INDUSTRY SELF-REGULATION: AN ALTERNATIVE TO DEREGULATION?

ADVERTISING — A CASE STUDY

By
MICHAEL BLAKENEY*
AND
SHENAGH BARNES**

Deregulation and self-regulation have been lauded as the most effective answers to the asserted disadvantages of inefficiency and inflexibility of government regulation of business and the economy. The Australian industries which have the most comprehensive system of self-regulation are the media and advertising industries. This article examines the structure of self-regulation in those industries, the various bodies and instrumentalities within that system, and the codes that they administer. The authors then go on to evaluate this self-regulatory regime in the light of particular determinations made under its auspices in the area of public health. They come to the conclusion that by its own standards, self-regulation by the media and advertiser associations lacks both responsibility and credibility.

I. INTRODUCTION

The alleged inefficiencies produced by government regulation of business has been the subject of voluminous scholarship by the free-market, Chicago School of Jurisprudence.[1] A consequence of this scholarship, given the prevailing climate of recession and retrenchment, has been the political movement towards deregulation.[2]

*B.A., LL.M.(Syd.); Senior Lecturer in Law, University of New South Wales.
**LL.M.(Syd.); Lecturer in Law, University of New South Wales.
***The authors are indebted to Jill McKeough, B.A., LL.B.(N.S.W.), for research assistance under an Australian Research Grant.

1 See the writings appearing in the University of Chicago Journals; *Law and Economics*; *Journal of Legal Studies*.
2 See J. Q. Wilson (ed.), *The Politics of Regulation* (1980).

The abolition of the Prices Justification Tribunal and scaling back of the Trade Practices Commission are two recent examples of the Australian Government's commitment to deregulation. Another attractive political option to an economising administration, is the endorsement of industry self-regulation. Under a self-regulatory system funding, organization and administration is supplied by the target industry itself, with no claims being made on government revenue or personnel.

The Australian industries which have the most comprehensive system of self-regulation are the media and advertising industries. A multiplicity of voluntary codes govern advertising practices. These include the industry-wide codes of the Media Council of Australia, codes adopted by trade associations of media proprietors and codes that have been adopted by groups of traders in particular industries, as well as those of individual traders and advertising agencies. These codes are administered by a complex structure of committees, councils and bureaux. This article surveys these instrumentalities and the codes they administer and in so doing attempts an evaluation of what may become the prototypical self-regulatory regime in Australia.

II. INDUSTRY-WIDE SELF-REGULATION

1. The Media Council of Australia (M.C.A.)

The M.C.A. is an unincorporated voluntary association of seven other media associations. These are:

(i) Australian Newspapers Council — representing publishers of all metropolitan newspapers with the exception of the Fairfax group;
(ii) Australian Accreditations Bureau — John Fairfax and Sons Limited and associated companies;
(iii) Federation of Australian Radio Broadcasters — representing 131 commercial broadcasting stations in Australia;
(iv) Federation of Australian Commercial Television Stations — 49 commercial television stations are members;
(v) Australian Provincial Press Association — representing most of the regional or provincial weekly and non-daily newspapers in Australia;
(vi) Regional Dailies of Australia Limited — representing the publishers of most non-metropolitan dailies in Australia;
(vii) Australian Magazine Publishers Association — representing most of the consumer magazines sold through newsagents.

Associations affiliated with the Media Council are:

(i) Australian Suburban Newspapers Association Pty Ltd — representing most of the proprietors of suburban newspapers which are not associated with a metropolitan daily;
(ii) Associated Rural Press of Australia — representing most of the proprietors of the special interest rural publications not associated with a metropolitan daily;
(iii) The Outdoor Advertising Association of Australia — representing companies engaged in the use of advertising bill boards, boardings and transit advertising;

(iv) Australian Cinema Advertising Council — representing most of the organisations responsible for advertising in cinemas.

The primary function of the M.C.A. is "[to] control the accreditation of advertising agencies throughout Australia in relation to advertising media so as to formulate and apply rules and conditions for accreditation on a common basis applicable to advertising media".[3] To this end rule 11(b) of the M.C.A. establishes the Media Council Accreditation Authority.[4] The Accreditation Authority is empowered, at its discretion, to grant accreditation to an applicant advertising agent, either in an unqualified form, or subject to such terms and conditions as it considers appropriate. An accredited advertising agent is entitled to place advertisements with any media proprietor, who is a member of a constituent or affiliated association of the Media Council on the basis that payment need only be made within the period allowed by the accreditation rules. Rule 19 provides that only accredited agents shall be eligible to receive commissions payable by media proprietors in respect of the lodgment of particular categories of advertising. Rule 23 of the M.C.A. in its original form prohibited advertising agents sharing commissions with advertising principals and forbade the rebating of commissions. Both of these rules became the subject of close scrutiny by the Trade Practices Commission.

This accreditation system obviously has a significantly anti-competitive effect, falling foul of section 45 of the Trade Practices Act 1974 (Cth), and a number of members of the Media Council sought authorization of the scheme under the Act. The Trade Practices Commission granted authorization of the Council's accreditation rules, excepting rule 19 which it ruled should not be given effect to and rule 23 which it ordered to be modified to operate only in respect of the sharing or rebating of commissions to advertising principals.[5] The Trade Practices Tribunal on a rehearing of the application granted an authorization of rule 19 on the basis that any detriment to the public was outweighed by benefits enuring to the public from the operation of the accreditation scheme.[6] One of the benefits to the public discerned by the Tribunal to be attributable to the operation of the accreditation scheme was the maintenance of advertising standards.

Rule 31 of the accreditation rules provides:

All advertising submitted to a Media Proprietor shall conform to the standards of the Media Proprietor concerned, and in addition —

(a) shall be clean, honest and truthful advertising, and

(b) shall not be liable to misinterpretation either directly or by implication or by omission, and

(c) shall not contain statements or visual presentations offensive to public decency and good taste, and

3 Media Council of Australia, rule 2(c).

4 The evolution of the Media Council's accreditation scheme is explored by the Trade Practices Commission in *Re Herald and Weekly Times Ltd; Re 2KY Broadcasters Pty Ltd; Re Southern Television Corporation Ltd* [1976] T.P.R.S. 108.98, 108.101-103.

5 *Id.*, 108.132.

6 *Re Herald and Weekly Times and Others on behalf of the members of the Media Council of Australia.* (1978) 17 A.L.R. 281.

