



**Australian Communication
and Media Authority
Contemporary Community
Safeguards Inquiry**

Submission

July 2013

Executive Summary

The Obesity Policy Coalition ('OPC') is a partnership between Cancer Council Victoria, Diabetes Australia – Victoria, and the World Health Organization Collaborating Centre for Obesity Prevention at Deakin University, with funding from VicHealth. The OPC is concerned about the rates of overweight and obesity in Australia, particularly among children.

The OPC is pleased to have the opportunity to provide comment on principles underpinning broadcasting industry codes ('Codes') under the *Broadcasting Services Act* 1992 (Cth) ('the Act'), with reference to the Australian Communications and Media Authority ('ACMA') Contemporary Community Safeguards Inquiry, as set out in the Issues Paper, June 2013.

The OPC's field of experience most relevant to the Inquiry relates to the regulation of unhealthy food advertising on television, particularly to children. This submission will address certain questions raised in the Issues Paper with particular reference to the appropriate role of broadcasting codes in the regulation of unhealthy food advertising to children.

The OPC will address questions from the Issues Paper:

1. Section 2: Protection of Children – Time Zones;
2. Section 3B: Ethical standards – Advertising; and
3. Section 7: Redress.

This submission will address these questions with reference to the ACMA's concerns about modernisation and convergence in the media environment leading to misalignment of policy and legislative constructs with market, behavioural and technological realities, gaps in the existing frameworks coverage of new forms of content and applications, and changed community experiences and expectations.

Section 2: Protection of Children – Time Zones

Question 18: Should the concept of ‘protection of children’ be relevantly included as a guiding core principle in contemporary broadcasting codes of practice?

The OPC considers the concept of ‘protection of children’ should be a primary concern of the ACMA. Section 3(1)(j) of the Act provides that an object of the Act is ‘to ensure that providers of broadcasting services place a high priority on the protection of children from exposure to program material which may be harmful to them’. This obligation is restated in section 123 of the Act, which deals specifically with the ACMA’s responsibility for developing industry codes. The OPC supports the inclusion of ‘protection of children’ as a core principle underpinning contemporary broadcasting codes, but considers it would not be possible to *exclude* it in any event, as it forms a central tenet of the legislative framework underpinning all broadcast regulation activities under the Act.

Protection of Children from harmful advertising

Protecting children from harmful program material includes protecting them from harmful advertising by virtue of section 6 of the Act, which defines program material as including ‘advertising or sponsorship material, whether or not of a commercial kind.’ Children are exposed to large volumes of television advertising of food throughout their development, and robust international research has shown this impacts their brand recognition, food intake and food choices.¹ Most TV food advertisements are for foods high in fat, salt and sugar, which contribute to poor diets and a variety of negative health outcomes. Research comparing the influence of food marketing on children’s diets with other factors such as family and socioeconomic status has suggested that food promotion has an equally important effect.² The need to limit children’s exposure to unhealthy food advertising has been acknowledged by the World Health Organisation (‘WHO’), which has called for action on the issue,³ because it is a risk factor for overweight and obesity.⁴ The need to reduce children’s exposure to television food advertising is therefore a pressing contemporary issue that we urge the ACMA to consider when engaging with the broadcast industry to incorporate the core principle of ‘protection of children’ into broadcast codes.

The current system of advertising self-regulation does not protect children

The ACMA’s responsibility for administering broadcasting codes, contained in section 123 of the Act does not limit the matters to which the codes may relate, reflecting the intention that codes provide a flexible and responsive means of regulation. Therefore, although presently much responsibility for the protection of children from harmful food advertising is delegated away from the ACMA to the Advertising Standards Board (‘ASB’) through a system of self-regulatory industry codes, we consider there is great scope to realize the object of protection of

¹ Boyland E J and Halford J C G (2013) ‘Television advertising and branding; Effects of eating behaviour and food preferences in children’ 62 *Appetite* 236

² Georgina Cairns, Kathryn Angus & Gerard Hastings (2009) ‘The extent, nature and effects of food promotion to children: a review of the evidence to 2008’ – Prepared for the World Health Organization.

