulatory system (including overall effectiveness and cost-efficiency) significantly outweigh the small number of occasions on which a complaint has been upheld. It would be unnecessarily cumbersome to subject some 12,000 third-party advertisements annually to government regulation where 99.99% of them are acceptable to the wider community.*

*A government regulatory framework, particularly one that utilises a classification system not originally designed for that specific use, for outdoor advertising would reduce the viability of outdoor advertising in comparison to television, radio, internet and print advertising. The OMA considers that this outcome is not justified by the small number of complaints upheld by the ASB. Such an outcome would have a detrimental effect on the*

---

<sup>59</sup> Advertising Standards Bureau, Submission No. 8, page 11.

<sup>60</sup> Advertising Standards Bureau, Submission No. 8, page 25.

<sup>61</sup> Advertising Standards Bureau, Submission No. 8, page 27.

<sup>62</sup> Outdoor Media Association, Submission No. 7, page 20.

<sup>63</sup> Outdoor Media Association, Submission No. 7, page 22.

*industry and on the industry's ability to continue making substantial contributions to the community.*<sup>64</sup>

In contrast to the view that the advertising self-regulation system is working well without government intervention, the KAP argued '*prevention is best practice for social responsibility.*'<sup>65</sup>

Expanding on this argument, the KAP contend:

*It is our belief that the ASB must change its approach, from a reactionary process that is based on consumer reaction and voluntary compliance of advertisers; to a preventative process which ensures social responsibility is enforced by a legislative authority in line with the Commonwealth Classification (Publications, Films and Computer Games) Act.*

*The role of the ASB and AANA is not underpinned by any Government legislation and is solely reliant on the voluntary compliance of advertisers. The ASB has no legal authority to enforce any of the guiding principles that are founded in the AANA code of ethics.*

*The ASB and AANA code of ethics is a system which could be effective, only if there is government legislation to underpin the self-regulatory system; otherwise it is just a good 'idea', without any authority.*<sup>66</sup>

---

<sup>64</sup> Outdoor Media Association, Submission No. 7, page 23.

<sup>65</sup> Advice from Mr Hopper MP, Katter's Australia Party, 5 September 2013, page 1.

<sup>66</sup> Advice from Mr Hopper MP, Katter's Australia Party, 5 September 2013, page 1.

### **3. Examination of the Classification of Publications (Billboard Advertising) and Other Legislation Amendment Bill 2013**

#### **3.1 Examination of the Bill**

This section discusses the key issues raised during the Committee's examination of the Bill. The Committee has examined the policy objectives contained in the Bill under the broad headings below which do not necessarily follow the order in which they appear in the Bill.

The Bill proposes to adopt the classification system as prescribed by the *Classification (Publications, Films and Computer Games) Act 1995* (Cth) (Commonwealth Act) for the advertising of billboards.<sup>67</sup> The classification system has been developed especially for films, computer games and certain publications as part of the national cooperative classification scheme.

The Bill removes the requirements for advertising of computer games and films on billboards currently dealt with under the *Classification of Computer Games and Images Act 1995* and *Classification of Films Act 1991* – and bring together all regulation of billboards under amendments to the *Classification of Publications Act 1991*, renamed as the *Classification of Publications and Billboard Advertisement Act 1991*.<sup>68</sup>

The Bill purports to go on to set up a regime of classification zones which will apply to the regulation of billboards throughout Queensland.

#### **3.2 The national classification system**

To understand the intent of the Bill, consideration must be given to the relevant categories under the national classification scheme. The Classification Board<sup>69</sup> defines the categories as follows.

##### **G - General**

The content is very mild in impact.

The G classification is suitable for everyone. G products may contain classifiable elements such as language and themes that are very mild in impact. However, some G-classified films or computer games may contain content that is not of interest to children.<sup>70</sup>

In the context of analysing the Bill, it is important to note that the *Guidelines for the Classification of Films and Computer Games*, defines that the general (G) classification includes that:

- The treatment of themes should have a very low sense of threat or menace, and be justified by context.
- Violence should have only a low sense of threat or menace, and be justified by context.
- Sexual violence is not permitted.
- Sexual activity should be very mild and very discreetly implied, and be justified by context.
- Sexual activity must not be related to incentives or rewards.

---

<sup>67</sup> *Classification (Publications, Films and Computer Games) Act 1995* (Cth), section 7.

<sup>68</sup> Classification of Publications (Billboard Advertising) and Other Legislation Amendment Bill 2013, Clauses 1-9.

<sup>69</sup> An independent Statutory Body established under section 45 of the *Classification (Publications, Films and Computer Games) Act 1995* (Cth), <http://www.classification.gov.au/Pages/Home.aspx>, accessed 28 August 2013.

<sup>70</sup> <http://www.classification.gov.au/Guidelines/Pages/G.aspx>, accessed October 2013.

- Coarse language should be very mild and infrequent, and be justified by context.
- Drug use should be implied only very discreetly, and be justified by context.
- Drug use related to incentives or rewards is not permitted.
- Interactive illicit or proscribed drug use is not permitted.
- Nudity should be justified by context.
- Nudity must not be related to incentives or rewards.

### **PG - Parental Guidance**

The content is mild in impact.

The impact of PG (Parental Guidance) classified films and computer games should be no higher than mild, but they may contain content that children find confusing or upsetting and may require the guidance of parents and guardians. They may, for example, contain classifiable elements such as language and themes that are mild in impact. It is not recommended for viewing or playing by persons under 15 without guidance from parents or guardians.<sup>71</sup>

### **M - Mature**

The content is moderate in impact.

Films and computer games classified M (Mature) contain content of a moderate impact and are recommended for teenagers aged 15 years and over.

Children under 15 may legally access this material because it is an advisory category. However, M classified films and computer games may include classifiable elements such as violence and nudity of moderate impact that are not recommended for children under 15 years.

Parents and guardians may need to see the film or computer game's specific content before deciding whether the material is suitable for their child.<sup>72</sup>

### **MA 15+ - Mature Accompanied**

The content is strong in impact.