(d) shall comply with all Commonwealth and State and Territory laws, ordinances, rules and regulations, and
(e) shall conform strictly with any advertising standards or Code of Ethics which may be published by M.C.A. from time to time.[7]

Pursuant to Rule 31(c) the M.C.A. has promulgated a general Advertising Code of Ethics, and standards have been promulgated for the advertising of goods for therapeutic use, cigarettes, alcoholic beverages, hairpiece/treatments, slimming preparations, domestic insecticides and mail order advertising.[8]

Failure to comply with these codes may result in disciplinary action by the Accreditation Authority. Sanctions include a warning, fines, the reduction or cancellation of commissions and the cancellation or suspension of accreditation. A right of appeal lies from a determination of the Accreditation Authority to the M.C.A. with a further right of appeal to the Appeal Tribunal, which is constituted by the Chairman of the Advertising Standards Council.

2. The Advertising Standards Council (A.S.C.)

The A.S.C. was established in 1974 by the M.C.A. in association with the Advertising Federation of Australia, an organization of advertising practitioners, and the Australian Association of National Advertisers, an association of advertising organizations. The A.S.C. was originally called the Australian Advertising Standards Advisory Authority, the change of name occurring in 1976. It consists of an independent Chairman together with five members of the public "who are otherwise unconnected directly with advertising and appointed on the nomination of the Chairman".[9] Three members are nominated by the M.C.A. to represent print, television and radio respectively, one member nominated by the Advertising Federation of Australia and one by the Australian Association of National Advertisers.[10] The Charter of the A.S.C. is to advise the M.C.A. on the conduct, interpretation and possible improvement of the Code of Ethics for advertising and the other codes of the M.C.A. relating to advertising, to alert the M.C.A. and its Code Committees to possible breaches of advertising standards, to advise and report to the advertising organizations of matters of general concern, to liaise with State and Federal Ministers and consumer bureaux on advertising matters, to promote and assist in the maintenance and improvement of the standards and ethics of advertising by the provision of direct public access and involvement in the interpretation and application of such ethics and standards and to publish annual reports.[11]

Between the commencement of its operations on 1 February 1974 and 25 February 1978, the date of its third Report, the A.S.C. received 759 complaints.[12] About one third of these complaints related to matters of taste and decency; 93 complaints

7 The Accreditation Rules are cited in *B & T Year Book* (1981) 683, 689.
8 Copies of the Codes and Standards appear in Australian Advertising Industry Council, *Self-Regulation in Australian Advertising* (1981).
9. Advertising Standards Council, *Charter* (adopted 16 October 1980) cl.3(b).
10 *Id.*, cl. 3(c) to (e).
11. *Id.*, cl. 2.
12. The Australian Advertising Standards Advisory Authority, *First Report* (1974); *Second Report* (1975-76); Advertising Standards Council, *Third Report* (1 October 1976 to 28 February 1978).

resulted in action being taken by the council against advertisers or their agencies.[13] In its fourth Report covering the period 1 March 1978 to 16 March 1981, the A.S.C. mentions receipt of 475 complaints of which 23 were upheld.[14] One fifth of these complaints involved taste and decency.[15]

Until recently the complaint procedures followed by the A.S.C. were difficult to deduce from the cases decided by it as no consistent pattern had emerged. The procedures were set out for the first time in 1981 in a publication of the Australian Advertising Industry Council *Self Regulation in Australian Advertising.*[16] In this publication it was declared that "the prime function of the A.S.C. is to provide direct public access for complaints against offending material".[17] The public are instructed to complain or register objections to an advertisement in one of three ways: (1) by writing to the paper, magazine, radio or television station which carried the offending matter; (2) by writing to the relevant media approvals body; or, (3) by writing to the Secretary of the A.S.C.[18] A complainant using the first two alternatives may appeal to the A.S.C. if it is not satisfied with the action taken.

3. Code Advisory Councils

In its enforcement of the M.C.A. Codes, the A.S.C. may call on the assistance of three advertiser associations. These are the Tobacco Products Advertising Council, the Alcoholic Beverages Advertising Council and the Therapeutic Advertising Council. The first two councils, created at the suggestion of the M.C.A., have among their objectives the maintenance, supervision and review of the M.C.A. Codes relevant to cigarette and alcohol advertising respectively. The Therapeutic Advertising Council assists the Federal Health Minister in the enforcement of the Therapeutic Advertising Code.[19] Each Council is comprised of the major advertisers in the relevant areas.

4. Joint Committee for Disparaging Copy

This Committee, established in 1954, deals with complaints from within the advertising agency industry or from advertisers regarding advertisements which are considered unreasonable or unnecessarily critical. The Joint Committee consists of seven members drawn from television, radio, press, national advertisers and agencies. It is empowered to veto an advertisement which "contains a specific and identifiable disparagement of a particular product or service advertised by a rival".[20] Where disparaging copy appears to be against the public interest it may be referred by the Joint Committee to the M.C.A. or the A.S.C. Of 589 complaints made to the Joint Committee between 1954 and 1980, 181 were upheld, 84 considered outside the jurisdiction of the Joint Committee, 41 withdrawn, 210 considered to be truthful and 72 considered not sustained.[21] The Joint Committee also offers its services as a mediator between advertisers and agencies.

13 A.S.C., *Third Report* (1 October 1976 to 28 February 1978) 4.
14 A.S.C., *Fourth Report* (30 April 1981) 5.
15 *Id.*, 7.
16 See note 8 *supra.*
17 *Id.*, 6.
18 *Id.*, 12.
19 See Part VI of this article *infra.*
20 Joint Committee for Disparaging Copy, *Annual Report* (1969) 3.
21 Joint Committee for Disparaging Copy. *Annual Report* (1980) 5, 8.

5. The Australian Association of National Advertisers (A.A.N.A.)

The senior advertising industry body is the A.A.N.A. formed as a result of a meeting of 12 advertisers held more than 50 years ago on 18 October 1928.[22] In 1964 it compiled and adopted the Australian Code of Advertising Standards which forms the basis of the M.C.A.'s Advertising Code of Ethics, and it was a foundation sponsor of the A.S.C. Current membership consists of a large group of advertiser organisations responsible for the bulk of main media advertising. The A.A.N.A. renders specialist advice on aspects of the M.C.A. Codes and is a member of the Joint Committee for Disparaging Copy.

