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The Manager
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Dear Australian Communications and Media Authority

Submission in response to the 'Impartiality and commercial influence in broadcast news' discussion paper

Ad Standards appreciates the opportunity to provide comment on the discussion paper.

We would be pleased to discuss any aspect of our **attached** submission or provide you with assistance on any other relevant matters that may arise.

In particular, we look forward to engaging further with ACMA and relevant regulators and policymakers to ensure that the important role that Ad Standards plays within the media regulatory framework is valued.

Kind regards

Fiona Jolly
Chief Executive Officer



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February 2020

1. Executive summary

- 1.1. Ad Standards' appreciates the opportunity to provide comments in response to the 'Impartiality and commercial influence in broadcast news' discussion paper. The focus of our submission is to address some of the matters raised in the section on 'Commercial Influence'.
- 1.2. Specifically, the purpose of our submission is to:
 - (a) inform the ACMA about the current advertising self-regulation system, and in particular its effectiveness in handling complaints about the content of advertising material to ensure that it is distinguishable from news or program content;
 - (b) highlight that the self-regulation system is a platform-neutral model, that ensures the content of advertising reflects prevailing community standards in a consistent and accessible way and at no cost to the government; and
 - (c) recommend that Ad Standards be the first key point of contact for all community complaints regarding the content of advertising including in relation to influencer marketing, infotainment, infomercials, advertorial, and other relevant sponsored content.
- 1.3. We have set out our detailed comments below.

2. Advertising self-regulation in Australia

- 2.1. As you are aware, Ad Standards is responsible for the administration of the complaint resolution component of the advertising self-regulation system. It supports the work of the Ad Standards Community Panel (**Community Panel**) which is the body established to consider community complaints about advertising and marketing communications against the provisions set out in the relevant advertising codes.
- 2.2. Self-regulation provides an effective and efficient way for advertisers to engage with consumers and to respond to consumers' concerns about advertising. It also ensures consumer protection by providing a free and fast route for consumers to express their views about advertising, and the means by which their complaints can be resolved through an independent adjudication process.
- 2.3. In a [report released by Deloitte Access Economics in August 2017](#), 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.

- 2.4. For further details on the current advertising self-regulation system and the role of Ad Standards can be found on our website [here](#).

3. Distinguishable advertising

- 3.1. The current advertising self-regulatory system already provides a consistent regulatory approach to commercial influence in advertising, at no cost to government.
- 3.2. On 1 March 2017, a new subsection 2.7 was inserted into the [AANA Code of Ethics](#) to address issues around distinguishable advertising being raised in the media and wider community:

2.7 Advertising or Marketing Communication must be clearly distinguishable as such to the relevant audience.

- 3.3. The [AANA Practice Note for section 2.7](#), clarifies that advertisers have a responsibility to ensure that their material is clearly distinguishable as advertising or marketing communication. For example, where advertisers have made a commercial arrangement for the promotion of a product or service, they should not be disguised as news content, independent market research, user-generated content, private blogs, advertorial or independent reviews.
- 3.4. In 2018, Ad Standards commissioned research on what makes social media and online content ‘clearly distinguishable as advertising’ and published a comprehensive [research report](#) on the matter. This included a [checklist](#) to help determine what is clearly distinguishable advertising. This research has been referred to in the ACMA commissioned ‘News in Australia Impartiality and commercial influence – Review of literature and research’ prepared by the Centre for Media Transition, dated January 2020 – section
- 3.5. The research report conducted by Colmar Brunton, showed that on average people spend 3.2 hours daily online, with 1.8 hours of that on social media. Facebook is the most popular social media for people over 50 (95%), while those aged 18-29 are more likely to be on Instagram (80%) and Snapchat (67%).
- 3.6. The research also looked at five advertisements previously considered by the Ad Standards Community Panel under section 2.7 of the AANA Code of Ethics. Three of these advertisements were social media ‘influencer’ posts on Instagram, plus an online and a television advertisement.
- 3.7. Overall the research showed that the Community Panel’s determinations about whether an advertising or marketing communication was distinguishable as such to the relevant audience were generally in line with community perceptions.



3.8. While complaints about online advertising represented less than 6% of complaints received in 2018, the issue of distinguishable advertising is increasingly being raised in the media and wider community. However Ad Standards is not finding that this concern is leading to a continued increase in complaints about distinguishability/

3.9 Between 1 March 2017 and 25 February 2020 there were:

- 20 cases dismissed.
- 2 cases upheld.
- 3 cases withdrawn before the case went to the Community Panel.
- 37 overall complaints.