MA 15+ classified material contains strong content and is legally restricted to persons 15 years and over. It may contain classifiable elements such as sex scenes and drug use that are strong in impact.<sup>73</sup>

The above classifications apply to all films and computer games. Every film and computer game has to be classified before it can be legally made available to the public.<sup>74</sup>

## **3.3 Can the classification system be used for advertising**

There have been two recent federal inquiries into advertising regulation.

In June 2011, the Senate Legal and Constitutional Affairs References Committee tabled the *Review of the National Classification Scheme: achieving the right balance*. In July 2011, the House of Representatives Standing Committee on Social Policy and Legal Affairs tabled *Reclaiming Public*

<sup>71</sup> <http://www.classification.gov.au/Guidelines/Pages/PG.aspx>, accessed 11 October 2013.

<sup>72</sup> <http://www.classification.gov.au/Guidelines/Pages/M.aspx>, accessed 11 October 2013.

<sup>73</sup> <http://www.classification.gov.au/Guidelines/Pages/MA15+.aspx>, accessed 11 October 2013.

<sup>74</sup> <http://www.classification.gov.au/About/Pages/Classification-Board.aspx>, assessed 9 October 2013.

*Space: Inquiry into the regulation of billboard and outdoor advertising (House of Representatives inquiry).*

The House of Representatives inquiry is beneficial to the Committee in its analysis of the Bill as it relates specifically to the regulation of billboards and outdoor advertising.

The House of Representatives Committee was of the view that outdoor advertising constitutes a special category of advertising, and that it should be addressed in a different way to that of other types of advertising, such as print and television. Moreover, it expressed the view that outdoor advertising requires a more socially responsible approach.<sup>75</sup>

The House of Representatives Committee considered a number of possible methods for the regulation of outdoor advertising. This included statutory regulation (exploring the framework of an existing government authority, the Classification Board, established by the *Classification (Publication, Films and Computer Games) Act 1995* (Cth), which classifies films, computer games and certain submittable publications in Australia;<sup>76</sup> quasi-regulation and co-regulation and finally, self-regulation.

In relation to statutory regulation, the House of Representatives Committee was of the view that the National Classification Scheme (statutory regulation) was an inappropriate system for regulating advertising, concluding:

*After careful consideration of the National Classification Scheme, the Committee has rejected the classification system as an inappropriate system for regulating outdoor advertising. The purpose of classification is to provide information on a cover about a publication, film or computer game's content, so that consumers can make an informed decision to purchase or view the item. It is not feasible to classify an outdoor advertisement that does not contain any additional content other than that which is on display.<sup>77</sup>*

In addition to the inappropriateness of the National Classification Scheme, the House of Representatives Committee went on to state:

*Outdoor advertisements are an effective means of conducting public health and social awareness campaigns, and if the content of such campaigns is appropriate to a public space, these should not be restricted by a G rating. Further, a regulatory scheme based on government classification would likely place a greater financial and administrative burden on the industry, and it is consumers who would ultimately bear these costs.<sup>78</sup>*

In support of this view, the OMA also submitted that a G rating system may preclude the display of a number of different public health and community awareness campaigns. For example, campaigns similar to the New South Wales government award winning binge drinking campaign may not

---

<sup>75</sup> The Parliament of the Commonwealth of Australia, House of Representative Standing Committee on Social Policy and Legal Affairs, *Reclaiming Public Space: Inquiry into the regulation of billboard and outdoor advertising*, July 2011, page 23.

<sup>76</sup> The Parliament of the Commonwealth of Australia, House of Representative Standing Committee on Social Policy and Legal Affairs, *Reclaiming Public Space: Inquiry into the regulation of billboard and outdoor advertising*, July 2011, page 27.

<sup>77</sup> The Parliament of the Commonwealth of Australia, House of Representative Standing Committee on Social Policy and Legal Affairs, *Reclaiming Public Space: Inquiry into the regulation of billboard and outdoor advertising*, July 2011, page 36.

<sup>78</sup> The Parliament of the Commonwealth of Australia, House of Representative Standing Committee on Social Policy and Legal Affairs, *Reclaiming Public Space: Inquiry into the regulation of billboard and outdoor advertising*, July 2011, page 36.

achieve a G rating. Other public health campaigns which may also be prevented from being displayed include the QUIT smoking campaigns, safe sex messages and various road safety campaigns.<sup>79</sup>

Similarly, the ASB argued:

*G or PG classification categories do permit elements of violence, sexual activity, language and nudity, with some limitations. For example nudity is allowed but “should be justified by context”. Applying classifications offers no substantive changes from the existing approach taken by the Standards Board in making determinations, which incorporates considerations of the relevance of the advertising to the product and/or context. Accordingly, it is unlikely to offer any significant advantages over the existing regulation of outdoor advertising.<sup>80</sup>*

In contrast to views that the classification system was inappropriate, in its written advice to the Committee, the KAP argued:

*The KAP policy research team believes outdoor advertising constitutes a special category of advertising which is subject to a different code regarding content and placement, which will underpin and strengthen the current self-regulatory system...*

*The KAP policy research team considered all the models presented in the report to regulate outdoor advertising and decided after further investigation that the Classification Board system would be the most efficient and proactive form of regulation or co-regulation.<sup>81</sup>*

The OMA argued the ratings which have been used to classify billboards under the proposed Bill have been developed specifically for films and computer games, not for billboards or other forms of advertising.

As a result, the OMA submitted ‘that this would lead to the classification scheme being used inexpertly for a purpose it was not originally intended, making it unsuitable for use in advertising. The usage of these ratings may also create legal implications if they were being used for a purpose for which they were not intended.’<sup>82</sup>

Additionally, the OMA contends that most current outdoor advertising would fall into the G or PG categories, as set out by the proposed Bill, including some which have recently caused controversy. Specifically, the OMA cited an advertisement for Honey B, which attracted a number of complaints, under the proposed classification system in the Bill, would likely receive a PG classification.<sup>83</sup>

The House of Representatives Inquiry Committee did not comment specifically on the quasi-regulation and co-regulation system. However, in relation to self-regulation it stated:

*The committee failed to be convinced that a government regulatory or classification model would improve compliance or provide a more effective means of regulating the industry in line with community expectations.<sup>84</sup>*

It is important to note that although the House of Representatives Inquiry Committee was in favour of self-regulation, it did make a number of recommendations to improve flaws within the system.

