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Developing Effective Advertising Self-Regulation in Australia:
Reflections on the Old and New Systems

Debra Harker, Michael Harker, & Michael Volkov

Abstract
The regulation of advertising is a controversial and difficult process. Over the past three decades, two attempts have been made in Australia to produce more acceptable ads. This paper reviews these systems using a macro framework for analysis which contextualises advertising in society. The systems have the fundamental process of handling complaints about advertising in common, however there are advantages and disadvantages of each and these are discussed. Important insights for the development of regulation of advertising are presented together with critical implications for the future of the industry.

Keywords: advertising, self-regulation

1. Introduction
Whilst Best (1997:p. 223) suggests that only ethical people can make ethical choices, many cynical observers of advertising in society would argue that advertisers are increasingly unethical in their attempts to reach their target markets. The activity has been described as pervasive (Drake, 1988), intrusive (Blakeney and Barnes, 1982) and, at times, pernicious. In the same vein, Mittal (1994) has suggested that the purveyors of the art have been known to be mischievous in their commercial role. Globally, we are told, developed and developing societies are bombarded by several hundred millions of different advertisements which are published and broadcast each year (Boddewyn, 1992). On the one hand, these figures are testament to the importance of this, the most visible, element of the marketing mix (Boddewyn, 1989:22), however they can also be viewed as further evidence that some members of society may need to be protected as some advertising can be harmful.

A small proportion of advertisements are offensive, false, misleading, unfair, or socially irresponsible, or they are perceived as such by the general public. So, when this is the case, a structure needs to be in place in order to provide protection to all parties. To complement their legal systems, developed countries have established programs of regulation which, in the main, are operated on a self-regulatory basis, where the industry is responsible for controlling the conduct of its own members. However, the recent breakdown in Australia of one of the world’s longest established advertising self-regulatory systems, and the introduction of a new system, highlights the problems associated with providing effective protection for society from unacceptable advertising (Media Council of Australia, 1996; Strickland, 1996).

The achievement of acceptable advertising through self-regulatory systems is a topic that has been debated spasmodically in leading marketing journals for over twenty years. The extant literature can be classified into two key streams, the first provides a significant, although somewhat descriptive, body of knowledge of advertising self-regulation (ASR) in general and examines, for example, how various schemes function around the world (Neelankavil and Stridsberg, 1980; Miracle and Nevett, 1987; Boddewyn, 1988, 1992). The second stream is more prescriptive and provides normative guides for regulators and advertisers to assist in developing effective ASR programs. Indeed, research studies have provided seven tests (Moyer and Banks, 1977), five activities (LaBarbera, 1980), five recommendations (Armstrong and Ozanne, 1983), six tasks (Boddewyn, 1985), and fifteen rules (Wiggs, 1992) as normative guides for advertisers in developing ASR programs.

Despite these research themes, little is known about how acceptable advertising can be defined and monitored. Thus, in the overall context of advertising regulation, this article has two objectives: first, to present and discuss the key variables associated with acceptable advertising. Second, to use these variables as a framework to analyse the way advertising is regulated in Australia — comparing the new administration to the old.

2. Regulation, Self-Regulation and Advertising
The parent body of literature for this research is social control (Streeck and Schmitter, 1985) and, in particular, regulatory
theory, incorporating collective action and group decision-making, in the context of advertising.

Regulation is used by government to support, or to obtain the collaboration or assistance of business, as well as to control it (Byrt, 1990). Indeed, there are few business activities in Australia that are not subject to government regulation, either directly or indirectly (Pincus and Withers, 1983). However, regulation can have a very broad meaning in everyday life and this is largely a result of its historical usage (Harris and Carman, 1984). Indeed, in their typology of regulatory response, Harris and Carman emphasise the fact that regulation is generic and very broad in scope and effect (1984, 43).

Regulation is primarily concerned with social control and, in the context of this article, specifically the interaction between authority and exchange (Harris and Carman, 1983). The authority of the state is used to protect those involved in the exchange process. The concept of exchange is at the heart of the marketing process and, when dealing with advertising in a society, those people who are often exposed to increasing amounts of advertising are often those least able to protect themselves when that advertising oversteps the boundaries of acceptability. The item exchanged in advertising is information, and problems arise when misleading, deceptive or offensive information is communicated to the marketplace, in other words unacceptable advertising.