6. Advertising Agency Associations

The advertising agency industry is represented by three associations, the Australian Association of Advertising Agencies (4A's) incorporated in 1946, the Australian-owned Advertising Industries Council (AUSTAC), a splinter-group of 4A's formed to protect the interests of locally-owned agencies, and the Advertising Federation of Australia (A.F.A.) incorporated in 1975. Of these associations the A.F.A. accounts for "between 80 and 90% of total advertising volume produced through accredited agencies".[23] The objectives of the A.F.A. are:

> To promote the observance by members of the highest standards of business ethics in their dealings with the public and amongst themselves and to promote, foster and support the integrity, security and future viability of the business of advertising.
>
> To represent and promote to all sections of the public, commerce and government the role of advertising as an essential social and economic requirement in a democratic free enterprise society.
>
> To promote a better understanding of advertising and its role in society and to present, on behalf of the industry, explanations or answers to criticism of the industry.[24]

As the major association of advertising practitioners, the A.F.A. provides specialist advice on the M.C.A. Codes.

7. The Australian Advertising Industry Council (A.A.I.C.)

The A.A.I.C. was formed on 11 September 1978 having as its members the A.F.A., the A.A.N.A. and the M.C.A., thus bringing together the agencies, the advertisers and the media in one body. The primary objective of the A.A.I.C. is to disseminate information to the community on the role and the benefits of advertising.[25]

22 For a history of the A.A.N.A. see P. Long, "The A.A.N.A.'s First 50 Years" *Rydge's* (November 1978) 165.
23 A.F.A., *Factsheet* (August 1978) 1.
24 *Advertising Review* (August 1978) 1.
25 *Advertising Review* (November 1978) 3.

III. MEDIA SELF-REGULATION

Radio, television and print advertising, as well as being regulated by the M.C.A. Codes and instrumentalities, is also regulated by three media associations made up of the proprietors of the broadcast and print media. Each of these associations administers the M.C.A. Codes and usually codes of their own devising. Each of the associations has an approvals body responsible for vetting advertising for which, pursuant to their membership rules, or the M.C.A. Codes, approval is obligatory. A grey area of the self-regulation schemes is the interrelationship of M.C.A. determinations with those of the media associations. Theoretically, a complaint may be made about advertising approved by one of the approval bodies applying the M.C.A. Codes and yet sustained by a different interpretation of that case by the A.S.C., although in practice this has never happened.

1. The Federation of Australian Commercial Television Stations (F.A.C.T.S.)

The Australian Broadcasting Tribunal has promulgated standards relating to advertising generally and to children's television advertising in particular. These standards are paralleled and endorsed by codes promulgated by F.A.C.T.S., a trade association consisting of 49 of the 50 commercial television stations in Australia. The origins of F.A.C.T.S. go back to 1956 when the Television Advertising Board was set up by four commercial television stations to produce codes governing the acceptability of television advertising. These codes are still in force, with amendments instituted in 1972. Advertising rules have been promulgated on the subjects of: back-to-back commercials, billboards, integrated commercials, composite sponsorships, adjacent competitive advertising and tag announcements. The Television Advertising Board has also formulated rules on the acceptability of advertising matter covering: political announcements, medical, childrens, and financial advertising and therapeutic claims.

In 1968, F.A.C.T.S. became a member of the M.C.A., subscribing to the M.C.A.'s Advertising Code of Ethics and its voluntary Industry Advertising Codes. Through its membership of the M.C.A., F.A.C.T.S. is also a member of the Australian Media Accreditation Authority, the Advertising Standards Council and the Joint Committee for Disparaging Copy. It thus has the option of sanctioning contravening advertising itself or referring the relevant matter to the M.C.A.

In 1974, F.A.C.T.S. established a Commercials Acceptance Division (C.A.D.) which previews all television commercials submitted to it in order to ascertain compliance with

> ...the requirements of the Australian Broadcasting [Tribunal's] Advertising Standards, the consumer protection provisions of the Trade Practices Act, certain aspects of the Broadcasting and Television Act, State legislation where appropriate, industry codes and standards and community standards ranging from road safety to marine safety to domestic safety and environmental protection. In addition commercials are classified in terms of their suitability for transmission to general or adult audiences.[26]

The C.A.D. rules require all accredited agencies to submit to it all film and television commercials to be broadcast at stations in more than one State, or on a Melbourne station plus a Victorian regional station, or a Brisbane station and any Queensland regional station, or on two or more stations in N.S.W.[27] C.A.D. approval is not required for "ephemeral type commercials of very limited life, such as 'grocery specials for this weekend' or the 'contents of tomorrow's newspaper'."[28]

During 1979 the C.A.D. previewed 11,686 commercials of which 300 or 2.5% were rejected.[29] The main reasons for rejection appear to have been contraventions of the law, of the voluntary codes and of the guidelines issued by the C.A.D. to assist advertisers. These guidelines advise on matters which include taste and decency, children's television advertising, environmental matters, election announcements, pet foods, real estate, cinema film, motor vehicle and personal products advertising.

2. The Federation of Australian Radio Broadcasters (F.A.R.B.)

F.A.R.B. represents most of the commercial radio stations in Australia. Pursuant to section 100(4) of the Broadcasting and Television Act 1942 (Cth), the Australian Broadcasting Tribunal, in consultation with F.A.R.B. and other interested bodies, has promulgated a code of advertising standards to be observed by licensees of commercial broadcasting stations. This code came into operation on 1 August 1981 and obliges, *inter alia*, compliance with the Alcoholic Beverages Advertising Council Voluntary Code for Advertising and the Voluntary Code for the Advertising of Goods for Therapeutic Use. As a member institution of the M.C.A., F.A.R.B. also obliges its members to comply with the complete range of M.C.A. codes and standards.

All recorded radio commercials must be submitted to F.A.R.B. prior to broadcast. Each commercial is judged against the standards administered by F.A.R.B. and if approved a stamp is affixed indicating to radio stations that approval has been granted. As F.A.R.B. produces no annual reports it is difficult to ascertain the number of commercials it processes, accepts, rejects or modifies. It is also difficult to ascertain whether there is any procedure for appeals by members against decisions of F.A.R.B. There also appears to be no procedure for the receipt of complaints by members of the public about radio advertising other than through the M.C.A. systems.