---

<sup>79</sup> Outdoor Media Association, Submission No. 7, pages 20-21.

<sup>80</sup> Advertising Standards Bureau, Submission No. 8, page 10.

<sup>81</sup> Advice from Mr Hopper MP, Katter’s Australia Party, 5 September 2013, page 11.

<sup>82</sup> Outdoor Media Association, Submission No. 7, page 22.

<sup>83</sup> Outdoor Media Association, Submission No. 7, page 22.

<sup>84</sup> The Parliament of the Commonwealth of Australia, House of Representative Standing Committee on Social Policy and Legal Affairs, *Reclaiming Public Space: Inquiry into the regulation of billboard and outdoor advertising*, July 2011, page 36.

In response to the 2011 inquiry into the regulation of billboard and outdoor advertising, the OMA developed a content review policy which requires its members to seek advice before posting certain types of advertisements. If the OMA decides the advertisement is likely to breach the AANA Code of Ethics, the advertisement will not be displayed.

The review policy also requires members to immediately remove an advertisement if a complaint against it is upheld by the ASB.

Supporting the view that the classification system is unsuitable for outdoor advertising, the Australian Christian Lobby (ACL) submitted that while it agreed in principle with the rationale behind the objectives of the Bill it could not support the Bill in its current form. The ACL stated in its submission to the Committee:

*The geographical zoning proposal falls short of what is required to adequately protect children and families from sexualised billboards.*

*ACL believes that all public outdoor areas should be accessible to and safe for children and families. There seems no justification for regarding some areas as MA15+ zones based on their lack of certain facilities. Even if some areas are predominantly frequented by adults only, establishing an MA15+ zone would potentially draw an excess of MA15+ billboards and reinforce the idea that certain areas in public are not for children. As a society we should encourage the idea that the outdoors is a place for everyone. We should strive for a society where parents do not have to avoid certain "zones" to keep their children safe.<sup>85</sup>*

The ACL went on to argue:

*It is true that many of the most controversial billboards attract complaints based on their proximity to a school, for example. But just because billboards in certain locations are guaranteed to be viewed by children does not mean that billboards away from these locations will not be viewed by the same children.*

*The stated policy objectives include "chang[ing] the behaviour of the advertising and marketing industries use of moderate (Mature (M)) or strong (Mature Accompanied (MA15+)) content". The introduction of geographical zoning would only modify behaviour to a limited extent. It would limit the locations available, but it would still allow the production of M and MA15+ material to be displayed in public spaces. The industries would not change their behaviour but would continue to produce sexualised images.*

*Similarly, the requirement of a levy on M and MA15+ billboards is unlikely to be an adequate deterrent. The Explanatory Notes describe the levy as a "stimuli for advertising and marketing industries to change their use" of M and MA15+ content. This is ambitious. A small levy on billboard owners could easily be passed on to advertisers, who would likely be willing to pay extra to avoid having to change their marketing strategies and cease using of M and MA15+ content.<sup>86</sup>*

The ACL acknowledged:

*The Bill recognises the problem of sexualisation in outdoor advertising. However, it falls short of offering an adequate solution. Establishing zones in which adult content can be displayed, even for a cost to the advertiser, is not an answer. We have a responsibility to protect children from sexualised advertising. All public spaces should be safe for families*

---

<sup>85</sup> Australian Christian Lobby, Submission No. 6, page 4.

<sup>86</sup> Australian Christian Lobby, Submission No. 6, page 5.

*and children. All outdoor advertising should be G rated. This is the only system of advertising regulation that will provide a safe environment for all children.*<sup>87</sup>

The evidence received by the Committee shows:

- the current national classification scheme has been designed for particular application to films and computer games; and
- the advertising industry is significantly different from the film and computer games industry.

The Committee recognises the scope and detail of the House of Representatives Inquiry and its findings that the classification system was not an appropriate system for regulating outdoor advertising. The Committee supports this view and has determined that the Bill's proposal of a classification system based on the classification of films and computer games is not an appropriate system for regulating billboards.

It would be inappropriate to attempt to apply the scheme for a purpose beyond the scope that it has been designed for.

### **3.4 Process for classifications under the Bill**

Setting aside the appropriateness or otherwise of the application of the national classification scheme to billboards, further aspects of the policy intent of the Bill are examined below.

#### **Geographical Classification Zones**

Proposed section 11M of the Bill establishes a number of 'classification zones' throughout Queensland which are intended to regulate billboard advertising within the relevant zone.

The four classes of zones established in the Bill are:

- a general classification zone;
- a parental guidance classification zone;
- a mature classification zone; and
- a mature accompanied classification zone.

#### General Zone

The Bill provides the general classification zone applies to every area of the State, other than an area established as another classification zone by the Minister.<sup>88</sup>

Despite this, the Explanatory Notes state the General (G) classification will have a radius of 10km from the 'impact area' which is described as facilities that are *'highly frequented by families and children such as schools, bus stops, train stations, hospitals, religious centres, community parks, shopping centres, theme parks, popular coastal areas, sporting facilities, community swimming pools and holiday areas.'*<sup>89</sup>

Proposed section 11O provides that the Minister may establish an area of the State as one of the other three classifications zones. The criteria for establishment of one of the other zones is set out in the Bill and Explanatory Notes.

---

<sup>87</sup> Australian Christian Lobby, Submission No. 6, page 5.

<sup>88</sup> Proposed section 11N.

<sup>89</sup> *Explanatory Notes*, Classification of Publications (Billboard Advertising) and Other Legislation Amendment Bill 2013, page 6.

### Parental Guidance Zones

Proposed section 11P of the Bill provides that the Minister may only establish an area of the State as a parental guidance classification zone if the whole of the area is at least 15km from facilities frequented by children and families.