One of the most important, and current, challenges for both marketing and public policy researchers and practitioners is to ensure that the remedy chosen to avert, or correct, market failure is the best that can be designed (Carman and Harris, 1986). Thus, effective ASR frameworks are one such remedy for unacceptable advertising practices.

Whilst research in this area is problematic, scholars such as Wotruba (1997) have issued the challenge to researchers, suggesting that the literature on self-regulation in general has little empirical flavour, does not inform about the effectiveness of schemes, does not enlighten about what types of programs are more effective than others, under what conditions and for what interested stakeholders. Given this challenge, it is not surprising that there are cynics among researchers when discussing the merits or demerits of indus-

<table>
<thead>
<tr>
<th>Breach</th>
<th>Guilty Party/Case</th>
<th>Reasoning</th>
<th>Country</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deceptive</td>
<td>Federal Trade Commission v. Ruta Lee</td>
<td>The advertising of a stop smoking spray that does not work effectively,</td>
<td>United States of America</td>
<td>1995</td>
</tr>
<tr>
<td>False</td>
<td>Driscoll v. US Robotics</td>
<td>Advertising the speed at which their modems could download information faster from the Internet</td>
<td>United States of America</td>
<td>1997</td>
</tr>
<tr>
<td>Unfair</td>
<td>Federal Trade Commission v. RJR Tobacco Co.</td>
<td>Regarding the use of Joe Camel in advertisements as being unfair advertising as it is targeting minors</td>
<td>United States of America</td>
<td>1998</td>
</tr>
<tr>
<td>Offensive</td>
<td>Smiths Foods</td>
<td>Advertisement depicting camera-clicking</td>
<td>Asians Australia</td>
<td>1999</td>
</tr>
<tr>
<td>Socially</td>
<td>People s Truth/Heartbalm</td>
<td>A billboard advertisement promoting an adults-only Website failed to treat sex, sexuality and nudity with sensitivity to its relevant audience, particularly given its prominent outdoor location, which effectively placed it on general exhibition to the general public</td>
<td>Australia</td>
<td>2000</td>
</tr>
<tr>
<td>Misleading</td>
<td>Papa John s Pizza</td>
<td>A federal district court in Dallas ruled Papa John s Better ingredients. Better pizza slogan is deceptive and misleading advertising</td>
<td>United States of America</td>
<td>2000</td>
</tr>
</tbody>
</table>

Source: FTC File Number 942 3058; Burstein, 1997; Meillo, 1998; Advertising Standards Board Complaint Reference Number 69/98; Advertising Standards Bureau, 1999; Siebert, 2000).
try self-regulation; indeed, some researchers have warned that self-regulation is like letting the lunatics run the asylum (Ducret, 1991).

Before the advent of self-regulation of any industry, a strong driving force must be apparent. A knee-jerk reaction from many industries when faced with the prospect of government regulation is to opt for self-regulation in an attempt to stave off what is seen as interference in the marketplace by government bodies.

In the advertising industry this is often the impetus needed to establish the foundations for self-regulation of an industry and, whilst the reasons might be purely enlightened self-interest, the positive outcome, when compared to a legal alternative, is a fast, cost-effective system, supported by the industry. However, where advertising industries opt for self-regulation of their members conduct and behaviour, they pay the price of constant scrutiny by interested parties such as government bodies, consumer groups and social commentators. Many ASR schemes around the globe, including Australia, have evolved in this way.

Whilst ASR is an attractive option for advertisers, a pre-requisite to continued operation and, little direct government involvement, is the concept of collective action. Collective action has three main purposes (Harris and Carman, 1984:46): first to realise economies of scale in production, second to internalise the benefits of productive actions and, finally, to change the balance of power between participants in the exchange process. However, when focusing on the marketing exchange process, and in particular the activity of advertising, unless the vast majority of advertisers are committed to, and involved in, the ASR scheme, continued self-regulation will be short-lived.

