



Submission on

**ACMA Discussion Paper: Impartiality and commercial  
influence in broadcast news**

on behalf of

Australian Association of National Advertisers

February 2020

## Introduction

The AANA is the peak body for advertisers and has represented national advertising for 90 years. It represents the common interests and obligations of companies across all business sectors involved in the advertising, marketing and media industry.

The advertising, marketing and media industry plays a fundamental economic role in society - contributing approximately \$40 billion to the Australian economy and employing over 200,000 people<sup>1</sup>. It is the driver of consumer choice and, by promoting competition, helps consumers get better value for money. It enables innovation to be brought to market and stimulates economic growth and jobs.

## Advertising Self-Regulation

Self-regulation is an essential part of the Australian business landscape and contemporary society. The current self-regulatory system for advertising and marketing communication in Australia was established by the AANA in 1997. Its establishment was due to advertisers' recognition that they have a responsibility to deliver marketing that is aligned to community standards and expectations.

The AANA system of self-regulation sits alongside and complements systems of regulation, co-regulation and self-regulation. It provides a flexible mechanism to meet the challenges of the ever-evolving advertising, marketing and media industry, along with changing community expectations.

The self-regulatory system, including complaints handling, operates at no cost to the consumer or to government. The AANA is funded by membership fees. Funding of Ad Standards and its secretariat support of the Ad Standards Community Panel and Ad Standards Industry Jury is provided through a voluntary levy on advertising spend.

The AANA self-regulatory system provides Codes that reflect community standards in relation to advertising. They are developed and have evolved with public and industry consultation. The Codes are technology and platform neutral, providing a uniform set of self-regulatory standards that apply to all advertisers, regardless of AANA membership.

The system is recognised and endorsed through inclusion in other self and co-regulatory systems, and all major media owners have agreed to support the decisions of the Ad Standards Community Panel.

Brand owners who are found in breach of the standards are required to remove or amend the relevant marketing material, irrespective of the platform. The resulting commercial consequences of breaching the Codes include:

- the direct and indirect costs of withdrawing an advertisement; and
- the reputational cost when a non-compliance decision is made public, including possible adverse media coverage.

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<sup>1</sup> *Advertising Pays: the economic, employment and business value of advertising*, June 2016  
<http://www.advertisingpays.com.au/>

## Submission

The AANA welcomes the opportunity to comment on the ACMA’s discussion paper on the impartiality of broadcast news.

The AANA system of self-regulation sits alongside and complements systems of regulation and co-regulation. It provides a flexible mechanism to meet the challenges of the ever-evolving advertising, marketing and media industry, along with changing community expectations.

The self-regulatory system, including complaints handling, operates at no cost to the consumer or to government. The AANA self-regulatory system provides Codes that reflect community standards in relation to advertising, including the requirement to clearly distinguish advertising from editorial content. The Codes are technology and platform neutral, providing a uniform set of self-regulatory standards that apply to all advertisers, regardless of AANA membership.

Brand owners who are found in breach of the standards are required to remove or amend the relevant marketing material, irrespective of the platform. The resulting commercial consequences of breaching the Codes include:

- the direct and indirect costs of withdrawing an advertisement; and
- the reputational cost when a non-compliance decision is made public, including possible adverse media coverage.

The AANA Codes are platform neutral and the AANA would welcome a move towards platform-neutrality in government regulation of this space. There needs to be a high degree of flexibility in any regulatory approach taken, otherwise the risk of swift obsolescence is high.

### Do current ACMA-administered regulatory measures provide adequate and appropriate community safeguards that address the various types of commercial arrangement?

The current ACMA-administered regulatory measures operate alongside various industry co-regulatory and self-regulatory systems, including the AANA Code of Ethics. The Code of Ethics was expanded in March 2017 to include an explicit provision that advertising must be clearly distinguishable from other content such as news, reviews or endorsements.