3. The Australian Publisher's Bureau (A.P.B.)

The earliest industry authorities concerned with the regulation of advertising were the bodies set up by the various print media. Prior to 1976 print advertising was vetted by the Australian Newspapers Council, which consisted of the Herald and Weekly Times group; the Australian Accreditations Bureau, which consisted of the Fairfax group; News Limited, which consisted of the Murdoch group; the Australian Provincial Press Association, representing most of the non-metropo-

26 F.A.C.T.S., *Self-Regulation by Australian Commercial Television* (1977) 11.
27 F.A.C.T.S., *Facts Approval of Commercials and Timing System* (1974) cl. 14.
28 *Id.*, cl. 13. See also cl. 15.
29 F.A.C.T.S., *Annual Report* (1980) 26.

litan, non-daily newspapers; the Regional Dailies of Australia Limited, representing the non-metropolitan dailies; and, the Australian Magazine Publishers Association. Each of these bodies became foundation members of the M.C.A. In order to streamline the application of the M.C.A. Codes to the print media, the A.P.B. was established in October 1976.

The accreditation rules enforced by the M.C.A. oblige advertising agencies to submit to the A.P.B. draft print advertisements to which the various M.C.A. codes apply. The Advertising Censor of the A.P.B. will reject any advertisements which fail to meet code requirements and rejected advertisements will not be published by M.C.A. members or associate members. The Advertising Standards Council may overrule a decision of the A.P.B. but has never done so. For the 12 months preceding November 1981 the Advertising Censor vetted 652 alcoholic beverages advertisements, 453 pharmaceutical goods advertisements, and 247 cigarette advertisements.[30] The rejection rate for each category of advertisements was estimated by the Censor to be about 5%, with slightly less than 5% for cigarette advertisements.[31] In virtually each case, the rejected advertisement was approved after modification.

The A.P.B. is essentially a trade organization. It receives no complaints from the public, although in 1979 a complaint about the print advertising of the N.S.W. Health Commission was referred to it by the M.C.A.[32] The A.P.B. has published no report on its activities or its procedures. It is said to be independent of M.C.A. control, although it shares the same offices as the latter body and, as the Health Commission case illustrates, is prepared to assume the carriage of complaints made to the M.C.A.

IV. SELF-REGULATION BY ADVERTISER ASSOCIATIONS

Until recently advertising self-regulation has been espoused primarily by advertising practitioners and the advertising media, but recently, interest in the concept has been expressed by associations of advertisers. The most important self-regulation bodies established by advertiser associations are the Tobacco Products Advertising Council and the Alcoholic Beverages Advertising Council, mentioned above, and the National Medical Media Council and the Australian Pharmaceutical Manufacturers Association.

1. National Medical Media Council (N.M.M.C.)

The N.M.M.C. was established in 1973 by publishers of the major medical journals in Australia who were concerned about proposals for government regulations of therapeutic goods advertising.[33] The N.M.M.C. adopted a code of

30 Authors' interviews with Advertising Censor, 11 November 1981.
31 *Ibid.*
32 See Part VII of this article *infra*.
33 Senate Standing Committee on Social Welfare, *Another Side to the Drug Debate . . . A Medicated Society?* (1981) 97.

business ethics establishing "standards intended to maintain the high reputation of medical publications, prevent the admission to the Council of any undesirable publications and permit Council to reprimand and/or expel a member should it not maintain those standards".[34]

Upon its formation the N.M.M.C. established a Liaison Committee with the Australian Medical Association, the Australian Pharmaceutical Manufacturers Association and the Australian Association of National Advertisers, which formulated a Code Relating to Ethical Advertising. Compliance with the Code was monitored by an Advertising Approval Authority which was to examine advertisements prior to their publication. The Approval Authority consisted of a chairman, with a special interest in clinical pharmacology, and a number of experts unconnected with the government, the pharmaceutical industry or with medical publications.[35] In 1976 the N.M.M.C. announced the abandonment of this surveillance system following advice that the Australian Pharmaceutical Manufacturers Association was adopting the N.M.M.C. Code.[36] After this date the responsibility of determining compliance with the Code was left to individual publishers.

2. *Australian Pharmaceutical Manufacturers Association (A.P.M.A.)*

The A.P.M.A. comprises 60 member companies which supply approximately 97% of the prescription pharmaceuticals available in Australia. Following the abandonment by the N.M.M.C. of the enforcement of its Code Relating to Ethical Advertising, the A.P.M.A. modified its Code of Conduct for the Pharmaceutical Industry to adopt the N.M.M.C. Code and to make specific provision for the advertising of prescription pharmaceuticals.

Observance of the A.P.M.A. Code is a condition of membership of the Association and is enforced by an Executive Committee. When the Committee determines that a breach has occurred it directs the Secretary of the Association to seek an undertaking that the practice complained of will be discontinued. In the event of a refusal, the member is invited to state his case to the Committee and if by a majority vote the Committee decides the Code has been breached, it may suspend or exclude the member from the Association or take any other action as it deems appropriate. Although not stated in the Code it appears that an aggrieved party has a further right of appeal to an independent arbiter.[37] The Executive-Director of the A.P.M.A. has stated that in appropriate circumstances breaches of its Code would be referred to the A.S.C., and the Chairman of the A.S.C. has responded with a reciprocal proposal to refer appropriate complaints to the A.P.M.A.[38]

34 N.M.M.C. Submission to the Senate Standing Committee on Social Welfare, *Hansard*, 1 August 1979, 1800-1812.

35 Med. J. Aust., "Advertising Standards and the National Medical Media Council" (1974) 2 *Med. J. Aust.* 189.

36 *Hansard*, 1 August 1979, 2045; quoted in L. W. Darvall, "Self Regulation of Advertising and the Consumer Interest" (1980) 8 *Aust. Bus. L. Rev.* 309, 315-316.

37 *Id.*, 317.

38 *Id.*, 317-318.

V. EVALUATION OF ADVERTISING SELF-REGULATION

1. The Debate

The most persuasive argument in favour of advertising self-regulation would be that it works more effectively, efficiently, expeditiously and less expensively than regulation by government agencies. The A.A.I.C. recently reported that "it is the opinion of many concerned people that Australia has one of the world's finest systems of advertising self-regulation".[39] In submissions to the Australian Broadcasting Tribunal's Public Inquiry into the concept of Self-Regulation for Australian Broadcasters, the alleged superiority of self-regulation over a governmental regime, mediated by the judiciary, was emphasised in media and advertising industry submissions.[40] Opponents of self-regulation point to the invariable lack of sanctions in most schemes as well as the non-mandatory nature of membership of the self-disciplinary umbrella organizations. Often the evaluation of industry self-regulation is very much a reflection of a commentator's political philosophy. The same holds true for evaluations of government regulation where the roles of supporter and detractor are invariably reversed.

