Ad Standards
PO Box 5110, Braddon ACT 2612
P (02) 6173 1500 | F (02) 6262 9833

AdStandards.com.au

Advertising Standards Bureau Limited
ACN 084 452 666

Australian Competition & Consumer Commission
Digital Platforms Inquiry

By email: platforminquiry@accc.gov.au

3 April 2018

Submission to the ACCC Digital Platforms Inquiry

Dear ACCC

Please find **enclosed** our submission in response to the ACCC Digital Platforms Inquiry – Issues Paper.

We would be pleased to discuss any aspect of our submission with the Inquiry, or provide you with assistance on any other relevant matters that may arise. It would also be appreciated if you could please keep us notified of updates in relation to the Inquiry and its progress.

Finally, for your information and to clarify, we have recently launched a rebrand of our organisation, noting that while the names have changed the core function of what we do remains strongly the same. From 1 March 2018, the following brand changes applied:

1. the Advertising Standards Bureau (ASB) is now known as '*Ad Standards*'
2. the Advertising Standards Board is now known as the '*Ad Standards Community Panel*'
3. the Advertising Claims Board is now known as the '*Ad Standards Industry Jury*'
4. the Bureau Board is now known as the '*Ad Standards Board of Directors',* and
5. a new '*Ad Standards Education and Advice'* brand has been introduced.

Kind regards

Fiona Jolly
Chief Executive Officer

Ad Standards

ACCC Digital Platforms Inquiry

Ad Standards Submission

April 2018

1. The changing landscape

1.1. Ad Standards appreciates the opportunity to provide comments to the ACCC Digital Platforms Inquiry (***Inquiry***). Although the focus of the Inquiry is on the impact of digital platforms on the supply of news and journalistic content, we acknowledge that digital platforms provide advertisers with significant consumer reach and that the line to be drawn between news and journalistic content and other media content (such as advertising) will not always be clear[1].

1.2. This is evident where advertisements are written or presented in the form of "news" or "journalism", and laid out alongside regular editorial content so that they mirror the environment they appear in. This type of sponsored, branded or custom content (often collectively referred to as "native advertising"), can blur the boundaries between editorial and advertising material.

1.3. Therefore, although Ad Standards are not directly involved in the supply of news and journalistic content, given the shift towards native advertising practices and the increase in advertising spend to digital platforms[2], we are also seeing an increase in consumer complaints about online advertising content[3].

1.4. However despite this increase, we submit that the existing system of advertising self-regulation is effective in providing a flexible mechanism to meet the challenges of a changing media landscape, and evolving consumer expectations.

1.5. The focus of our submission therefore is to draw the Inquiry's attention to how the advertising self-regulatory system is effective in addressing community concerns about online advertising. Specifically, our intention is to address in general terms questions 3.32 to 3.36 of the Issues Paper, which relate to "Existing regulation and proposals for change"[4].

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[1] ACCC Digital Platforms Inquiry – Issues paper, 26 February 2018, p.7
[2] ACCC Digital Platforms Inquiry – Issues paper, 26 February 2018, pp. 16 to 17
[3] Online ads were the second most complained about advertising medium in 2016 (Internet (social media) at 7.64% and Internet at 7.47%, giving a total of 15.11%), Ad Standards Review of Operations 2016, https://view.joomag.com/advertising-standards-bureau-review-of-operations-2016/M0547142001499131627
[4] ACCC Digital Platforms Inquiry – Issues paper, 26 February 2018, p.22

2. Advertising self-regulation

2.1. Ad Standards is the central authority in Australia for receiving complaints about advertising content across all forms of media (including online advertising), and in relation to the advertising of any products or services.

2.2. The platform neutral model acknowledges that the advertising industry operates across a range of media, and also enables Ad Standards to be flexible in adapting the system to emerging marketing techniques, particularly as consumers may access the same or similar material across a range of media platforms.

2.3. In addition, the AANA Code of Ethics, which sets the standard for the content of advertising and marketing communication, includes a specific provision which applies to native advertising. Section 2.7 was inserted into the AANA Code of Ethics, effective 1 March 2017, which specifically requires advertisers to ensure that any branded content or native advertising is "clearly distinguishable" to the relevant audience.

2.4. Maintaining complaints about online advertising within the existing advertising self-regulatory complaint adjudication process managed by Ad Standards provides an important level of certainty for consumers. To consider online advertising as a separate or distinct matter to advertising that occurs in other media (television, radio, print and outdoor) would cause consumer confusion and detract from a system that is already tested, effective and well-known and supported by industry.