The Bill does not provide a definition of facilities frequented by children and families, rather, the Bill provides the following example:

*Examples of facilities frequented by children and families—*

- *schools, bus stops, train stations, hospitals, shopping centres, sporting facilities, religious centres.*

The Explanatory Notes provide that billboards and mobile billboard advertising can have PG classification where the advertising is in an area that is '*moderately frequented by families and used as thoroughfares to schools, bus stops, train stations religious centres, community parks, shopping centres, theme parks, popular coastal areas, sporting facilities, community swimming pools and holiday areas.*'<sup>90</sup>

### Mature and MA+ Zones

Proposed section 11Q establishes mature and mature accompanied classification zones. The section provides that the Minister may only establish a mature and mature accompanied classification zone if the area is not a PG zone and the whole of the area is at least 20km from facilities frequented by children and families.

The Explanatory Notes provide that billboards and mobile billboard advertising can have a Mature (M) and Mature Accompanied (MA15+) classification where the advertising is in an area that is least frequented by families and children.<sup>91</sup>

### **Zone Classification process**

To assist the Minister in establishing the above classification zones, the Bill establishes a geographical classification zoning branch and a State billboard geographical classification zoning panel (the panel).<sup>92</sup>

Proposed section 11R enables the Minister to ask the panel to consider whether an area of the State should be established as a zone other than a general classification zone and make a recommendation to the Minister before a particular day. The panel *may* consult with local government bodies, or any other person it considers appropriate and give the Minister any recommendation it considers appropriate.

Under proposed section 11S, the Minister must decide whether to accept the recommendation and if not, provide a statement of reasons to the panel. If the Minister decides to establish an area as a classification zone, the Minister must publish a map of the zone on the Department's website.

---

<sup>90</sup> *Explanatory Notes, Classification of Publications (Billboard Advertising) and Other Legislation Amendment Bill 2013, page 6.*

<sup>91</sup> *Explanatory Notes, Classification of Publications (Billboard Advertising) and Other Legislation Amendment Bill 2013, page 7.*

<sup>92</sup> Proposed sections 11G and 11L.

### Is the proposed zone classification system workable?

The Committee is of the view that the geographical classification category zones appear on the face of the Bill to be unworkable – in that it would be almost impossible for zones other than General (G) classification zones to be established.

Having regard to the examples of facilities ‘frequented by children and families’, the Committee considered how the zoning provisions would work using maps of the Department of Education and Training (DET) showing the position of schools.

Using only the geographical location of schools and the requirement that the Minister can only establish an area of the state as a Parental Guidance (PG) zone if the whole of the area is at least 15km from a school - almost 100% of the geographical area of the Metropolitan and South-East regions as set out on the DET maps – cannot be declared as anything other than a General (G) Zone. (see **Appendix B**).

As depicted in the diagrams, the combined area from the NSW border to the north of Brisbane and west out to the Darling Downs and Darling Downs South West Region would not qualify to be any area other than a General (G) Zone.

This example does not take into account any other type of area frequented by children and families such as train stations, sporting facilities or religious centres – only schools. As the radius required for M or MA15+ Zones is even greater than the PG Zone radius used in the example, it would be even more difficult to establish one of these zones.

In its submission to the Committee, the ASB argued that in relation to the geographical zones contained in the Bill:

*The Bill contains references to “facilities frequented by children and families”, without any guidance as to what is meant by the term “frequented”. It is also unclear how this would work with moving billboards, for example where bus routes change.<sup>93</sup>*

The Committee notes the example provided in clause 11P, but considers the issue raised by the ASB highlights the problems with the zone classification process.

There is a distinct lack of clarity in the Bill as to how the panel and the Minister are to reach decisions about establishing classification zones. The Bill does not include any criteria to inform the panel or the Minister in making decisions on classification zones, nor does the Bill contain any reference to the concepts set out in the Explanatory Notes relating to whether places are ‘highly frequented’, ‘moderately frequented’ or ‘least frequented’ by children and families.

It is unclear from the Bill how decisions about the frequenting of an area will be made. As highlighted in the attached maps, it is also unclear as to how a 15 km or 20 km radius is to have any application in cities and metropolitan areas throughout the state, when there are innumerable numbers of facilities which could be ‘frequented’ by children or families.

The Committee does not understand why the Bill provides for separate zones of Mature (M) and Mature Accompanied (MA 15+) zones when there is no discernible difference between these two zones or the criteria for classification of the zones reflected in the Bill. Given there is a significant difference between M and MA15+ in the national classification scheme (content that is moderate in impact vs content that is strong in impact), the Committee cannot see how there is no difference in the proposed classification of accompanying zones.

<sup>93</sup> Advertising Standards Bureau, Submission No. 8, page 11.

### Classification of Billboard Advertisements

Hand in hand with the geographical classification of zones, the Bill establishes a process for billboard advertisements themselves to also be classified.

The Bill requires a person who proposes to display advertising on a billboard to apply to the Chief Executive (of the Department of Justice and Attorney-General) to decide an 'appropriate classification' for the proposed billboard advertisement.<sup>94</sup>

The process outlined in the Bill however does not require the Chief Executive to ask the panel to recommend an appropriate classification for the advertisement itself but to recommend an appropriate classification *zone* to apply to the Billboard advertisement.<sup>95</sup> The panel must make a recommendation within 14 days.

Within a further 14 days, the Chief Executive must decide whether or not to accept the recommendation of the panel and provide a statement of reasons to the panel. The Chief Executive must also give written notice to the applicant and also provide the applicant with reasons for the decision.<sup>96</sup>

Under proposed section 11Y, the Chief Executive must – only if the application relates to a proposed billboard advertisement for a publication, film or computer game that has been classified under the national classification scheme – decide the application for classification in a way that is consistent with the classification under the Commonwealth Act.