As we have seen, at the centre of advertising self-regulation is the M.C.A. Its constitutive bodies and the Codes they administer, are identified by supporters of self-regulation as the most palpable demonstration of their regulatory resolve. Although an evaluation of the M.C.A. and its codes must be considered the starting place for an evaluation of advertising self-regulation as a whole, it should be noted at the outset that the M.C.A. scheme is imposed by media proprietors on their advertising agency customers and cannot be said to be industry self-regulation as advertising industry members are not members of the M.C.A.

2. Evaluation by the Trade Practices Commission and Trades Practices Tribunal

Advertising industry publications frequently refer to the approval expressed by the Trade Practices Commission and the Trade Practices Tribunal for the voluntary codes and standards administered by the M.C.A. in the authorization, by those bodies, of the M.C.A.'s accreditation system. The Trade Practices Commission observed:

> The accreditation system does have a considerable ingredient of responsible industry regulation as to standards of advertising. This is an area where industry concensus and action can very helpfully supplement the general law, and it is difficult to see interference with competition unless there is abuse. There is no suggestion of that, and although all levels of industry are not represented in administering the advisory body on standards, the Advertising Standards Advisory Authority under the independent chairmanship of Sir Richard Kirby is broadly based and impartial. The present form of regulation of industry standards is relatively new and is capable of an increasing beneficial influence,

39 Note 8 *supra*, 3.

40 For an index to submissions see Australian Film and Television School, *List of Submissions to the Australian Broadcasting Tribunal Inquiry into Self Regulation* (1977).

particularly in matters that are ethical and moral and are not spelt out in explicit legislation. The system is the media's system rather than the industry's system, but that is changing and may change more over time, and currently it is salutary that the media is taking responsibility because it controls the point of publication and can take immediate action when required.[41]

The Trade Practices Commission accepted the importance of the Codes and Standards. It saw "industry and legislative controls as complementary and mutually reinforcing and [thought] that industry regulations in the standards area must be welcomed — provided it does not become subject to abuse, of which there was no suggestion here".[42] The Commission also noted that:

There are areas where legislation does not reach in specific terms, for example the specific provisions about broadcasting are not reflected in legislation about newspapers. Moreover, there can be flexibility and speed within an industry system. There can also be the same emphasis on prevention rather than cure that the Commission itself has tried to encourage by its own Guidelines on Advertising as well as on other matters. The industry provisions for clearance beforehand of certain broadcasting and television material and of advertising on particular subjects, notably those affecting health, are matters of real value to the public and, be it remembered, to the industry itself in terms of its self-respect and public standing. The law speaks on some, but not all of these matters. The law has little to say, directly, in matters of what amounts to good taste in advertising in a general moral or ethical sense.[43]

A similar view of the M.C.A.'s code and standards was accepted by the Trade Practices Tribunal when rehearing the M.C.A.'s appeal against the Trade Practices Commission's qualified grant of authorisation of its accreditation system. The Tribunal declared:

We accept that the primary object and effect of the code of standards in the accreditation rules and the associated standards and code of ethics is to promote honesty, fairness and responsibility in advertising . . . The applicants submitted that the benefits to the public which resulted from the application of, and adherence to, the codes and standards laid down by the Media Council include:—

- Those codes and standards cover areas which are not covered by legislation.
- They enable immediate action to be taken to stop contravening advertisements without court proceedings. Legislative codes can only be enforced by court proceedings which are much more time-consuming and costly.
- They enable a common standard to be applied by all media proprietors to a particular advertisement. Under a legislative code different interpretations are likely by different media proprietors in the application of the code to particular advertisements.
- They enable standards of advertising to be maintained and improved. Under legislative codes, standards will tend to drop to the minimum standard permissible under the law.
- They enable advertisements in areas which experience has shown need special safeguards (e.g. slimming treatments) to be cleared before publication. This

41 *Re Herald and Weekly Times Ltd; Re 2KY Broadcasters Pty Ltd; Re Southern Television Corporation Ltd,* note 4 *supra,* 108.114-115.
42 *Id.,* 108.122.
43 *Ibid.*

procedure is more beneficial to the public than a prosecution under a legislative code against an advertiser long after the advertisement has been published.

- They enable advertisements such as advertisements for proprietary medicines to be required to be substantial before the advertisement is published and for the claims made for the product to be evaluated by an independent medical expert. Under a legislative code, the fate of a prosecution may depend upon the evaluation by a court of competing medical opinions.
- They are conducive to the achievement of uniform standards of advertising throughout Australia. We accept that those benefits to the public result from the establishment of, and adherence to, the Media Council's codes and standards and that these benefits should properly be regarded as resulting from the accreditation system. They collectively constitute an important and substantial benefit to the public resulting from the accreditation system.[44]

The decisions of the Trade Practices Commission and Trade Practices Tribunal have been quoted at length because they address most of the arguments that are raised in support of industry self-regulation. The validity of some of these public benefit arguments may may be tested against the potential and actual operation of the M.C.A. scheme.

3. *Motivation for Advertising Self-Regulation*

The credibility of a voluntary regulation scheme may to some extent be assessed by the motive forces which bring it into existence. Advertising industry representatives make frequent references to the long tradition of industry responsibility in Australia dating back to the formation in 1928 of the A.A.N.A. The Chairman of the A.S.C. points to the paucity of complaints in the areas of dishonest and misleading advertising as attributable largely to "the high standards observed by the advertising industry".[45] However, it might be more than coincidental that enthusiasm for self-regulation often parallels threats of government regulation of the industry. Proposals for the statutory regulation of children's television advertising and the industry responses to these proposals present a striking example of this chronology.[46] Indeed, the year of the passage of the Trade Practices Act saw the establishment of the A.S.C. and F.A.C.T.S.' Commercials Acceptance Division. The $100,000 fine imposed by the Australian Industrial Court in *Hartnell* v. *Sharp Corporation of Australia Pty Ltd,*[47] the first advertising case under the Act, may also explain some of the recent enthusiasm for advertising self-regulation.