³ The WHO Global Action Plan for the Prevention and Control of Non-communicable Diseases 2013-2020

⁴ United Nations Political Declaration of the High-Level Meeting of the General Assembly on the Prevention and Control of Non-communicable Diseases, General Assembly resolution 66/2, 16 September 2011; World Health Organization. *Set of recommendations on the marketing of foods and non-alcoholic beverages to children*. Geneva: World Health Organization, 2010; see also Cairns et al, above n 2.

children through incorporation of restrictions on unhealthy food advertising into broadcast codes developed in consultation with the ACMA.

The controls on advertising to children that presently exist in codes provide such a low level of protection as to be effectively meaningless. The Commercial Television Industry Code of Practice 2010 ('CTICP') currently requires only that food advertising to children not encourage an inactive lifestyle (defined as not engaging in any or much physical activity as a way of life) or unhealthy eating or drinking habits (defined as excessive or compulsive consumption).⁵ Similarly, the Subscription Television Broadcast Code 2007 applies only to advertising broadcast in subscription TV programming aimed at children, and requires that advertising should not seek to exploit children and should not promote products that place them at risk of 'physical, mental or moral jeopardy'.⁶ We submit the current code-based restrictions on advertising to children are ineffectual, as advertisers are very unlikely to ever wish to engage in the activities they purport to prohibit. The Children's Television Standards ('CTS') provide limited further protection, but only apply to low-rating, dedicated children's programming. All other controls on the timing, content and frequency of food advertising on television is presently left to industry self-regulation, administered by the ASB.

We ask the ACMA to consider that these industry-based codes⁷ provide a very poor level of protection that is not consistent with the object of protecting children from harmful material under the Act. The Australian Government has recently acknowledged that the voluntary, industry-based initiatives to reduce children's exposure to television advertising of unhealthy food have not been successful.⁸ The following failures of the present system highlight the need for the principle of 'protection of children' to be more effectively incorporated into codes:

- The current voluntary codes do not apply to all food advertisers, only to signatories, a circumstance that may be used to the advantage of unhealthy food advertisers;⁹
- The industry codes only cover advertising content directed *primarily* to children, and do not limit advertising for unhealthy foods shown during G and PG rated shows that draw the largest numbers of children viewers;¹⁰
- The scheme relies entirely on complaints from the public, but the complaints process is difficult to negotiate and complaints take approximately one month to process;¹¹
- There are no meaningful sanctions for breaches by advertisers;
- The ASB makes findings that are inconsistent with the ACMA's own positions on the same issues.¹²

⁵ CTICP, section 6.23

⁶ Subscription Television Broadcast Code 2008, section 6.3

⁷ 'Industry-based codes' will be used to refer to the Quick Service Restaurant Industry Code ('QSRI') and the Responsible Children's Marketing Initiative ('RCMI'), the two voluntary self-regulatory codes developed by food industry bodies.

⁸ Australian Government responses to the House of Representatives Standing Committee on Health and Aging report: Weighing it up: Obesity in Australia, February 2013.

⁹ See, for example, the partnership between KFC and Cricket Australia described in answer to question 64 below, where advertising material promoting KFC was not subject to the provisions of the QSRI because Queensland Cricket had reportedly funded the advertisement.

¹⁰ Presently, provisions of the RCMI restricting all unhealthy food advertising apply only to P and C rated programs, and programs where children comprise greater than 50% of the audience. It is noted the Australian Food and Grocery Council has indicated its intention to reduce the threshold proportion of children to 35% for the purposes of the RCMI. This will still fail to protect children during the highest rating shows among children because the threshold is still too high to capture the vast majority of programs popular with children.

¹¹ Estimate based on the OPC's experience of complaints to the ASB in 2012 and 2013

In light of these documented failings, we submit the ACMA should engage with broadcasters to introduce provisions within the broadcast codes that restrict unhealthy food advertising to children, to ensure the object of protecting children is achieved. Restrictions contained in broadcasting codes will be more efficacious than the present system, with closer oversight by the ACMA, and the potential to impose meaningful sanctions to more effectively control harmful advertising to children. Such code-based restrictions on advertising to children should comprise both time-zone interventions (discussed below in answer to question 19), and content-based interventions (discussed below in answer to question 61).

We also note, relevant to the ACMA's concern regarding changing community experiences and expectations, that recent research has shown very strong public support for stronger restrictions on the advertising of unhealthy foods to children, with 83% of adult grocery-buyers surveyed favouring of a ban on advertising of unhealthy food at times when children watch TV.¹³ There is excellent scope for the ACMA to engage with the broadcast industry to introduce broadcasting code-based interventions of regulation to meet community expectations.