2.5. Ad Standards' independent, well-recognised and proven complaint resolution process therefore offers a practical and cost-effective solution to the handling of advertising content issues, including complaints in relation to online advertising.

2.6. The system is transparent and accessible to all consumers, meets international best practice standards for advertising self-regulation, and regularly successfully resolves consumer complaints in relation to online advertising.

2.7. When required, Ad Standards is supported in enforcing compliance with Community Panel determinations by the media and media industry associations. This system has demonstrated its effectiveness during the past 20 years - with a record of nearly 100 per cent (currently 97%) compliance by industry with Community Panel determinations.

3. About Ad Standards

3.1. Ad Standards is responsible for the administration of the complaint resolution component of the advertising self-regulation system in Australia. We support the work of the Ad Standards Community Panel (***Community Panel***) and Ad Standards Industry Jury (***Industry Jury***), the bodies established to consider public and competitor complaints respectively about advertising and marketing communications against provisions set out in the relevant advertising codes.

3.2. Advertising and marketing communications are defined in the codes general terms as:

Any material published or broadcast using <u>any medium</u> or any activity which is undertaken by or on behalf of an advertiser or marketer,

- *over which the advertiser or marketer has a reasonable degree of control, and*
- *that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct*
- *But does not include labels, packaging, or corporate reports.*

3.3. In a report released by Deloitte Access Economics in August 2017[5], positive findings were made about the efficiency, responsiveness and cost effectiveness of the work of Ad Standards. The report focused on the differences between self-regulation of complaints handling and direct government regulation, finding that the self-regulatory approach achieves similar outcomes to government regulation in compliance and effectiveness, and performs better in terms of cost, efficiency and responsiveness.

3.4. In its conclusion Deloitte Access Economics found that:

- *On balance, **self-regulation of complaints handling** is **more likely to be effective** than direct government regulation across the dimensions of cost, efficiency and responsiveness, and equal with government in terms of effectiveness and compliance.*
- *Therefore in our view in this case **self-regulation** appears to be a **better choice** than direct regulation by government.*
- *The current self-regulatory complaints handling system for community standards in advertising appears to be working effectively and in the **best interests of Australian consumers**.*

3.5. A more detailed description of the current advertising self-regulation system and the role of Ad Standards is provided for reference at **Appendix 1** to this submission.

4. Recommendations for Online Advertising

4.1. In order for the existing self-regulatory system to operate fairly and continue to be sustainable, online advertising platforms must:

(a) Contribute fairly to the funding of the self-regulatory system. Fairness in contribution will be achieved by ensuring parity of online media organisations with other forms of media in the support of the advertising self-regulatory system of complaints handling.

(b) Actively participate in compliance with Community Panel decisions. Compliance will be achieved by online media organisations removing from

[5] "Assessing the benefits of a self-regulatory advertising complaints handling system" dated August 2017 (https://adstandards.com.au/sites/default/files/final_benefits_of_self-regulation.pdf)

online publication those advertisements that have been found to breach existing codes, in the same way that television broadcasters desist from broadcasting any advertisements that have had a consumer complaint upheld by the advertising Community Panel.

4.2. It is only by participating equitably in the funding of the advertising self-regulatory complaints handling scheme as well as ensuring compliance with the decisions of the regulatory body that online advertising platforms can be seen to be responsible media organisations in the area of dealing with community concerns about online advertising.

5. Statistics

5.1. Globally it is recognised that the online advertising market is strong and growing. Complaints about online advertising represented 11.45% of all complaints received by Ad Standards in 2016. A higher percentage of cases about online advertising are upheld each year when compared with complaints about advertising in other forms of media. This has been consistently the trend for the past five years. For instance in 2016, 13.32% of all cases dealt with by Ad Standards were upheld but 19.5% of cases about online advertising were upheld.

6. Conclusion

6.1. Online advertising is currently regulated by the centralised complaints handling process administered by Ad Standards. The current self-regulatory model, which is well-recognised, tested and successful, is supported by traditional media. The system is only sustainable if online media organisations contribute equitably and support compliance with regulatory decisions.

6.2. Should the Inquiry wish to consult with Ad Standards about any aspect of this submission we would be pleased to do so.

Appendix 1

1. The advertising self-regulation system

1.1. Australia's system of advertising self-regulation is recognised as world class. The current system was established by the AANA in 1998. It recognises that advertisers share an interest in promoting consumer confidence in and respect for general standards of advertising.