Gupta and Lad (1983) suggested that industry self-regulation will only take place if the firms in the industry, the advertisers, decide to cooperate with each other. Similarly, where the ASR scheme incorporates a national tripartite system (Boddewyn, 1992; Sinclair 1992) and the advertisers, agencies and media are involved in the process, cooperation will be significantly enhanced. This collective action, which grows out of the need to regulate, succeeds in spreading the decision-making responsibility across a group. Although group decision-making has received a number of criticisms over the years (wasting of time, evading individual responsibility, producing conformity and compromise [Ofner, 1959]), the benefits of quality and acceptance of group decisions still prevail (Jewell and Reitz, 1981).

3. Acceptable Advertising - The Key Variables

The literature in the area suggests a conceptual framework of

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**Figure 1: Acceptable advertising; a framework for analysis**

*Source: Harker, 1998*
acceptable advertising, which can be applied to analyse the regulation of advertising in developed countries. The framework is shown at figure 1.

3.1 Acceptable Advertising

There is a relationship between the relative economic importance of annual advertising expenditure in an economy and the existence or absence of a self-regulatory body concerned with unacceptable advertising (Neelankavil and Stridsberg, 1980). In other words, the more money spent on the activity in a country, the greater the need for protection from unacceptable advertising. However whilst advertising contributes to a country’s economy it must also satisfy the social norms that exist in that country, that is, the activity should be responsible and accountable, providing acceptable advertising to society.

Irrespective of whether they work within a legal or self-regulatory system, advertising regulators must still attempt to define acceptability. Defining any value-laden term such as acceptability is problematic, and this difficulty is exacerbated by the competing interests that enter into debates on advertising. That is, advertisers typically hold the view that, in a free society, they should be permitted to promote their products and services as they wish, provided they do not breach the privileges of free speech (i.e. their messages are not misleading, deceptive or defamatory). Advertising agencies concur with this view, since it allows them to exercise their creative craft freely. Consumers and certain interest groups (such as religious groups, churches, lobby groups) within the public domain believe such freedom needs boundaries. At the heart of any good advertising message is the concept of communication and, whilst the communication process has been studied at length in the marketing literature, the true purpose of any communication must not be overlooked; that is, to transfer meaning from source to receiver. The difficulty that advertisers face, however, is that meaning is subjective; it is internal to the receiver, rather than external (Shimp, 2000) and this has serious implications for those concerned with controlling unacceptable advertising.

Regulators attempt to deal with this issue by considering prevailing community standards, by ensuring complaints boards contain representatives from throughout the community, and by publicising their adjudications widely. These measures (discussed in more detail later) mean acceptability is defined by default as advertising that did not clearly fall foul of legal or self-regulatory standards. This approach is pragmatic, since regulators must take decisions, but it needs also to be recognised that these decisions are subjective. Table 1 provides some examples of recent unacceptable advertising from around the world. The examples include the reason for the breach of the code, typical recalcitrant advertisers and the precedent decision.

3.2 Prevailing Community Standards

Attempts to represent prevailing community standards in an ASR system are usually achieved by involving the public in the complaint handling process, which should lead to increased effectiveness of the program (LaBarbera, 1980; Boddewyn, 1983; Armstrong and Ozanne, 1983; Moyer and Banks, 1977; Trade Practices Commission, 1988) and also provide a credible and transparent process which is open, frank and candid for all. Some programs also attempt to monitor trends in advertising and community standards as a means of better representing current standards in the community (Canadian Advertising Foundation, 1991).

Involvement from the public can be at two levels; as complainants and also as members of the complaint handling body. Most complaints in most countries originate from members of the public and, as ASR programs are established primarily to protect these people, this situation is healthy. However, there is concern about the growing number of complaints stemming from competitors and trade organisations in countries such as Canada (Boddewyn, 1992) and Australia (Harker, 1996).

There is no magic mix regarding the make-up of a complaint handling body and there is little in the literature to guide us as to what ratio works best. America, for example, does not have any outside participation on their National Advertising Division Committee, being entirely staffed by attorney advertising review specialists (Internet BBB Web Server, 1995) whilst, at the other end of the spectrum, the United Kingdom operates with two-thirds of its twelve-person board being completely independent (Boddewyn, 1992).