In its written advice to the Committee, KAP argued:

*The implementation of the pre-vetting classification and geographical zoning policy will legislatively underpin the ASB and AANA Code of Ethics and enable the self-regulating system to enforce advertisers to adhere to the established Code of Ethics.*<sup>97</sup>

Further, the KAP argued the proposed Bill would be more effective than the current self-regulatory process:

*Under our policy, advertisers would be required to adhere to pre-vetting, classification, and geographical zoning before they proceed to final production. Our policy will create a legislative framework that will underpin and strengthen the ASB and AANA ability to enforce their Code of Ethics upon unethical Advertisers.*

*Pre-vetting, classification, and geographical zoning will create a clear and distinct process which will ensure the ASB and AANA social responsibilities to the relevant audience are adhered to by Advertisers. This should act as a preventative to community concerns regarding advertising.*

*Our policy should be implemented into the ASB and AANA system and be utilised as a co-regulatory legislative authority, which can be used to enforce the ASB and AANA Code of Ethics upon Advertisers. At present the ASB and AANA have no authority to enforce their Code of Ethics and are reliant on the voluntary participation by Advertisers.*

*We believe that the AANA and the ASB must shift from a reactionary system which is reliant on complaints to gain compliance from Advertisers; to a preventative system that enforces compliance from the Advertisers and reduces the reliance on complaints.*<sup>98</sup>

---

<sup>94</sup> Proposed section 11V.

<sup>95</sup> Proposed section 11W.

<sup>96</sup> Proposed section 11X.

<sup>97</sup> Advice from Mr Hopper MP, Katter's Australia Party, 5 September 2013, page 6.

<sup>98</sup> Advice from Mr Hopper MP, Katter's Australia Party, 5 September 2013, page 6.

KAP argue that ASB must shift *'from a reactionary system which is reliant on complaints to gain compliance from advertisers, to a preventative system that enforces compliance from the advertisers and reduces the reliance on complaints.'*<sup>99</sup>

While the intent of the Bill is to implement a new regulatory regime for billboard advertising, it appears to fall spectacularly short in doing so. In addition to the unworkable process of establishing zones under the Bill, the classification application process is also lacking.

The Bill again fails to provide any criteria, or provide any guidance to the panel or the Chief Executive when reaching decisions about billboard advertisements that are not for publications, films or computer games, and therefore have not received a national classification.

For those that do, despite the content of the proposed billboard and the current requirements for the advertisement to display the classification, the Bill purports to limit the product to being advertised in the corresponding classification zone. Coupled with the unworkable process for establishing zones, this would mean, despite what was on the advertisement itself, there would be no place in metropolitan Brisbane and surrounds where an M or MA15+ movie could be advertised on a billboard.

As an example, if a movie contained a single scene that required it to be classified as MA15+, the Bill would seemingly prohibit the advertising of that film on any billboard in any metropolitan area, even if the billboard showed a picture or scene of the movie that was unrelated to the scene which contributed to the classification of MA15+.

Despite the references to the Commonwealth Act in the Explanatory Notes (referring to the relevant classifications), the Bill makes no provision to actually require the Minister, Chief Executive or panel to have regard to these classifications when reaching a decision about the classification of a billboard advertisement.

In contrast to the approach taken in the Bill, the provisions of the existing *Classification of Publications Act 1991* which relate to the classification of a publication – require the classification officer to apply to the relevant provisions of the Commonwealth Act in reaching a decision.<sup>100</sup> Further, unlike decisions which are made under the National Classification Scheme, the Bill does not provide for a mechanism of review of the Chief Executive's decision about a billboard advertisement.

The Committee considers that problems would still exist even if an appropriate linkage was made between the decision making process and the requirement to have regard to the classification system. The impartiality of the classification system is at odds with the Bill's policy objectives, as stated in the Explanatory Notes:

*This policy will also determine a framework for mandatory billboard geographical zoning based on classification rating. This will reduce the risk of exposing communities to the displaying of moderate (Mature (M)) or strong (Mature Accompanied (MA15+)) content in areas highly frequented by families and children.*<sup>101</sup>

As stated earlier in this report, simply adopting the films and computer games classification system would not prevent advertisements which the community perceive to be contentious being classified as falling within the M or MA+15 rating. Different considerations are taken into account in outdoor advertising than in relation to films and computer games.

<sup>99</sup> Advice from Mr Hopper MP, Katter's Australia Party, 5 September 2013, page 6.

<sup>100</sup> Section 9, *Classification of Publications Act 1991*.

<sup>101</sup> *Explanatory Notes*, Classification of Publications (Billboard Advertising) and Other Legislation Amendment Bill 2013, page 1.

Finally, as this Bill only regulates billboards (outdoor structures) and mobile billboards and not on-premise or shop-window advertising (which could appear in shops adjacent to schools), the objectionable advertisements that are intended to be caught by this Bill would not be caught at all by the proposals in the Bill if they appeared as on-premise advertisements.

### Sanctions in the Bill

The Bill creates an offence to display a billboard that is unclassified or has been classified as appropriate for display in a Mature (M) classification zone or Mature Accompanied (MA15+) zone, in a General (G) or Parental Guidance (PG) zone.<sup>102</sup>

No distinction is made between the MA15+ billboard being displayed in the G or PG zone, nor is there any distinction between the MA15+ or M billboard being displayed in the incorrect area.

The Bill also includes a provision which enables the Chief Executive, on receipt of a complaint, to direct an inspector to remove a billboard advertisement from any place the inspector is lawfully able to enter. It does not appear that there is any power to remove an M or MA15+ billboard without a complaint.

### Geographical classification zone levy

The Bill also introduces a levy payable for billboards located in, or moving within, a Mature (M) or Mature Accompanied (MA+) zone.<sup>103</sup> The levy is calculated as 10% of the net revenue received for each leviable billboard. The levy is payable for a month if the billboard owner had at least one leviable billboard and received revenue for the billboard during the month.

The Bill sets out a process whereby the owner of a billboard, on the first day of each month, must give the manager of the zoning branch the following information for the previous month:

- the number of leviable billboards the owner had during the previous month; and
- the net revenue received for the leviable billboards during the previous month.<sup>104</sup>

The manager of the zoning branch must, before the last day of the month, give written notice to the billboard owner of the amount of the levy payable for the previous month and the day by which the amount must be paid.<sup>105</sup>

The Explanatory Notes provide the rationale for the levy:

*The use of the geographical classification levy is based on the State Governments Social Marketing model, which is utilised to change and direct societal behaviour. The levy acts as a stimulus to encourage advertising and marketing industries to change their **Mature (M) and Mature Accompanied (MA 15+)** classification approach to the selling of a product or service. This will encourage advertising and marketing industries to creatively plan their approach towards attaining a **General (G) or Parental Guidance (PG)** classification.*

*This levy stimulus is not only financially driven but also geographically driven. Due to the market demand for prime positioning of billboard advertising, advertising and marketing industries will compete for the greatest exposure to the public. For the advertising and marketing industries to access these prime positions they must abide by the geographical classification zoning of **General (G) and Parental Guidance (PG)** classification. Demand for*

---

<sup>102</sup> Proposed section 11Z.