	2017	2018	2019	2020
Raised case upheld	0	1	1	0
Raised case dismissed	7	9	1	3
Withdrawn cases	1	1	1	0
Complaint #	11	18	5	3

3.9. A key point to note is that for the Community Panel to consider a complaint under section 2.7, the advertiser must have had a “reasonable degree of control” over the advertising or marketing material.

3.10. The Community Panel have taken a broad view of how this level of “control” may be exercised, and the types of commercial arrangements that may be involved. For example, if it involves an arrangement where there has been monetary payment; commission; free loan of a product/service; a free product/service whether requested or not; or any other incentive (gifts, trips, hotel stays etc), the Community Panel is likely to find that the advertiser had a “reasonable degree of control”.

3.11. Consumers should be easily able to recognise that something is an advertisement, through the use of hashtags, labels or otherwise. The content of the advertisement should make it clear and obvious that the material is an advertisement.

3.12. Currently the AANA Practice Note for section 2.7, does not specify any particular “disclosure requirements”, rather, advertisers currently have flexibility as to how they ensure that material is distinguishable as advertising or marketing communication. However, in a [previous case](#) considered by the Community Panel, it was found that including a hashtag and handle of the brand being promoted was considered to show that the post was an advertisement.



3.13. In the UK, the Advertising Standards Authority (ASA) have recently published the following research and guidance on influencer advertising, which may be informative to the ACMA:

- (a) [Labelling of Influencer advertising](#)
- (b) [Recognising ads: Brand-owned and paid social media](#)
- (c) [Recognising ads: Social media and influencer marketing](#)

4. Providing a platform-neutral solution

4.1. Ad Standards supports the premise behind the reform work being undertaken as part of the Government's response to the ACCC's Digital Platforms Inquiry, in regard to the need to develop a platform neutral framework for advertising content.

4.2. The current advertising self-regulation system already ensures that all advertising content is treated consistently regardless of the platform on which it appears. It also effectively provides adequate and appropriate community safeguards that address the various types of commercial arrangements with advertisers, at no cost to government.

4.3. The Community Panel determine complaints about advertising screened on or displayed on subscription television, free to air television, commercial radio, print publications, outdoor billboards, posters in publicly accessible places, advertising on motor vehicles as well as all internet platforms.

4.4. We therefore recommend that distinguishability requirements continue to be directed to advertisers (e.g. through the AANA Code of Ethics), and that the regulatory framework be further enhanced in whatever form it takes (co-regulatory or otherwise) by including:

- (a) **Recognition of the AANA Codes:** a requirement that all content must be considered against the provisions of the AANA Codes, and all Licensees must only broadcast advertisements which comply with the AANA Codes; and
- (b) **Referral to Ad Standards:** a requirement that all complaints about advertising content, including distinguishable advertising, be referred to Ad Standards for resolution.

4.5. The key benefits of this approach are that:

- (a) the complaints system operates at no cost to the consumer or to the government, as it is funded through a voluntary levy based on advertising spend;
- (b) it provides a uniform set of standards which are technology and platform neutral, allows for more consistent treatment of advertising content issues. This will better reflect a modern content market and effectively establish a 'one-stop-shop', for advertising in Australia across all media;



- (c) the flexibility of the AANA Codes is able to quickly respond to recurring issues and evolving advertiser and content service provider practices, as well as adapting to changing consumer needs and expectations; and
- (d) it confirms the commitment of all advertisers, including online content service providers, to abide fully by the decisions of the Community Panel and to remove content if a complaint is upheld by the Community Panel.

5. Conclusion

- 5.1. In conclusion, the current advertising self-regulation system already provides an effective, transparent and robust mechanism for the community to raise concerns about the content of advertising.
- 5.2. We therefore submit that all complaints about the distinguishability of advertising should be referred to Ad Standards, so that in effect we become a 'one-stop-shop' for the community and industry on this issue.
- 5.3. This would greatly improve clarity and consistency for consumers and would provide a single point of contact for those responsible for advertising those services products and services across all media (broadcast and online). Additionally, it provides a robust, independent and fair system for assessing whether or not an advertisement meets the broader community's standards.
- 5.4. We would be pleased to discuss our submission further with ACMA, and how our proposal for the recognition of the AANA Codes and the referral of complaints to Ad Standards could be implemented.