1.2. 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.

1.3. 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.

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

(a) through the existence and development of appropriate codes and initiatives relating to advertising standards;

(b) the voluntary compliance of advertisers;

(c) the efforts of other industry stakeholders in ensuring compliance, supporting industry education and public awareness programs, and supporting enforcement where required; and

(d) the operation of the complaint resolution process.

1.5. 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.

2. Role of Ad Standards

2.1 Ad Standards administers the complaint resolution component of the advertising self-regulation system. The work of Ad Standards is not underpinned by any Government legislation.

2.2 Ad Standards' 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.

2.3 Ad Standards 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.

2.4 Currently, Ad Standards administers the following codes of practice relating to advertising and marketing communications in Australia:

(a) Australian Association of National Advertisers (AANA) Code of Ethics;

(b) AANA Code for Advertising and Marketing Communications to Children;

(c) AANA Food and Beverages Advertising and Marketing Communication Code;

(d) AANA Environmental Claims in Advertising and Marketing Code;

(e) AANA Wagering Advertising and Marketing Communication Code;

(f) Federal Chamber of Automotive Industries (FCAI) Voluntary Code of Practice for Motor Vehicle Advertising;

(g) Australian Food and Grocery Council Responsible Children's Marketing Initiative of the Australian Food and Beverage Industry; and

(h) Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children.

2.5 These codes apply to all advertising and marketing communications across all media. Ad Standards also works with the Alcohol Beverages Advertising Code (ABAC) management scheme, and accepts, and forwards to the ABAC chief adjudicator, all complaints about alcohol advertisements.

2.6 Ad Standards is secretariat for the Community Panel and Industry Jury, the bodies appointed to adjudicate public and competitor complaints and to ensure compliance with the relevant codes and industry initiatives. They both have separate and distinct roles considering public and competitor complaints about advertising against the advertising codes they administer. Members of the Community Panel are community representatives, independent of the industry and appointed following a publicly advertised application and interview process. Members of the Industry Jury are legal practitioners sourced from a register of lawyers experienced in advertising and/or competition and consumer law.

3. Role of the Community Panel

3.1 The Community Panel is the independent body established to determine public complaints about advertising and marketing communications against the principles set out in the relevant codes. The Community Panel 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.

3.2 The Community Panel comprises 20 members of the community and reflects a diverse knowledge and experience base. The Community Panel 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.

3.3 Individual Community Panel 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 Community Panel member absents herself or himself from the meeting.

3.4 The Community Panel 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.

3.5 Membership of the Community Panel is on a fixed term basis. New appointments are staggered to avoid desensitisation and to ensure the Community Panel retains a mix of corporate knowledge and at the same time introducing people with different experiences, views and skills. Profiles of current Community Panel members are available to all on the Ad Standards website (www.adstandards.com.au).

3.6 Community Panel appointments are made following a publicly advertised application and interview process. People sought for appointment to the Community Panel ideally have an interest in, and views on, advertising and have been exposed to a broad range of community activities and interests.

3.7 Community Panel Members participate in twice yearly training days to reinforce codes and initiatives and highlight issues impacting on community standards in advertising.

4. Role of the Industry Jury

4.1 The Industry Jury provides a separate competitive complaint resolution service and is designed to determine complaints involving issues of truth, accuracy and legality of advertising on a user pays cost recovery basis.

4.2 The Industry Jury is a system of alternative dispute resolution aimed at addressing and resolving challenges to advertising that might otherwise lead to expensive and time consuming litigation.

4.3 The Industry Jury 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.

4.4 Complaints received by the Industry Jury are considered by a panel of legal advisors with experience and expertise in advertising and/or trade practices law.

5. Role of Independent Reviewer of Community Panel determinations

5.1 As part of its ongoing commitment to international best practice in delivering the advertising self-regulation system in Australia, Ad Standards introduced a review process for Community Panel determinations in April 2008.

5.2 The independent review process provides the community and advertisers a channel through which they can appeal decisions made by the Community Panel in prescribed circumstances. The review process is available to the advertiser and the person(s) who originally made a complaint.

5.3 In line with international best practice, the Independent Reviewer's role is to assess the validity of the process followed by the Community Panel, or to assess any new material provided by parties to the case. The Independent Reviewer does not provide a further merit review of a case. Their role is to recommend whether the Community Panel's original determination should be confirmed or be reviewed. It would be inappropriate to set up one person as a decision maker in place of a 20 member panel that makes determinations on the basis of community standards.