<sup>103</sup> Proposed section 11ZA.

<sup>104</sup> Proposed section 11ZC(1).

<sup>105</sup> Proposed section 11ZC(2).

*prime advertising positions should assist in changing behaviour of advertising and marketing industries to use appropriate classifications content. The prime geographical positions of advertising space are generally situated where there is a high exposure to families and children.*<sup>106</sup>

In its submission, the OMA submitted:

*The proposed Amendment Bill also sets out a levy system which only applies to M or MA 15+ classified advertisements. As mentioned, currently the outdoor industry generally displays advertisements that comply with the AANA Code of Ethics, as such it is highly unlikely that any current billboards would attract an M or MA 15+ rating, meaning that any monies collected by the levy would be negligent. This would therefore mean that the full burden of cost for the establishment of a State Billboard Geographical Classification Zoning Panel and the State Billboard Geographical Classification Zoning Branch would fall on the government alone... economic modelling estimates that this could cost between half a million and several million dollars per year to maintain.*<sup>107</sup>

In its written advice to the Committee, KAP argued the rationale behind the levy:

*The levy is optional. The idea of the levy is to act as stimulus to change the behaviour of Advertisers who consistently use content that is classified as M or MA. The levy can be calculated easily, but if the levy is in contradiction to the Governments red tape reduction policies, this should be considered when debating the Bill.*<sup>108</sup>

The Committee agrees with the KAP that the levy is in direct contradiction to the Newman Government's red tape reduction policies. The requirement in the Bill for a billboard owner to remit monthly repayments to the Department is unreasonable and would severely increase the regulatory burden on those unlucky billboard owners throughout the state whose billboards could actually fall in the minimal areas that qualify for a Mature (M) or Mature Accompanied (MA15+) geographical zone.

However this is not the only problem with the levy. Despite the policy statement by the KAP (above) that the levy is to act as a stimulus to change the behaviour of advertisers, due to the construction of the definition of 'leviable billboard', the levy does not attach itself to the content of the billboard but to the location of the billboard i.e. a leviable billboard is a billboard located in a Mature classification zone. What this means is, once again, if a billboard owner is unlucky enough to own a billboard in the negligible area of the state that is able to be classified as a Mature classification zone, the owner will still be liable to pay the levy even if the content of the billboard is unobjectionable and would contain G rated information.

The levy does not appear to assist in achieving the KAPs desired policy objectives.

Without even giving consideration to the reasonableness of a levy that is 10% of the net revenue received from the owner, similar to the rest of the Bill, there are severe problems with the imposition of the levy.

<sup>106</sup> *Explanatory Notes, Classification of Publications (Billboard Advertising) and Other Legislation Amendment Bill 2013, pages 7-8.*

<sup>107</sup> *Outdoor Media Association, Submission No. 7, page 22.*

<sup>108</sup> *Advice from Mr Hopper MP, Katter's Australia Party, 5 September 2013, page 7.*

### **3.5 Should the Bill be passed?**

Standing Order 132(1) requires the Committee to determine whether or not to recommend the Bill should be passed.

While the Committee accepts there may be some merit in the policy objectives being pursued, the Committee has identified significant issues with the Bill that cannot be rectified simply.

Given that the Health Community Services Committee is conducting a more detailed inquiry on sexually explicit outdoor advertising, the Committee considers that it would be prudent to wait for the outcome of that inquiry before making any recommendations on alternate ways to achieve the policy objectives of the Bill.

It is for these reasons, the Committee has not recommended amendments to individual parts of the Bill and recommends the Bill not be passed.

#### **Recommendation 1**

The Committee recommends the Classification of Publications (Billboard Advertising) and Other Legislation Amendment Bill 2013 not be passed.

## 4. Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The Explanatory Notes provided with the Bill state the Bill is ‘consistent with fundamental legislative principles’.<sup>109</sup> The Committee has also examined the application of the fundamental legislative principles to the Bill and brings the following to the attention of the Legislative Assembly.

### 4.1 Rights and liberties of individuals

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals.

Legislation therefore should not, without sufficient justification, unduly restrict ordinary activities.<sup>110</sup>

Clause 11 of the Bill, by restricting the placement of certain billboard advertisements in areas frequented by families and children, would impact on a person's or organisation's right to conduct business in the way they consider appropriate.

The requirement at proposed section 11V to provide the Chief Executive with proposed advertisements for classification may also adversely impact on the rights of advertisers.

It is also noted that billboard advertisements located in, or moving within, a Mature (M) or Mature Accompanied (MA 15+) classification zone would be subject to a levy of 10% of the net revenue received from the billboard in the month.

The former Scrutiny of Legislation Committee (SLC) considered that the extent of the interference with liberties must be rational, proportionate and reasonably necessary so interference does not do more overall harm than good.

The Explanatory Notes state that the policy will provide the Minister with ‘*the power to enforce mandatory regulation to meet the concerns of a community which views conservative values in their society above the commercialisation and sexualisation of families and children by the advertising and marketing industries.*’<sup>111</sup>

The issue of whether clause 11 strikes an appropriate balance between the rights of business and the rights of the community, in particular, families and children, is raised for the attention of the House.

---

<sup>109</sup> *Explanatory Notes, Classification of Publications (Billboard Advertising) and Other Legislation Amendment Bill 2013*, page 8.

<sup>110</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, January 2008, page 118.

<sup>111</sup> *Explanatory Notes, Classification of Publications (Billboard Advertising) and Other Legislation Amendment Bill 2013*, page 4

## 4.2 Institution of Parliament

Section 4(2)(b) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to the institution of Parliament.