Rule 2.7 of the AANA Code of Ethics states that:

*Advertising or Marketing Communication shall be clearly distinguishable as such to the relevant audience.*

To fall within the remit of the Code of Ethics and be required to clearly distinguish advertising content from other content, the advertiser must have a reasonable degree of control over the advertising content. Payment is not required for material to be considered advertising or marketing. Other arrangements may have been made in place of direct payment (for example, where the brand owner provides free product to an independent third party in exchange for them to produce content). The Codes are platform neutral and apply to all advertising in any media.

With the increase in innovative means of advertising, came a commensurate onus to make it clear where content is a commercial placement. The AANA proactively evolves the Codes to align with developments in marketing communication techniques to ensure we continue to meet community expectations.

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Ad Standards recently conducted research into the community’s perceptions and understanding of clearly distinguishable advertising and found around half (49%) of the surveyed participants sometimes felt online advertisements were not clearly distinguishable as such.

In September 2019, the AANA launched a public review of the AANA Code of Ethics to stimulate discussion with interested stakeholders and members of the public to understand whether the Code is meeting its stated objective of ensuring that advertisements and other forms of marketing communications are legal, decent, honest and truthful and are prepared with a sense of obligation to the consumer and society and a sense of fairness and responsibility to competitors.

Following the review, the AANA intends to update the Code and Practice Notes to ensure that it continues to meet community requirements and expectations. It is our intention that a revised AANA Code of Ethics will articulate world’s best practice standards against which it can be measured and administered.

Based on feedback received during the Code of Ethics review, there is some concern that social media influencers may not be clearly disclosing commercial arrangements with advertisers or may be using disclosure tools (e.g. #sp, #spon, #gifted) that are not clearly understood by the relevant audience. The AANA is currently investigating whether the Code of Ethics rules should contain greater guidance in the form of specific disclosure requirements (e.g. #ad, Branded Content, Paid Partnership) for online influencers and product reviewers.

During the AANA Code of Ethics review, no feedback or comments were received calling for greater disclosure requirements under rule 2.7 for broadcast news. Below are three cases which illustrate the AANA Code of Ethics in action. These three cases involve advertisements shown during, adjacent to or resembling broadcast news:

### Medibank Health Update



This TV ad ran immediately after a segment of the Channel 7 news. The ad begins with the Medibank logo, the words ‘HEALTH UPDATE’ and a voice over stating ‘This is a Medibank Health Update with Mia Greves’. Greves speaks into a Medibank branded microphone while a Channel 7 News ‘ticker’ scrolls information about stories coming up. Greves speaks about anxiety with facts presented in a infographic format while the words ‘Medibank health update’ remain on screen throughout the ad.

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Also included are Psychologist Dr Michael Carr-Gregg and information on Beyond Blue and the Raising Children Network. The piece finishes with the voice over ‘to find out more search Medibank Health Updates’. The news-style ad is followed by another ad for Medibank with a voiceover speaking about the benefits of Medibank and testimonials.

The complainants’ was concerned that the ad masqueraded as a news story which is misleading as people expect the news to be impartial.

The Community Panel considered that the relevant audience for this ad would be Seven News viewers and the audience would be familiar with the format of the news but who may also be watching the news whilst doing other things such as preparing dinner.

The Panel considered that the format of this ad was much longer than typical TV ads and was highly stylized to look like a news segment. The theme of anxiety and the opening statement that ‘new data shows that the rates of anxiety have doubled in a decade’ reflects a current concern in the community about anxiety and mental health, and resembled content likely to be on the news. The use of Mia Greves, who was a presenter for Seven News for eight years, as presenter as though it was a news segment was consistent with content viewers would expect from Seven News.

Also the appearance of Psychologist Dr Michael Carr-Gregg was consistent with how Seven News would present information from an independent expert. Dr Michael Carr-Gregg often provides expert information to a number of news programs and the relevant audience for this marketing communication could be aware of this. There was no information making it clear that Mia Greves and Dr Michael Carr-Gregg were employed by Medibank and were not providing information as part of a sponsored segment. The Panel considered that whilst there was branding throughout the ad the overall effect of the ad creates confusion as to whether the content is advertising or is part of the news content.