The threatened establishment of a government regulatory agency is sometimes an express reason for an industry initiative, for example, Graham Perkin in his Arthur Norman Smith address advised that:

> I have no doubt we will have a Press Council forced on us one day by this government or the next. It would be best if we initiated the move ourselves so that the Press Council we get reflects the best ambitions and motives of the Press

44 Note 6 *supra*, 309-310.
45 Sir Richard Kirby, "Advertising Advertising" *Advertising Review* (November 1978) 2.
46 See also S. Barnes and M. Blakeney, "The Regulation of Children's Television Advertising — The Australian Experience" (1980) 1 *J. Med. L. & Prac.* 265.
47 (1975) 5 A.L.R. 493.

rather than the ignorance and misunderstanding of public servants and some academics.[48]

The establishment of the N.M.M.C. is another conspicuous instance of a self-regulation scheme designed to pre-empt government intervention. In April 1973 the National Therapeutic Goods Committee formulated a comprehensive code for the advertising of prescription drugs which it presented to the Health Ministers Conference. In the middle of that same year, in response to what they perceived as "bureaucratic intervention", the N.M.M.C. was formed, announcing in October 1975 its opposition to the National Therapeutic Goods Committee's advertising proposals. The N.M.M.C. promulgated its own code on ethical advertising which forbade the inclusion of information in advertisements which had been recommended by the government body. In 1976 the N.M.M.C. abandoned its enforcement scheme leaving the responsibility of assessing advertisements to individual publishers.

Another factor bearing on the credibility of self-regulation is the propensity with which the scheme will apparently be abandoned. One factor which appears to have influenced the Trade Practices Commission in its authorization of the M.C.A. accreditation system was the statement by the chairman of the then Australian Advertising Standards Advisory Authority that the disbanding of the accreditation system would have meant the abandonment by the industry of its voluntary system of advertising regulation.[49] This threat may qualify the suggestion that self-regulation is actuated by altruistic notions of public service.

4. Impartial Administration

A problem which all voluntary schemes share is the suspicion that self-regulation is a facade for self protection. This suspicion is derived partly from the motivation for such schemes and partly from the personnel of the administration. In schemes in which the industry supplies the regulators the suggestion that the poacher is performing the office of gamekeeper is not inapposite. To some extent the M.C.A. scheme avoids this allegation by the important role played by Sir Richard Kirby, former President of the Conciliation and Arbitration Commission. Sir Richard is the Chairman of the Advertising Standards Council and the Appeal Tribunal of the Accreditation Authority. In his role as Chairman of the A.S.C., Sir Richard is the ultimate appeal tribunal in disputes arising out of the administration of the voluntary standards. Sir Richard is also responsible for the appointment of the five representatives of the "public" in the A.S.C. The Australian Consumers' Association is critical of the under-representation of the consumer interest in the A.S.C. It is also critical of the silence of the A.S.C.'s Charter on the right of consumer access.[50]

48 Quoted in J. S. Western, *Australian Mass Media: Controllers Consumers Producers* (1975) 20.
49 Note 4 *supra*, 108.123.
50 Australian Consumers' Association, *Self Regulation and the Consumers' Interest* (November 1977).

A quite glaring deficiency in the M.C.A. scheme is the lack of representation of the advertising industry either in membership or administration. It will be recalled that the scheme was part of the "sugar coating" which secured the authorisation of the M.C.A.'s accrediation system, which a former Trade Practices Commissioner has indicated as "quite highly restrictive trade association activities".[51] Self-regulation is thus imposed on the advertising industry. Its effectiveness could be enhanced by industry representation in its administration, which would confer the expertise frequently alleged for self as opposed to government regulation.

Administration by the media associations of their own codes lies almost exclusively in the hands of media representatives, calling into immediate question the impartiality of their administration. For example, the recent suspension by a F.A.C.T.S. appeal tribunal of the N.S.W. Health Commission's "Healthy Lifestyle" campaign was determined by the three television executives and the chairman of the Australian branch of an international advertising agency, after a complaint by another advertising agency.[52]

5. Sanctions

The Australian Consumers' Association declares that the most serious shortcoming of the M.C.A. scheme "is the absence of any effective sanctions against advertisers who are in breach of the standards".[53] Presumably, the principal sanction in the M.C.A. scheme is loss of accreditation by a contravening advertising agency. There is no evidence of this sanction ever having been applied, although suspension of accreditation for short periods of time has been mentioned.[54] There are no sanctions for media proprietors who fail to observe any of the codes, and the enforcement authorities will thus be tempted to be lenient or biased in favour of a contravenor out of fear that rigorous enforcement would cause egress from the relevant association. Possible examples of these deficiencies include the refusal by the M.C.A. to adjudicate the dispute between the two massive advertisers Colgate-Palmolive and Unilever over the claims made by the latter for its AIM toothpaste,[55] and the way in which disputes between cigarette advertisers and public health bodies are invariably adjudicated and resolved in a manner that is favourable to the cigarette companies.[56] The Australian Consumers' Association cites as evidence, lack of consumer acceptance of the M.C.A. scheme, the paucity of the complaints handled by it, mentioning that the second report of the precursor body to the A.S.C. listed 88 complaints, while the Trade Practices Commission in the first eight months of its operation received more than 3,000 complaints and State Consumer Affairs Bureaux, many thousands of complaints.[57]

51 W. Pengilley, *Trade Associations, Fairness and Competition* (1981) para. 9. 5. 3.
52 *Australian Financial Review*, 27 July 1981, 12.
53 *Choice* (February 1981) 63.
54 Australian Advertising Industry Council, note 8 *supra*, 11.
55 See *Australian Financial Review*, 2 October 1981, 14.
56 See Part VII of this article *infra*.
57 Note 50 *supra*, 25.

6. Publicity

The importance of publicity as a sanction in regulating business conduct has been recognized[58] and taken into account by Judges of the Federal Court in quantifying penalties imposed under the Trade Practices Act 1974 (Cth).[59] A failing of the M.C.A. scheme is that there is no mechanism for the publication of A.S.C. findings and such reports as emerge contain merely a small selection of its decisions. This is to be contrasted with advertising self-regulation in the United Kingdom where the Advertising Standards Authority publishes a complete monthly report of its determinations and solicits consumer complaints in the national media.[60]

Although the Joint Committee for Disparaging Copy produces annual reports in which it gives a statistical breakdown of all its determinations, it together with the A.S.C. reports gives no explanation of the frequent findings that particular matters are beyond its charter. F.A.C.T.S.' 1980 Report mentions that 300 of 11,686 advertisements submitted to it were either rejected or required modification.[61] The reasons for rejection or modification are not detailed in the Report and contravening advertisers remain anonymous. F.A.R.B. is reported to have rejected 19 advertisements out of 19,062 submitted to it.[62] No statistics are available from the A.P.B. which has never published any report on its activities.