Whatever the mix, the public persons who are involved in determining complaints are generally not ordinary people but rather of the great and the good (Boddewyn, 1983:p. 83) and amateur, but often distinguished (Tunstall, 1983:p. 237). In essence the public members of a complaint handling body are better educated and better known people and, usually, members of the Establishment. However, one might question the appropriateness of such people to represent the prevailing community standards of a society.

3.3 The Legal Regulatory Framework

The fundamental determinant of a developed or developing country’s ASR system is a sound legal regulatory framework which complements the self-regulatory structure (Miracle and Nevett, 1987:xxii). The legal regulatory framework in this instance refers to the laws and regulations in place to protect society from unacceptable advertising, and also to those bodies charged with implementing the laws and regulations.

The laws and regulations governing advertising practices obviously vary from country to country; however, there are certain areas of commonality that assist in improving the acceptability of advertising at the country level. While much legislation that deals with advertising relates to aspects of consumer protection or regulation of competition (Sverdrup and Sto, 1992), in most developed countries illegal advertis-
ing practices, encompassing unacceptable advertising, are governed by laws pertaining to marketing or broadcasting and many countries have umbrella legislation of this kind in place. Further, there has been a recent world-wide trend to outlaw tobacco advertising in many countries. Regulatory agencies or bodies which complement this legislation are apparent in Australia and these have not changed for many years.

3.4 The Advertising Self-Regulatory Framework

There is an important overlap between a country's legal regulatory framework and its self-regulatory framework in relation to advertising. In order for the two frameworks to co-exist effectively many tasks and responsibilities can be delegated to each other, if the system is mature enough. For example, countries which have established a national tripartite system (Boddewyn, 1992; Sinclair, 1992) whereby the advertisers, agencies and media are involved in the process, the chances of industry compliance with decisions are greatly enhanced. In this system unacceptable advertising will not be published or broadcast by the various arms of the media. However, this aspect of the process was at the heart of Australia's demise as the Australian Competition and Consumer Commission (ACCC) found the collusive nature of the practice to be illegal.

Whilst many critics of advertising would argue that the advertisers opt for self-regulation as a protection against government intervention, it is this very situation that has assisted in the evolution of the more effective ASR systems. For example, systems such as New Zealand and the UK that do not have the luxury of a tripartite system still achieve some success in ensuring that when a complaint about advertising is upheld, the advertiser complies with the ruling and removes or amends the ad. The new Advertising Standards Board (ASB) in Australia is facing an analogous situation as it has been established on a voluntary basis.

Thus, whilst Australia has a new ASR system in place, the legal regulatory framework has not changed for a number of years.

3.5 Industry Compliance

Achieving industry compliance in an ASR system is vitally important else the process will be accused of impotence. Compliance is usually achieved through sanctions such as prosecution under law, in the most extreme circumstances, and financial incentives to comply with rulings from charter bodies. Complaint handling bodies achieve varying levels of success in relation to encouraging industry compliance; for example, where the ASR system incorporates a national tripartite system (Boddewyn, 1992:9; Sinclair, 1992:3) and

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3For example the Australian Competition and Consumer Commission.

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Figure 2: The Old — Prior to 1997: The structure of advertising self-regulation in Australia.

Source: Harker 1998
the advertisers, agencies and media are involved in the process, the chances of compliance are greatly enhanced as the complaint handling bodies are given teeth.

4. Australian ASR

Not only is the advertising industry in Australia controlled to some degree by law, it is also heavily self-regulated, having observed the disciplines of self-regulation for more than sixty years (Australian Advertising Industry Council, 1989). However, whilst two attempts have been made to formulate an effective complaints handling body, many of the other industry organisations have endured and also adhere to their own codes of conduct.

4.1 Australian Advertising Industry Council

The Australian Advertising Industry Council (AAIC) was established in 1978 as a tripartite organisation, incorporating the major arms of the advertising industry; the advertisers (Australian Association of National Advertisers), the advertising agencies (Advertising Federation of Australia) and the media (Media Council of Australia). The Council had three objectives:

1. to create a positive attitude to advertising among consumers and legislators;
2. to explain the role of advertising in the free enterprise system; and
3. to promote to consumers the benefits of advertising.