The Panel noted that the Seven News ticker may not be used during the usual programming, however in this instance throughout most of the ad the Seven News logo is featured more prominently than the Medibank logo, and therefore the ad more closely resembled content from Seven News than advertising material for Medibank.

The Panel considered that the ‘Medicare HEALTH UPDATE’ watermark on the screen similarly suggested the content was a sponsored news segment, rather than a TV ad and that the overall impression of the ad was of a news segment on anxiety, or a sponsored health segment as part of Seven News. In the Panel’s view it was not clearly distinguishable to a broad audience of news viewers and did breach Section 2.7 of the Code of Ethics.

See video [here](#) and read the report [here](#).

## Nutra-Life



This advertorial was an in-program health segment on Studio 10, for Nutra-Life. The segment was part of a fully integrated paid media campaign for Nutra-Life.

The complainant was concerned that the ad was not clearly distinguishable as an ad and masquerading as a news story which would be misleading as people expect the news to be impartial.

The segment started with one of the hosts listing statistics relating to heart and cardiovascular disease. A guest cardiologist joins the TV panel to speak about ways to reduce risks. He speaks about the main risk factors for heart disease and the '5 keys to good health' before recommending the natural product Nutra-Life Kyolic Aged Garlic and referencing the studies that support it as a natural way to reduce heart disease risk.

The Ad Standards Community Panel noted that the cardiologist is embedded with the hosts and there is no indication through the introduction or during the segment that the advice and opinions offered by the medical professional were part of a specific product promotion.

The relevant audience for this ad would be Studio 10 viewers and much of the audience would be familiar with the concept of in-program promotions of products and services. The Panel considered that the ad differed from the usual format of in-program promotions in that the product was discussed by the hosts as though it were a news story. By linking the story to current events and statistics the segment appeared more like a news story on cardiovascular health than an ad.

There was no mention in the segment of the cardiologist appearing to promote a product within the segment itself, rather the impression was he was there to provide broad medical advice in his specialist field of cardiology on an important health issue. The hosts reacted as though they had not heard of the product before, and there was no mention in the segment that there was a sponsorship arrangement between Nutra-Life and Studio 10.

The Panel found that the ad was not clearly distinguishable as advertising material to the relevant audience and breached Section 2.7 of the Code of Ethics.

Read the [report](#).

## **Lottoland**



Video: <https://youtu.be/Rt1V1twAM2A>

Issues: Native Advertising not clearly distinguishable; Excess participation - Condone or imply excess participation; Pressure to gamble - Disparage abstention; Health and Safety Within prevailing Community Standards.

Result: NOT IN BREACH

This free to air TV ad featured a series of ads that contained some elements of news bulletins. A 'newsreader' states that celebrations are happening all over Australia with footage showing people dancing in various locations after winning.

The Panel noted the ad was designed to look like a news bulletin reporting on people celebrating wins every four minutes. Advice provided in the Practice Note to Section 2.7 states: "If it is clear to the relevant audience that the content is commercial in nature (for example by the nature of the content, where the content is placed, how consumers are directed to the content, the theme, visuals and language used, or the use of brand names or logos), then no further disclosure or distinguishing element is needed." The Panel considered that it may not be clear within the first few seconds that this was an ad, however soon the use of logos, disclaimers and wording made it clear to most viewers that this was an ad.

The Panel considered there is space for parody and satire in advertising and that although the news bulletins may at first appear real, the ads did not use real newscasters or station branding and is clearly different from a genuine news bulletin.

A range of other issues were also considered by the Panel however overall the ad was found not in breach of any of the AANA Codes. Read the report.