7. Scope of Codes and Standards

Unquestionably the greatest contribution which can be made by voluntary schemes of regulation is the promulgation of standards to deal with areas of conduct beyond the scope of legal regulation. The law is pre-occupied with matters of deception and falsity and is manifestly inadequate to grapple with problems of psychology persuasion, ethics and morality.[63] Both the Trade Practices Commission and the Trade Practices Tribunal applaud the application of the M.C.A. Codes and Standards to the areas of advertising practice not covered by legislation.

Examples of M.C.A. regulations which exceed the narrow confines of the law include the M.C.A.'s Code of Advertising Ethics which prohibits advertisements which "exploit the superstitious or unduly play on fear", or which "exploit children", or "certain anything which might result in their physical, mental or moral harm". The Voluntary Code for the Advertising of Goods for Therapeutic Use provides as a general principle that such advertising shall not "misrepresent or be likely to mislead the consumer into unwisely relying on medicines to solve emotional or mood problems". The M.C.A. codes dealing with the advertising of

58 See B. Fisse, "The Use of Publicity as a Criminal Sanction Against Business Corporations" (1971) 8 *M.U.L.R.* 107.

59 *Eva* v. *Southern Motors Box Hill Pty Ltd* (1971) 15 A.L.R. 428.

60 See Director General of Fair Trading (U.K.), *Review of the U.K. Self-Regulatory System of Advertising Control* (1978).

61 Note 29 *supra*.

62 Note 53 *supra*.

63 See M. Blakeney and S. Barnes, "Psychological Advertising and the Law" (1980) 18 *New Doctor* 16.

cigarettes and alcohol both prohibit any implication in advertising that consumption of either of these products produces social success, and in the case of alcohol, sexual success.[64] The Commercials Acceptance Division of F.A.C.T.S. has indicated its concern with advertisements containing "gratuitous nudity, sensuous mannerisms, innuendoes and the use of coarse language"[65] and the F.A.C.T.S. Television Standards includes a prohibition of the use of "objectionable words, phrases or words which have offensive implications".[66] Similarly, the radio standards administered by F.A.R.B. contain a prohibition of advertising matter which "would be objectionable to a substantial and responsible section of the community".[67]

Although the broad scope of the voluntary advertising codes may be perceived as a valuable supplement to legislative controls, their very ambit may import the vagueness and ambiguity which statutory regulation seems to avoid. The taste and decency provisions of the radio and television standards in seeking to import community standards would seem to create difficult interpretative problems. The C.A.D. has confessed that it "cannot spell out in minute detail, because it is clearly impracticable to do so, where the line falls precisely between public toleration and unacceptability".[68] As with legal regulations, vagueness and ambiguity in formulation not only renders detection of contravention difficult but it also allows for oppression and abuse in capricious administration.

The assumption that voluntary codes are wider in scope than legislative regulation is not always correct, as a motivation for self-regulation may be to formulate proposals that are less stringent than proposed legislative alternatives. An example of this motivation is the Code Relating to Ethical Advertising promulgated by the National Medical Media Council. Previous to the formulation of this Code the National Therapeutic Goods Committee presented to the Health Ministers Conference proposals to be enforced by legislation for controlling the promotion of medication. In relation to prescription drugs it proposed that advertisements should contain disclosure of the active constituents of a produce, its indications, its therapeutic dosage regimen, any contra-indications of adverse reactions, the degree of dependence potential and a statement of likely interactions.[69] The N.M.M.C. opposed these proposals as being counter-productive, expensive and time consuming:[70] its proposed Code contained only two mandatory requirements for "reminder advertisements" which make up about 90% of pharmaceutical advertising, namely, the "approved" name of the preparation and the name of the distributor or manufacturer of the drug. Paradoxically, the N.M.M.C. Code prohibits the mention of dosage, adverse reactions, and the inclusion of references. The Senate Standing Committee on Social Welfare described these as "desirable inclusions in advertisements" and stated that it was "disturbed that they should actually be prohibited", and recommended a new code be drawn up.[71]

64 See generally note 8 *supra*.
65 F.A.C.T.S., *C.A.D. Guideline No. 1*, 3 June 1977, 1.
66 "Standards Applying to Television", note 8 *supra*, 42.
67 "Standards Applying to Radio Advertising", note 7 *supra*, 714, 715.
68 Note 65 *supra*, 2.
69 See note 33 *supra*, 97.
70 *Id.*, 98-99.
71 *Id.*, 99.

VI. SELF REGULATION — THE CONSUMER INTEREST

If self-regulation is to replace government regulation, legislators must be convinced that the objectives of advertising laws are better secured voluntarily than by government intervention. Virtually all the advertising laws are animated by a concern for the consumer; it must be questioned whether advertising self-regulation shows this concern. The self-interested motivation for advertising self-regulation in Australia has been questioned above, but the lack of a consumer concern may not be fatal if consumers are benefited in the result. The under-representation of the consumer interest in the M.C.A. scheme and its lack of representation in the various media schemes have also been observed. The various codes do indicate some concern for the consumer but this concern appears equivocal given the repetition in the codes of injunctions against disparaging copy. The existence of a Joint Committee for Disparaging Copy is an indication of the seriousness with which the industry treats this form of advertising, but from the consumer point of view, disparaging copy may assist comparisons between products by enriching the informative content of advertisements.[72] Prohibitions of disparagement primarily serve the interests of advertisers.

It is difficult, given the paucity of detailed reporting of determinations of the self-regulation bodies, to ascertain the extent to which decisions reflect a consumerist concern, as opposed to remedying the complaints of rival advertisers. As to whether consumers benefit from self-regulation, the Australian Consumers' Association referring to the small number of advertisements which fell foul of the M.C.A., F.A.C.T.S. or F.A.R.B., has concluded that "self-regulation is not an effective way of controlling advertising. Too often it means almost no regulation".[73] Perceived deficiencies in the administration of advertising self-regulation should not obscure some of the potential benefits of such a system. If administered by advertising industry as well as media industry representatives it could provide the expertise often absent in government regulation. Additionally, its application to matters of advertising taste, decency, honesty and fairness can provide for the regulation of matters with which the law has indicated its unwillingness to grapple. If publicity is given both to the means of consumer access to the complaint system and to the decisions of regulatory authorities, enforcement would be more approximate to the legislative ideal.