AAIC, 1986

4.2 The Australian Association of National Advertisers

The Australian Association of National Advertisers (AANA) was formed in 1928 when 12 advertisers met in order to discuss their common problems and ultimately resolved to work towards a voluntary code of ethics and improved media research. The prime objective of the AANA is to represent and protect the interests of advertisers and its membership includes almost all of the largest advertisers in Australia (AANA, 1993).

4.3 The Advertising Federation of Australia (AFA)

The Advertising Federation of Australia (AFA), established in 1975, is the industry association of advertising agencies and other advertising practitioners. Its members are responsible for the majority of national advertising expenditure in Australia (AFA, 1993).

Prior to 1997 there were two main players in Australian ASR; the Media Council of Australia (MCA) and the Advertising Standards Council (ASC). The MCA was formed in 1967 as an unincorporated voluntary association of virtually all mainstream commercial media (MCA, 1994). The MCA brought together the various arms of media to ensure a uniform method of extending credit to advertising agencies, and to implement a system for the regulation of advertising content published or broadcast by its members through development of five codes of advertising practice (MCA, 1994). The five codes being, the Advertising Code of Ethics, the Alcoholic Beverages Advertising Code, the Slimming Advertising Code, the Therapeutic Goods Advertising Code, and the Cigarette Advertising Code.

In 1974 the ASC was established by the MCA (the media), the AFA (the agencies), and the AANA (the advertisers) as a strictly independent and autonomous complaint handling body for the advertising industry (ASC, 1993).

5. The Catalyst for Change …

During 1995 and 1996 a number of significant events took place in Australia that ultimately resulted in the industry being charged with producing a new system of ASR. First, the government agency and industry watchdog, the Australian Competition and Consumer Commission (ACCC), revoked the MCA’s accreditation system for advertising agencies because the benefit to the public from the system was insufficient to outweigh the associated anti-competitive detriment. This was a key event in the unfolding demise of the ASR system in Australia, as the power of the media was crucial to the effectiveness of the system, without its support breach decisions determined by the ASC were unenforceable. Advertising agencies, once accredited to the MCA for pecuniary and business reasons, were no longer compelled to comply with the system of ASR. In March of 1996 the ACCC’s decision was unsuccessfully appealed and effectively meant that the system of ASR in Australia had no means of enforcing decisions — advertisers, through the advertising agency mechanism, could not be compelled to withdraw offending advertisements. Next, in August of the same year the ACCC announced a review of advertising standards in Australia, encompassing both the codes of conduct and the complaint handling body, the ASC. Thirty days later the MCA declared its intention to disband at the end of 1996, leaving Australian society open to unacceptable advertising until a new ASR system was established (Harker, 1997).

The ACCC went ahead with its review despite the capitulation of the MCA and found that a material change of circumstance had occurred since 1988 in regard to five key areas (ACCC, 1997):

1. Outdated Codes: lack of responsiveness of the codes to changes in community needs;
2. Lack of Compliance: diminished powers to ensure compliance with the codes beyond 3 February 1997;
3. Lack of Administrative Control: administration of the codes;
4. Lack of Confidence: in the membership of the Advertising Standards Council; and
5. Lack of Commitment: of the Charter organisations, to the codes.
The MCA and the ASC were the two major casualties of the collapse of the Australian ASR system in 1996. In 1997 the Australian government charged the Australian Association of National Advertisers with the responsibility of establishing a new system of ASR in Australia. The AANA launched the replacement ASR system in August 1997 and operations commenced at the end of that year. The AANA’s system for ASR has three important parts:

1. The AANA Advertiser Code of Ethics;
2. The ASB — a new body comprising 14 members of the public to maintain standards of taste and decency in advertising; and
3. The Advertising Claims Board (ACB) — a new AANA dispute resolution process for rival advertiser complaints.

The new dual platform of ASB and ACB means that each board is responsible for applying different sections of the new AANA Advertiser Code of Ethics. It should be noted that, whilst many industry bodies abide by their own codes of ethics (i.e. the AFA’s) or conduct, the focus here is on the codes specifically administered by the ASB and, before it, the ASC. The ASB deals with issues of taste and decency and the service is free to complainants. The ACB handles questions of truth, accuracy and questions of law on a user-pays basis. The system is funded by a levy of 0.035% surcharge on gross media billings, which is more than twice the previous levy.