5.4 There are three grounds for review:

(a) Where new or additional relevant evidence which could have a significant bearing on the determination becomes available. An explanation of why this information was not submitted previously must be provided;

(b) Where there was a substantial flaw in the Community Panel's determination (determination clearly in error having regard to the provisions of the codes or initiatives, or clearly made against the weight of evidence); and/or

(c) Where there was a substantial flaw in the process by which the determination was made.

5.5 The Independent Reviewer will first consider whether the application for review sets out a prima facie case for review and will decide to accept or not accept the request. If the request is accepted, the Independent Reviewer will undertake appropriate investigation and will make a recommendation to the Community Panel, stating whether the Community Panel's original determination should be reviewed or confirmed.

5.6 During the review process, the original determination (and any subsequent remedial action or withdrawal of the advertisement) will stand. The Ad Standards publishes the initial determination until the outcome of the review is known at which point the revised determination with Independent Reviewer recommendation is published.

5.7 Information about the review process is available on the Ad Standards website. The advertiser and original complainant(s) are also informed about the process when notified of the complaint determination.

6. Principles underpinning the self-regulation complaints system

6.1 ***Accessibility of complaint process***

(a) The complaint process is accessible to all members of the public. Complaints may be made via an online complaint form, by post or facsimile. A single written complaint is sufficient to initiate the complaint process.

(b) The complaint process is a free service and provides fairness for complainants and advertisers. Process steps are clearly set out and available to all on the Ad Standards website, along with information about how the Community Panel makes its determinations. Members of the public without access to the internet are able to contact Ad Standards and request information about the complaint process.

(c) Ensuring consumers know where to complain about advertising is an important issue for Ad Standards. Ad Standards considers that the increase in complaint numbers over recent years is partly attributable to the success of the Ad Standards awareness campaign, "People like you", launched on television in early March 2014. In addition to raising awareness of the role and composition of the Ad Standards Community Panel, the awareness campaign highlighted how easy it is to lodge a complaint online. This campaign was extended to social media through 2016-17.

(d) In community research commissioned by Ad Standards during 2015, when participants were provided with a list of organisations which they could contact if they wanted to make a complaint about advertising, 42% of respondents indicated that they would contact the '*Advertising Standards Board'* (now the Community Panel), while one third (36%) proposed that they would contact the '*Advertising Standards Bureau'*. In previous research, participants in 2009, 2010 and 2012 were also asked to nominate an organisation. Overall, 62% of the general public in the 2012 community perceptions study were aware that they could complain to Ad Standards if they had a complaint about paid advertising. This result remained stable since the 2010 sexuality research (63%) and 2009 violence research (67%). The result was also significantly higher than the level of unprompted awareness in the 2006 community awareness research (10%), which drove the development of an earlier awareness raising campaign commencing in 2008 with television, radio and print advertisements.

(e) In the 12 months prior to the 2015 research, the majority (90%) of participants had not made a formal complaint about advertising standards. The main reason for not making a complaint was that they were not concerned about any advertising they had seen or heard.

6.2 ***Transparency of complaint process and decision making***

(a) Ad Standards is committed to a high standard of transparency with regards to Community Panel determinations.

(b) A single written complaint is sufficient to initiate a formal investigation by Ad Standards. An anonymous complaint is not sufficient to initiate a formal complaint, but it can be included as part of a complaint that has already been raised or is subsequently raised.

(c) Complaints are promptly assessed as to their appropriateness for submission to the Community Panel for determination. Ad Standards, as secretariat for the Community Panel, responds to all complainants, informing them of the status of their complaint and keeps complainants and advertisers informed of the progress of complaints throughout the process via written correspondence.

(d) In 2010, Ad Standards initiated the development of a series of "Determination Summaries", aimed at providing a general overview of Community Panel determinations on complaints about particular issues covered by the codes. The Determination Summaries are available from the Ad Standards 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*.

(e) 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 Community Panel itself in understanding how the Community Panel has viewed particular issues covered by the codes that have been the subject of complaints in the past.

(f) All case reports are also made publicly available on the Ad Standards website promptly after determination. Case reports contain details about the complaint, a description of the advertisement, the advertiser response and the Community Panel's determination, along with a summary of the reasons for its decision.

6.3 ***Robust decision making***

(a) The Community Panel has the complex and sometimes difficult task of making determinations in relation to a wide range of issues covered by the various codes and initiatives it administers.