Under section 4(4)(b), the proposed exercise of a delegated legislative power (instrument) should be sufficiently subjected to the scrutiny of the Legislative Assembly.

Clause 11 of the Bill inserts new section 11S into the *Classifications of Publications Act 1991* to provide that the Minister may establish a classification zone for billboard advertisements. The classification zone is to have effect from the day the map of the classification zone is published on the Department's website.

Section 11T requires the manager of the State billboard geographical classification zoning branch to keep a publicly available database including the classification zones established by the Minister.

The Minister's decision to establish a classification zone would not be subject to parliamentary scrutiny. It is arguable that, given the decision to establish a classification zone will impact on a large number of businesses and the local community (including families and children), the decision should be subject to parliamentary scrutiny.

The issue of whether proposed section 11S has sufficient regard to the institution of Parliament is brought to the Committee's attention.

## 4.3 Explanatory Notes

Part 4 the *Legislative Standards Act 1992* relates to Explanatory Notes. It requires that an Explanatory Note be circulated when a bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Under section 93(2) of the *Parliament of Queensland 2001*, the Committee is responsible for monitoring the operation of Explanatory Notes. Further, section 23 of the *Legislative Standards Act 1992* sets out a detailed list of the requirements of Explanatory Notes.

The Committee does not consider that the Explanatory Notes tabled with the Bill contain sufficient information to comply with the requirements set out in the *Legislative Standards Act 1992*.

Section 23 of the *Legislative Standards Act 1992* sets out the requirements for the contents of Explanatory Notes for bills. In particular, section 23 (1) (a) and (d) provide:

- a) the Bill's short title;
- b) a brief statement of the policy objectives of the Bill, and the reasons for them;
- c) a simple explanation of the purpose and intended operation of each clause of the Bill.

The Committee notes that the Explanatory Notes tabled with the Bill contain a number of salient administrative errors.

In addressing item (a), the title of the Explanatory Notes (Classification of Publications (Mandatory Billboard Geographical Classification Zoning) Amendment Bill is at odds with the name of the Bill (Classification of Publications (Billboard Advertising) and Other Legislation Amendment Bill 2013).

In addressing item (b), the Explanatory Notes refer to the Katter's Australian Party's child and family focused policy framework based on mandatory billboard geographical classification zoning.<sup>112</sup> It is noted that this policy framework underpins the basis for the Bill, however the Committee was unable to locate it on the official Katter's Australia Party website.

In addressing item (c), the Committee notes that on all but one explanation of the clauses (clause 2), the explanation provided did not match its related clause in the Bill. Effectively, the analysis provided in the Explanatory Notes was of no use.

The Bill contains 14 clauses. The Committee notes the Explanatory Notes addressed only 11 clauses of the Bill.

The Committee acknowledges the Office of the Parliamentary Counsel may assist with draft Private Members Bills, however the onus to draft Explanatory Notes falls on the Private Member.<sup>113</sup>

Despite the limited resources available to private members to draft Explanatory Notes, the Committee could not justify, nor accept, the inability to correctly draft the Explanatory Notes pursuant to the *Legislative Standards Act 1992*, particularly given the salient nature of the errors.

---

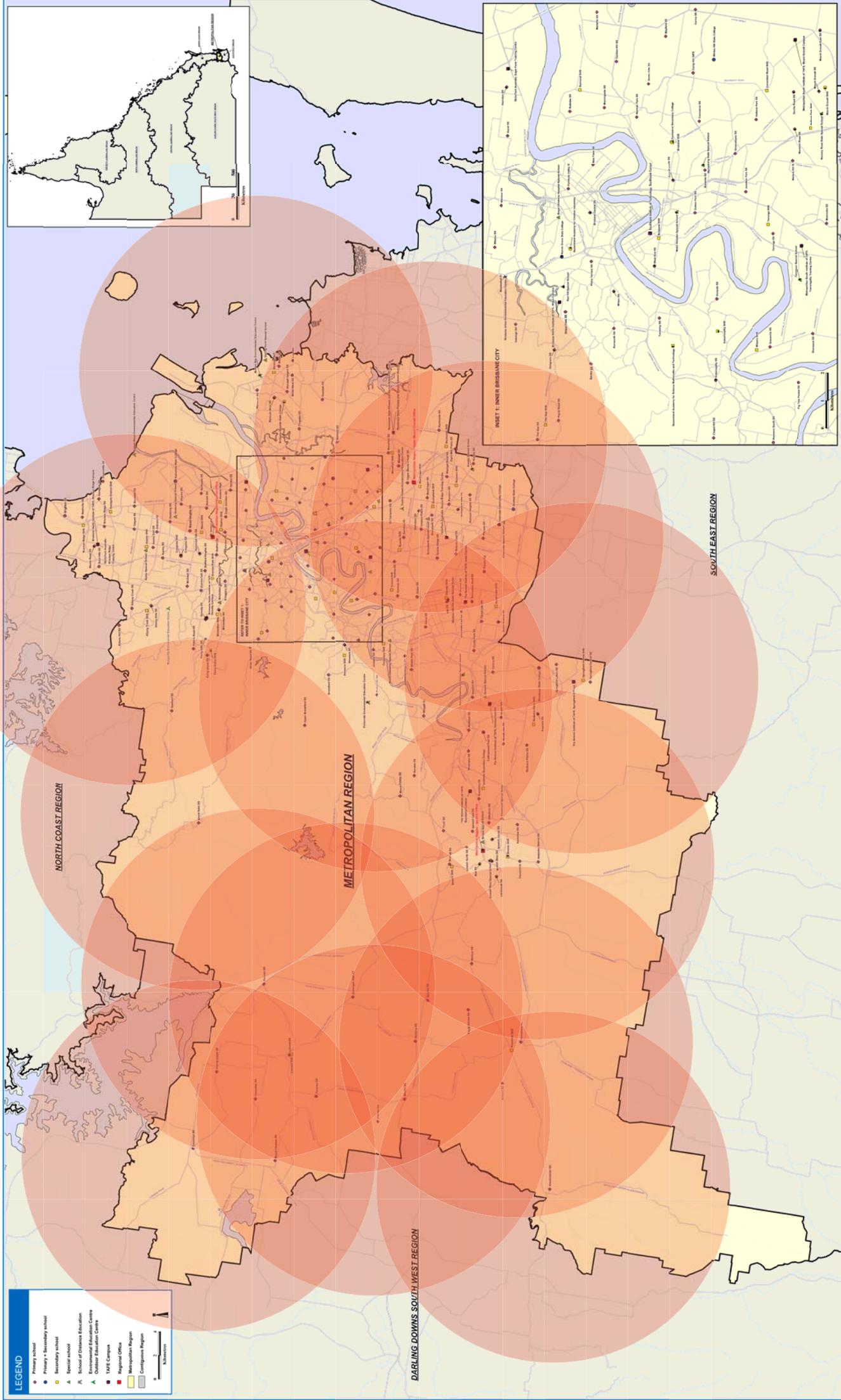
<sup>112</sup> *Explanatory Notes*, Classification of Publications (Billboard Advertising) and Other Legislation Amendment Bill 2013, page 4.