6. Learning from Comparison
Comparing both systems using the concept of collective action, with its three purposes of realising economies of...
scale, internalising the benefits of productive actions and changing the balance of power between participants in the exchange process (Harris and Carman, 1984), it is apparent that the ASC achieved more effective collective action than the ASB now does.

Without the national tripartite system in place during the ASC’s reign, whereby advertisers were forced to remove unacceptable ads, the ASB struggles to achieve any real sense of collectivity amongst the industry. Economies of scale, apparent in a national tripartite system, are not achieved without the, now extinct, Media Council’s input and the benefits of productive actions are similarly stifled as there is constant uncertainty amongst all parties in regard to the balance of power. Certainly Gupta and Lad’s (1983) suggestion that industry self-regulation will only take place if the firms in the industry decide to cooperate with each other, is validated here in the case of the advertising industry in the 21st century in Australia. Since inception in 1998, the ASB has received prolonged and severe criticism from many commentators, including the advertising industry, and the very uncertainty of the compliance process has produced timidity from the complaint handling body, evidenced by the 5% uphold rate discussed earlier.

Prevailing community standards are usually achieved by involving the public in the complaint handling process; this involvement can be at two levels, as complainants and as members of the complaint determination board. As complainants, the public is now provided with a stand-alone panel set up with the sole purpose of determining complaints about taste and decency, traditionally the domain of the general public. This is a positive move. As is the fact that there are now nearly twice as many complaints overall, compared to the last year of the ASC’s reign. More complaints means that the public awareness message is getting through to those concerned with unacceptable advertising.

Understanding the ASR process involves not only examining how the systems operate but also who is involved in the process. Both systems involve(d) the public in the complaint adjudication process which, arguably, leads to increased effectiveness of the program (LaBarbera, 1980; Boddewyn, 1983; Armstrong and Ozanne, 1983; Moyer and Banks, 1977; Trade Practices Commission, 1988), and provides a credible and transparent process which is open to all stakeholders. The old system operated with a 10:6 ratio of public:industry members on the Council, whilst the new system has 14 non-industry members.

Whereas the old ASC relied on ex-Supreme Court Judges, ex-Deputy Prime Ministers, ex-State Premiers, Lawyers, Doctors, sporting greats and the like, the new ASB adopts a slightly different recruitment policy with board members from the worlds of business, media, academe and sport. Specifically, the ASB draws on the services of the great and the good (Boddewyn, 1983) such as prominent businesswoman, Sara Henderson, media personalities, Mary Kostakidis, Margaret Pomeranz and Carmel Travers, sporting aficionados Roy Masters, John Konrads and Geoff Lawson, author Thomas Keneally, public servants John Brown and Wendy McCarthy, students Joanna Cohen and Kate Williams, and others who have worked in advertising and marketing research, such as Graham Cox and Brian Sweeney (ASB Annual Report, 1999).

The legal regulatory framework for advertising in Australia has changed little over the past three decades, with the Trade Practices Act and Broadcasting Services Act being the main pieces of legislation pertaining to this activity. The key difference between the two regimes, however, lies in the change-over from the Trades Practices Commission to the Australian Competition and Consumer Commission as the body concerned with monitoring the effectiveness of ASR. Whilst the ACCC were the catalyst that brought about the demise of the MCA and ASC in 1996, it is now closely monitoring the ASB.

In terms of the ASR framework, and in particular the complaint handling bodies, both systems operate(d) in a similar precedent manner but each has(had) a varying degree of effectiveness in this regard. Both systems require(d) a complaint to be in writing and this in itself is problematical for the illiterate, poorly educated and inarticulate members of society who, nevertheless, have a fundamental right to complain. Each of the systems then filter(s) the complaints to gauge if a prima facie case exists, or if the complaint is outside the jurisdiction of the body. However, whilst the ASC filtered out 50% of all complaints that were delivered to the secretariat, thus only allowing 50% to be heard at a Council meeting, the new administration endeavours to hear almost all of the complaints that are received by their secretariat (Fraser, 1999).