(b) To assist the Community Panel in its deliberations, Ad Standards conducts two training days each year in which issues of topical or general importance and determination precedent are discussed. This often includes presentations from other organisations or experts on matters of current interest. For example, the Outdoor Media Association presented to the Community Panel on *Understanding who sees outdoor advertising and how*. An update was also

provided at the training day from ABAC representatives on recent issues in alcohol advertising.

(c) All community standards research which Ad Standards regularly undertakes on behalf of the Community Panel is discussed at training days both during the draft stage and subsequently during a formal presentation of the final research report. Ad Standards also involves the Community Panel in the development of the Determination Summaries which provide precedent information regarding previous Community Panel determinations on particular issues.

(d) All case reports following Community Panel determinations are published on the Ad Standards website. Since these documents are available to the entire community, Ad Standards ensures that determinations in case reports are articulated clearly, logically and concisely.

(e) The Community Panel 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 Community Panel followed, increases the Community Panel's resolve to ensure sound decision making.

6.4 ***Responsiveness of complaints handling***

(a) The Ad Standards complaint handling system is efficient. Ongoing improvements to our case management system have allowed us to maintain prompt turnaround of complaints and to more accurately report on timeliness. In 2016, 73% of cases were completed within 42 calendar days (covering the period from receipt of complaint until resolution and publication of the final case report), with considerably shorter timeframes for advertisements that receive a large number of complaints or that are likely to breach the code. The average case time during 2016 was 39.1 calendar days from initial complaint receipt to final publication. Ad Standards dealt with a record number of cases (595) in 2016.

(b) Since early 2009 the Community Panel has met at least twice per month, which contributes to the timely turnaround of complaints. It is also possible to provide a 24 to 48 hour turn around for cases where it is likely that the advertisement will breach the Code or if there is immediate and significant community concern. In the latter case, however, most advertisers would remove the advertisement voluntarily – an example of this is a Target advertisement which depicted an act considered by many in the community to be dangerous. Upon receipt of Ad Standards notification of complaints, Target immediately withdrew the advertisement, prior to the Community Panel determination (in which the complaints were upheld). This self-regulatory action on the part of the advertiser is an example of the self-regulation system working as it should.

(c) Neither the Community Panel nor Ad Standards considers the receipt of complaints a problem. Complaints provide a good test of the self-regulatory system and of the alignment of the codes to community opinion. We do not aim for, or expect to experience a situation where the community does not complain about advertising at all. No system of regulation is failsafe and the role of the complaints process is to act as a safeguard to ensure participants continue to comply with the codes, having regard to changing community standards.

6.5 ***No cost to the community***

(a) The system is funded by industry – it receives no government funding. Responsible advertisers assist in maintaining the self-regulation system's viability and support its administration by agreeing to a levy being applied to their advertising spend. The levy is paid to and administered by the Australian Advertising Standards Council (AASC). The AASC holds the industry funds in an account which is drawn down to pay the costs of managing the Community Panel and the self-regulatory system. Financial management of the funds is outsourced to a chartered accounting firm and the Annual Financial Statements of Ad Standards and the AASC are audited by independent auditors.

6.6 ***Continuous improvement***

(a) Ad Standards is committed to continuous improvement, taking into account input from the public and the industry, and having regard to international best practices relating to advertising self-regulation.

(b) Since 2005, Ad Standards has undergone substantial remodeling, including a range of initiatives to improve the transparency and accountability of its complaint handling service. These initiatives include the following:

i. Complaint processing

- A new case management system was implemented in 2010 and further enhanced in 2012 and again in 2016 resulting in improvements in the efficiency and timeliness of complaint processing.

ii. Public awareness

- Major public awareness campaigns were conducted in 2008 and continued in 2011 and 2014.
- Ongoing community standards research has included testing of community awareness about Ad Standards and advertising self-regulation.
- A new website was launched in 2015, with improvements to the presentation of information about the complaint process and role

of Ad Standards and determination search functionality. The launch of a blog in 2012 and an official Twitter account in 2014 has assisted in improving our community engagement.