<sup>113</sup> Section 7 of the *Legislative Standards Act 1992* provides that OQPC draft Private Members Bills, not Explanatory Notes.

## Appendix A – List of Submissions

Sub #	Submitter
001	Alan and Susan Johnson
002	Josephine Hynes
003	Paul Groves
004	Rowan Shann
005	Protect All Children Today Inc.
006	Australian Christian Lobby Queensland
007	Outdoor Media Association
008	Advertising Standards Bureau
009	Australian Association of National Advertisers

# Department of Education and Training - Metropolitan Region

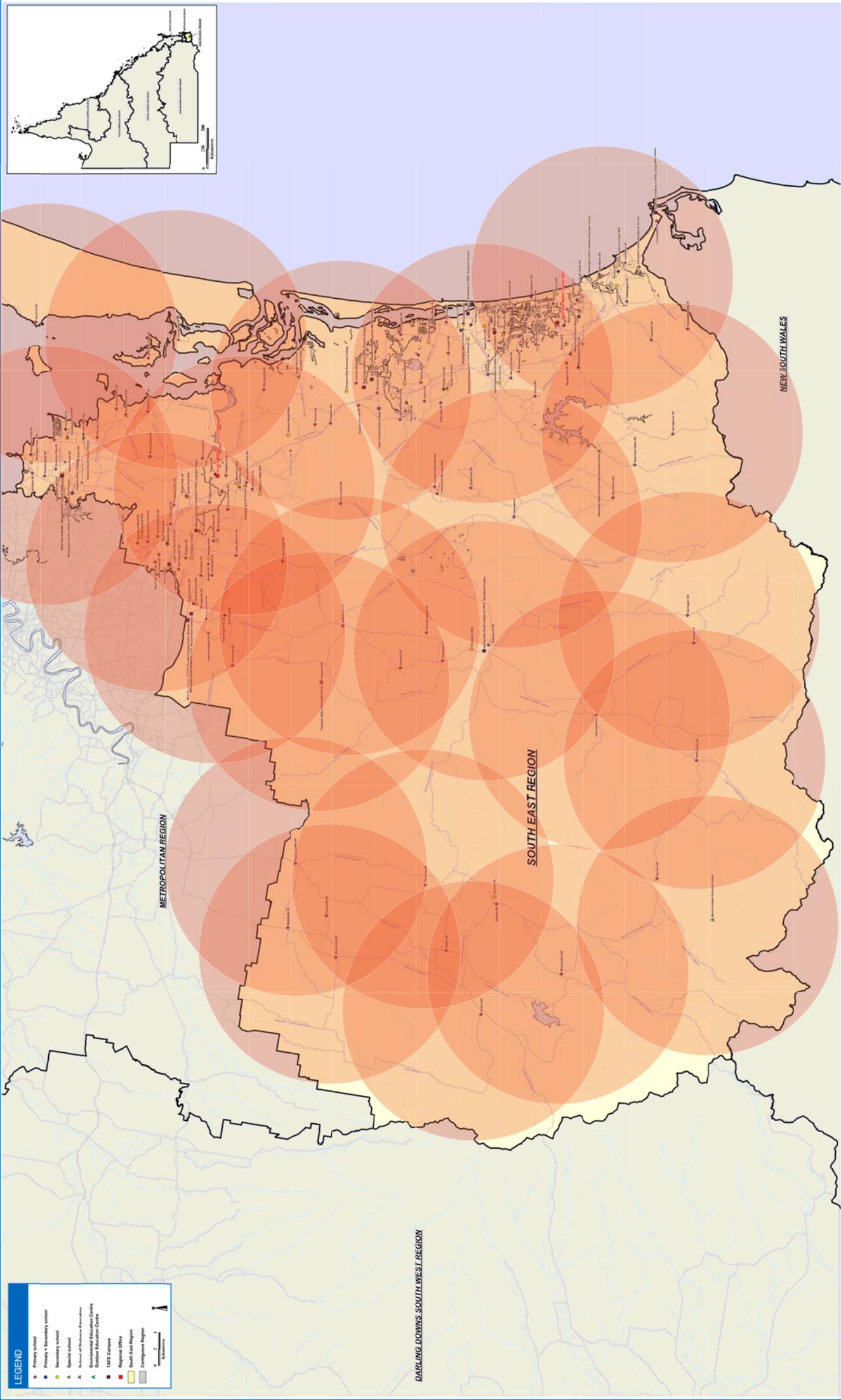


Government Statistician  
Queensland Treasury and Trade

governmentstatistician@treasury.qld.gov.au  
www.oestr.qld.gov.au

No liability accepted for any loss or damage which may arise from the use of or reliance upon this data  
Map produced March 2013

# Department of Education, Training and Employment - South East Region



Government Statistician  
Queensland Treasury and Trade

[governmentstatistician@treasury.qld.gov.au](mailto:governmentstatistician@treasury.qld.gov.au)  
[www.oestr.qld.gov.au](http://www.oestr.qld.gov.au)

No liability accepted for any loss or damage which may arise from the use of or reliance upon this data  
Map produced March 2013