VII. DETERMINATIONS OF SELF-REGULATORY BODIES IN THE PUBLIC HEALTH AREA

An important touchstone of the efficacy of advertising self-regulation in Australia is the way that the system works in practice. Lack of detailed reports of determinations of the various self-regulatory agencies makes this evaluation difficult. However, an area of advertising self-regulation which has attracted press

72 See R. Smiles, "Comparative Ads: Avoid the Legal Landmines" (1981) 2 *Rydge's In Marketing* 27.
73 Note 53 *supra*.

attention is the regulation of advertising which has implications for public health. The principal determinations were those of the M.C.A. in the "Paul Hogan" case, the A.P.B. in the "Healthy Lifestyle" case and by F.A.C.T.S. in the Health Commission of N.S.W.'s television campaign.

The decision of Sir Richard Kirby, the Chairman of the A.S.C., that the television celebrity Paul Hogan be removed from cigarette advertising because he was a person of major appeal to children, in contravention of clause 4 of the M.C.A.'s Voluntary Cigarette Code, was not made until 18 months after the first complaint to the M.C.A.[74] The advertiser was merely ordered "to take steps" to have Hogan excluded from its advertising and that it was "reasonable" for them to have an additional six weeks "to stop this inclusion",[75] although new Hogan posters were reported as erected after this time.[76] The *Hogan* ruling was criticised both by industry representatives and by Sir Richard's colleagues on the A.S.C. The Chairman of the A.F.A. regarded the decision as an attack on self-regulation[77] and predicted the unlikelihood of any more decisions like it.[78] This prediction has been borne out by the peremptory rejection by the full A.S.C. of a number of subsequent complaints about cigarette advertising allegedly contravening the voluntary code.[79]

The procrastination of the M.C.A. in the *Hogan Case* can be contrasted with its expedition in dealing with the anti-cigarette advertising by the Health Commission of N.S.W. in its "Healthy Lifestyle" campaign conducted in Northern N.S.W. Within 7 days of a verbal complaint by an advertising agency on behalf of a client, the Health Commission was informed by the A.P.B. that all its print advertisements were suspended. Details of the complaints were not supplied to the Health Commission for a month and revised advertisements were passed for use 15 weeks after the original suspension. During this time cigarette advertisements in the Lismore *Northern Star,* the local paper, increased by 260%.[80] One reason for the delay in this case may have been the not insignificant fact that the Health Commission's advertising was the first ever rejected by the A.P.B., whose adjudicative functions were taken over during the case by the M.C.A.[81]

Pursuant to its "Healthy Lifestyle" campaign, the Health Commission of N.S.W. had a number of television advertisements prepared which were all approved by F.A.C.T.S.' Commercials Acceptance Division. Following complaints made to F.A.C.T.S. by an advertising agency the advertisements were suspended pending the hearing of an appeal by the Commercials Acceptance Division Appeal Committee. The Health Commission obtained an injunction in the Supreme Court of New South Wales restraining the suspension until the determination by the Appeal Committee.

74 For a detailed discussion on the Paul Hogan case see S. Chapman, "A David and Goliath Story: Tobacco Advertising and Self-Regulation in Australia" (1980) 281 *British Medical Journal* 1187.

75 Media Council Decision: *Re Rothmans of Pall Mall (Aust.) Ltd* (Unreported 2 May 1980).

76 *Sydney Morning Herald,* 28 June 1980, 12.

77 *B. & T. Advertising, Marketing & Media Weekly,* 8 May 1980, 1.

78 *National Times*, 20-26 July 1980, 59.

79 See D. Dunoon, "Cigarette Advertising: Is Self-Regulation Self-Destructing" (1980) 18 *New Doctor* 20, 22.

80 G. Egger, G. Frape and B. Mackay, "Applied Problems of Media Use in Health Promotion — The North Coast Experience" (1980) 18 *New Doctor* 24, 25.

81 Note 30 *supra*.

When the Appeal Committee met it rejected the advertisements on the grounds that they were in bad taste. The four man Committee was made up of three television executives and the chairman of the Australian branch of an international advertising agency. The Committee did not detail the reasons for its decision and by rejecting the advertisements on the ground of bad taste it left the Health Commission with very little room for reply since the Commercials Acceptance Division Guideline on the question had already explained that it was not practicable to lay down a set of formal guidelines on the subject of taste and decency. Following this decision the Australian Broadcasting Tribunal decided that only two of the advertisements were objectionable, but that it had no power to direct that F.A.C.T.S. allow the advertisement to be televised.

Self-regulation of advertising in the public health area could have afforded the industry an opportunity to demonstrate its propensity to subordinate self-interest to the public good. The above decisions call this propensity into question. Obvious contrasts can be drawn between the procrastination in the *Hogan Case* and the expedition with which the Health Commission's advertising was suspended. The alleged flexibility of the voluntary codes was cited as a reason for delaying suspension in the *Hogan Case* but was arguably a cloak for abuse in the decision by the F.A.C.T.S.' Commercials Acceptance Appeal Committee.

The competing financial interests in this litigation have been cited as a reason for the decisions.[82] Some $28 million was spent on the Hogan-based advertising campaign.[83] Food is the most heavily advertised product on television with expenditures of $67.6 million spent promoting it on metropolitan stations and $15.9 million on regional stations, whereas the total advertising budget of the Health Commission's "Healthy Lifestyle" programme was only $80,000.[84] The venality or otherwise of these decisions is irrelevant, but the importance for any system of self-regulation is that it secures the confidence of all interests. F.A.C.T.S., in its submission to the Australian Broadcasting Tribunal's inquiry into Self Regulation

> must exhibit a high degree of responsibility. It must deal with inputs from various participants in a responsive fashion treating each with courtesy and respect. If any group feels that its views are not receiving due attention (even if their point of view is not ultimately accepted) they will become alienated and disaffected. That would lead to a breakdown in the system.
>
> If the system is not responsible in its attitude towards enforcement then it will attract contempt and opposition from both the public and broadcasters . . . The attitudes by responsible broadcasters — if they fail to gain that reputation the public will not have confidence in the system and broadcasters will have no incentive to adhere to them.[85]

It is submitted that by their own standards the regulation of advertising by the media and advertiser associations in the very important area of public health manifestly lacks both responsibility and credibility.

82 *Australian Financial Review*, 24 July 1981, 13.
83 *Advertising News*, 23 May 1980.
84 Note 82 *supra*.
85 Note 26 *supra*, 14.