- A rebrand of the organisation was launched on 1 March 2018 to increase awareness and clarify to consumers, advertisers, government and the media, the various elements which make up Ad Standards.

iii. Community standards research

- Research to determine the level of unprompted awareness of the Ad Standards (2006).
- World-first research testing the Community Panel's decisions against the views of the community (2007).
- Community perceptions of violence in advertising (2009).
- Discrimination and vilification in advertising, at the request of the Community Panel, to better inform them about issues in this area (2009).
- Community perceptions of sex, sexuality and nudity in advertising (2010).
- Community perceptions to assess current community attitudes and seek information about possible shifts in community standards and the Community Panel's alignment with those standards (2012).
- Exploitative and degrading advertising (2013).
- Advertising directed primarily to children (2015).
- Community Standards plus 10 year longitudinal study of changes in community views (2017)
- Full research reports are available from the Ad Standards website.
- Research conducted provides the Community Panel with valuable feedback and Community Panel members have taken the results of such research into account in their consideration of complaints under the codes.

iv. Maintaining an independent and effective Community Panel

- Since 2005, a number of changes have been made to the structure and procedural arrangements of the Community Panel, including expansion to a membership of 20 and appointment of new members at staggered intervals to ensure that the Community Panel has a mix of experienced and new members.
- The frequency of meetings has increased, with the Community Panel now meeting twice a month to consider complaints and also between scheduled meetings, usually by teleconference, if

Ad Standards considers that a case should be considered as a matter of urgency.

v. Introduction of an Independent Review process

- An Independent Review process was introduced in April 2008 as part of Ad Standards' efforts to meet international best practice. The process enables original complainants and advertisers to appeal determinations made by the Community Panel.
- There are currently two Independent Reviewers, Professor Robin Creyke, appointed in June 2015 and Ms Victoria Rubensohn AM, appointed in August 2011.

vi. Introduction of consistently dismissed category

- A "consistently dismissed" category was introduced in 2010, responding to concerns that resources be devoted to cases that are most likely to be upheld. This initiative has resulted in streamlining of this type of complaint.

(c) Ad Standards will continue to work with the advertising industry, associated national and international bodies and the community to maintain a healthy system of advertising self-regulation.

7. Upheld rates

7.1 Compared to the total number of advertisements considered by the Community Panel in 2016, the number of advertisements found to breach the codes equated to an upheld rate of 13.3 per cent. This compares to 5 per cent in 2006. This is due to the continuous improvement initiatives referred to above, and in particular the appointment of new and more diverse Community Panel members and a greater awareness within the Community Panel of community standards, particularly about issues relating to sex, sexuality and nudity.

7.2 There is no right or wrong number for an upheld rate. There will always be circumstances in which people make valid complaints about an advertisement, but whose complaint is not in line with the broader community. There is a wide range of community views on particular issues and Ad Standards research shows that the Community Panel is generally in line with community views.

8. Compliance with Community Panel determinations

8.1 Ad Standards has a record of nearly 100 per cent compliance by industry with decisions of the Community Panel. Ad Standards' ability to achieve compliance across Federal, State and Territory jurisdictions, regardless of the size of the advertiser, is something that legislation and government administration is very unlikely to rival.

9. Enforcement of Community Panel determinations

9.1 Regardless of an advertiser's reaction to a Community Panel determination, in the 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 Ad Standards has developed a range of enforcement actions to ensure compliance with Community Panel decisions.

9.2 Firstly, if a complaint indicates that an advertisement may breach government regulations or has broken the law, Ad Standards 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 Community Panel for consideration.

9.3 Other actions can include:

(a) An advertiser's failure to respond will always be included in the final case report which is made public on the Ad Standards' website. This is generally unwelcome publicity for the advertiser and for most advertisers such publicity is a threat to brand reputation and is to be avoided.

(b) In a similar fashion, an advertiser's failure to respond can feature in information released to the media which follows the relevant Community Panel meeting, and the Ad Standards Chief Executive Officer will respond to all media requests with a full account of the particulars of the case, including the timeliness of the advertiser's compliance.

(c) Should an advertiser fail to respond to Ad Standards' request to remove or modify advertising, Ad Standards will liaise with industry and media bodies such as FreeTV and the Outdoor Media Association, which will either negotiate with the advertiser directly for the removal of the advertisement or in specific cases, take action to remove the advertisement.

(d) Under appropriate circumstances, Ad Standards will refer an advertiser to a government agency such as: the Commonwealth Department of Communications and the Arts; the Australian Communications and Media Authority; the Attorney-General's Department; or to State Police Departments to request that these agencies assist in taking action against the advertiser. In some cases, local councils may also have relevant authority to assist with the removal of an advertisement, although this authority varies greatly between jurisdictions. Although Government agencies can be of assistance should Ad Standards be unable to facilitate removal of an advertisement, it is apparent that they do not have relevant powers or funding to achieve enforcement outcomes or, in some cases, are unable to act quickly or on the basis of community concerns.