In both systems, once determination is(was) made, a formal written communication is(was) sent to advertisers, complainants and the media involved. However, under the old

4The AFA’s Code of Ethics was first unveiled at the beginning of 1998, just after the collapse of the ASC and MCA. The Code has recently been re-written and launched again (Sinclair 2001).

5NB Whilst this table is concerned with the ASR systems and codes administered by the ASC and ASB, it should be noted that an industry-backed Alcohol Beverages Advertising Code and Complaints Management System was introduced in July 1998 by the liquor industry (Wooldridge 1998). This ABAC is not included in discussions in this paper as it is outside the control of the ASB, although the Bureau does forward suitable complaints onto the administrators of that code. Similarly, other industry bodies, such as the AFA, abide by their own codes of ethics or conduct and, likewise, these are not discussed here for the same reason.
### Table 2:
Towards acceptable advertising self-regulation in Australia — the old and the new

<table>
<thead>
<tr>
<th>Representing Prevailing Community Standards</th>
<th>Advertising Standards Council</th>
<th>Advertising Standards Board</th>
<th>Advertising Complaints Board</th>
</tr>
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<td>Complaint handling body — industry:non-industry members</td>
<td>6:10</td>
<td>0:14</td>
<td>Panel of 5 legal practitioners.</td>
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<tr>
<td>Public awareness campaigns</td>
<td>At industry discretion</td>
<td>At industry discretion</td>
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### Legal Regulatory Framework for Advertising

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<th>Laws, government agencies</th>
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### ASR Framework — Complaint Handling Body

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<tr>
<td>Funding</td>
<td>0.017% billings</td>
<td>0.035% billings</td>
<td>User pays</td>
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<tr>
<td>Number of codes/guidelines administered</td>
<td>5</td>
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<tr>
<td>Complaint procedure</td>
<td>Written</td>
<td>Written</td>
<td>Written</td>
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<tr>
<td>Number of complaints per year</td>
<td>1,135 (96)</td>
<td>2,065 (99)</td>
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<tr>
<td>Appeals procedure</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Dissemination of case summaries</td>
<td>Limited — parties to complaint</td>
<td>Limited — parties to complaint</td>
<td>Not known yet</td>
</tr>
<tr>
<td>Monitor ad trends</td>
<td>No</td>
<td>No</td>
<td>Not known yet</td>
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<td>Monitor complaints</td>
<td>Yes</td>
<td>Yes</td>
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### Advertising Industry Compliance

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<tr>
<td>National Tripartite System</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Industry complaints considered</td>
<td>At ASC meeting</td>
<td>By ACB</td>
<td>Yes</td>
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### Sanctions

- Modification or withdrawal of ad. Else: loss of $ privileges
- Request for modification or withdrawal of ad.
- Request for modification or withdrawal of ad.
Compliance by the advertising industry with rulings from the complaint handling body is a key component of any ASR system. It was suggested earlier that, where the ASR scheme incorporates a national tripartite system (Boddewyn, 1992, Sinclair, 1992) and the advertisers, agencies, and media are involved in the process, the chances of industry compliance with rulings are greatly enhanced as the complaint handling bodies are given teeth. When the ASC was in place, prior to 1997, the system achieved compulsory industry compliance with this method, whereas now the ASB must rely on the goodwill of recalcitrant advertisers to toe the line. Indeed, the new system has had its first real test of the voluntary nature of its compliance process and was found wanting. Outdoor advertising for Windsor-Smith shoes, depicting a man cradling a woman’s face close to his groin (Mckenzie, 2000), caused public outcry in early 2000 with the National Women’s Media Centre in Queensland calling on women to boycott sex with men who wore the brand of shoe (Mckenzie, 2000). The ASB upheld complaints about the advertisement but Windsor-Smith refused to remove the ad (Mckenzie, 2000). The unintended consequence of a voluntary system of compliance, compared to a compulsory system, would perhaps be a lower rate of upheld complaints in the former system as the body may shy away from confronting the industry in this regard and this is in fact what has occurred with the new system of ASR. The ASC regularly achieved around a 25% uphold rate (ASC Annual Reports, 1984-1996), that is on an annual basis 25% of all complaints received were considered to have breached a code and were thus upheld. The ASB upheld 5% of complaints in both 1999 and 1998 (ASB Annual Reports, 1998, 1999). However, we are not comparing like with like here, as rival advertiser complaints are segregated in the new system but not in the old. It has already been documented that rival advertisers demand more time from complaint handling bodies (Harker, 1996), however they also submit better complaints in terms of detailing specific clauses of codes breached and providing extensive, detailed, litigious evidence (Harker, 2000).