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The AANA understands that this ad was also investigated by the ACMA and found not to breach the Commercial Television Industry Code of Practice 2015. While the Commercial Television Industry Code of Practice 2015 imposes disclosure requirements on ‘factual programs’, the AANA Code of Ethics imposes disclosure requirements for all advertising and marketing communication, regardless of the media platform and regardless of the type of content. The complaint handling procedure is different for each Code however both systems provide the public with a free mechanism for raising concerns and seeking redress.

### To what extent should regulation address the perception of commercial influence and the ‘soft’ influence of advertisers in addition to explicit commercial arrangements?

The AANA notes the quantitative and qualitative research commissioned by the ACMA and other consumer research which identified community concerns or perceptions of commercial influence. The AANA also notes the following gaps in research on commercial influence identified in ACMA’s research report:

- in Australia there is very little research that charts current industry practice in relation to commercial content in news and current affairs and then examines consumer attitudes to these practices;
- there is no qualitative Australian research establishing whether consumers can detect commercially supported content in news and current affairs, or whether they can identify native advertising online on news and current affairs sites; and
- it is not known how consumer views on integration of commercial content might vary between news and current affairs, or across platforms or across different types of commercial content (e.g. product placement compared to sponsored editorial comments).

Further research into these gap areas may be useful to identify both the level of consumer ability to identify particular instances of advertising in editorial content and also the level of concern in each case.

Complaints to Ad Standards under section 2.7 of the Code of Ethics made up only 0.41% of total complaints to Ad Standards in 2018.

### What are the benefits or otherwise of the various approaches to transparency such as disclosure or distinguishability?

The AANA Code of Ethics requires advertising to be “clearly distinguishable” from other content. As noted above, the AANA is currently investigating the need to introduce further guidance on disclosure requirements in the Practice Note for social media influencers and online reviewers.

The AANA Code of Ethics and Practice Note has been deliberately drafted in a way that allows advertisers the flexibility to decide how to distinguish their advertising from other content. Such an approach also has the benefit of giving the Ad Standards Community Panel the flexibility and discretion to make a determination having regard to the audience, content, theme, visuals and language used.

## Can disclosure requirements be adequately acquitted through websites or program credits, rather than in real time during the broadcast?

The UK Code of Broadcast Advertising (BCAP Code) requires advertising to be “*obviously distinguishable from editorial content*”<sup>2</sup>. While the Code does not contain any specific disclosure requirements in terms of tools to be utilised to distinguish such ads, the rule does require that the “*the audience should quickly recognise the message as an advertisement*”.

## Are distinguishability requirements best directed to advertisers (e.g. through the AANA Code of Ethics), broadcasters (e.g. through industry codes of practice) or both?

Although the AANA Code of Ethics requirements are directed at advertisers, the self-regulatory system has the support of all commercial and subscription TV, radio and newspaper platforms as well as the major digital platforms, Facebook and Google. The combined effect of the AANA Code of Ethics and the industry codes of practice is that both the broadcasters and advertisers are covered by distinguishability requirements when it comes to placing advertising in or near editorial content.

## Are there other principles or considerations not included in this paper that the ACMA should have regard to in its consideration of regulating commercial influence?

The ACCC Digital Platforms Inquiry Final Report acknowledged that the AANA self-regulatory system is technology-neutral and this feature has enabled the AANA Codes to keep pace with technology by applying equally to new forms of media and advertising platforms such as Google and Facebook.

The AANA supports the ACCC’s calls for platform-neutral media regulation and believes that delivering platform-neutral regulation of commercial influence should be the primary goal of any action coming from this review.

## Further Consultation

The AANA would welcome an opportunity to discuss in more detail with ACMA the issues raised in the Discussion Paper. Please contact Megan McEwin on [REDACTED] regarding opportunities for further consultation.

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<sup>2</sup> Section 2 Recognition of advertising, UK Code of Broadcast Advertising (BCAP Code), <https://www.asa.org.uk/codes-and-rulings/advertising-codes/broadcast-code.html>