7. General Conclusions
This article articulated two objectives: first, to present and discuss the key variables associated with acceptable advertising. Second, to use these variables as a framework to analyse the way advertising is regulated in Australia — by reflecting on the old and the new administrations.

Given the framework used in this paper, one should be able to now determine which system of ASR is better, the ASC or the ASB? However, as many researchers are fond of saying, it all depends. In the case of effective ASR in Australia, the perfect system would naturally have the best of both regimes. Both systems operate(d) in very similar legal frameworks and, without delving into the impact of the Internet on advertising and the legal ramifications, the comparison is complete. A particular problem for the ASC, however, was the issue of funding and the current arrangements are a significant improvement in this regard. However the key problem with the new system is the voluntary nature of compliance, which has severe implications for other areas of operations. For example, funding is also voluntary and this inevitably puts the regulators in the delicate situation of sometimes penalising the very advertisers that fund their operations, and this could affect the uphold rate of the ASB.

An extremely positive feature of the new ASR system is the segregation of rival advertisers from the complaint determination process. Not only are there no advertisers represented on the ASB complaint handling panel, but also they are no longer allowed to dominate proceedings with lengthy and technical submissions, at the expense of hearing complaints from other sections of the community. The new rival advertiser system (the Advertising Complaints Board) is operated on a user-pays basis and it is interesting to note that this panel has yet to be called upon to sit.

8. Recommendations for Further Research
From this analysis three key areas emerge for future researchers to study. The first area relates to the voluntary nature of industry compliance. Only time will tell if the ASB
can make a virtue out of this necessity and draw on the unwritten support of the various media bodies to assist the self-regulatory system evolve. Regulators must, however, learn from the Windsor-Smith example and seek (unwritten) commitment from the stakeholders in order to ensure industry compliance.

The second area relates to the issue of enlightened self-interest and is concerned with the fact that the advertisers are, to all intents and purposes, paying for and running the ASR system, so how can we be sure, as a society, that they are acting in our best interests and not their own? Or, worse still, will our system of ASR merely have as Ducret (1991) warns, the lunatics finally in charge of the asylum? Clearly the numbers of complaints made to the ASB and the outcomes reached will tell us much about the commitment of the players involved.

Finally, there is a need for future research into the representation of prevailing community standards as, generally, there appears to be little creativity amongst the ASR systems in operation around the world in this regard. However there is an opportunity to learn from those bodies that do go further than including members of the public onto the complaint handling body and accepting. Canada, for example, monitors trends in what people are complaining about and also the trends in advertising itself, highlighting new developments for the attention of its complaint handling body (Canadian Advertising Foundation, 1991).

9. Implications for the Advertising Industry and Regulators

Effective ASR is only as good as the demonstrated commitment to the system by the players involved. The key players of the advertisers and the regulators are currently faced with a simple proposition: improve the effectiveness of the scheme, else government will intervene. After more than twenty years of operations the ASC stumbled in its approach to ASR and the new ASB regime has been heavily criticised since inception. Current issues dogging the ASB include attacks on outdoor advertising and the portrayal of women in advertising. If the two players allow this situation to continue, presenting a divided front, and not uniting on these issues and addressing community concerns, then the current system of ASR is under threat. Unlike 1997, this time it is probable that the government will not call on yet another industry body to take up the reins of ASR in Australia, and far stricter controls will inevitably be put in place.

Enlightened self-interest can achieve positive outcomes, provided the players are truly enlightened and committed to an effective system of ASR that is fair and open. If such a system of ASR is achieved in Australia then government intervention will be staved off, however if the current criticisms of advertising continue then the regulators and industry players may be facing stricter controls. The choice is theirs.

References


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Biographies

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