International discourse on health and broadcasting policy

A further factor relevant to the protection of children under the Act, is Australia's international policy commitments, including the Australian Government's endorsement of the WHO Global Action Plan for the Prevention and Control of Noncommunicable Diseases 2013-2020 ('GAP'), which stresses the importance of regulatory measures to reduce children's exposure to unhealthy food advertising and to protect food policy from undue influence of vested interests.¹⁴ The GAP builds upon the Political Declaration adopted by Australia and the 192 Member States of the UN at the General Assembly's landmark High-Level Meeting on NCDs.¹⁵ The Australian government's participation in these high level health international health policy fora should assist the ACMA to act consistently with the WHO's recommendations in including restrictions on advertising to children in broadcast codes.

The ACMA has acknowledged that it is not an expert health body, and has been hesitant in taking decisive regulatory steps on food advertising and children.¹⁶ We appreciate the difficult task the ACMA faces in balancing differing interests under the Act. We note, however, that the ACMA is the sole statutory body charged with responsibility for protecting children from harmful TV advertising. The issue is so pressing in the modern media environment that we urge the ACMA to undertake whatever research and monitoring into the harms of unhealthy food advertising and appropriate interventions it considers necessary to adequately inform itself pursuant to s.168 of the Act. We also urge the ACMA to engage with the Australian National Preventative Health Agency to ensure this issue is considered as the ACMA's inquiry moves forward, but not leave action to the ANPHA, who do not have expertise in broadcasting regulation.

¹² See the example of the ASB's decision in relation to McDonald's MacPack TV commercial and website, which may be contrasted with the ACMA's reasoning in relation to McDonald's the "It's a Knockout" game show, described in answer to question 64, below.

¹³ Belinda Morley, Jane Martin, Philippa Niven and Melanie Wakefield (2012) 'Public opinion on food-related obesity prevention policy initiatives' *Health Promotion Journal of Australia* 23(2) 86

¹⁴ The World Health Organization Global Action Plan for the Prevention and Control of Non-communicable Diseases 2013-2020

¹⁵ United Nations General Assembly, Sixty-Sixth Session, 66.2 *Political Declaration of the High-level Meeting of the General Assembly on the Prevention and Control of Non-communicable Diseases*, 24 January 2012, (A/Res/66/2), 2012.

¹⁶ As noted in Australian Government, Australian Communications and Media Authority, 'Industry self-regulation of food and beverage advertising to children' - ACMA monitoring report (December 2011)

Question 19: The ACMA has drawn a connection between ‘protection of children’ and time zone interventions. Do you agree with this connection? Are there other interventions or safeguards that should be included here?

The OPC agrees that it is appropriate to draw a connection between the principle of ‘protection of children’ and time zone interventions. We consider that time zone interventions are a potentially powerful and necessary means of protecting children from harmful broadcast material including advertising. The Issues Paper summarizes the time zone interventions that currently relate to program content, but does not make specific reference to the potential application of time zone interventions to food advertising. The OPC asks the ACMA to consider how time zone interventions could be introduced into broadcast codes to protect children from harmful food advertising.

Time zone interventions applied to advertising

The present self-regulatory scheme for restricting advertising to children contains no firm time zone restrictions, but rather restricts advertising of unhealthy food only in C and P rated programs, and at times where the proportion of children in the audience is 50%.¹⁷ The Australian Association of National Advertiser’s Food and Beverage Advertising and Marketing Communications Code restricts only material that is directed primarily to children and promotes a children’s product.

These interventions do not apply during the shows watched by the greatest numbers of children. Children aged under 15 years make up only 19% of Australia’s population,¹⁸ therefore even shows that are disproportionately watched by children relative to the adults will not achieve a proportion of child viewers that reaches the 50% (or 35%) threshold. The scale of children’s exposure during their main viewing times is demonstrated by ACMA’s comparative report analysing children’s viewing statistics from 2001, 2005 and 2006. The report noted that from January to June in 2006, the highest numbers of children aged 0-13 were watching from 6pm – 9pm, with audience numbers peaking at 492,000 child viewers. This number represented only 14.6% of the total audience, however, so restrictions on unhealthy food advertising did not apply.¹⁹

In light of the large numbers of children exposed to unhealthy food advertising during high-rating timeslots, the OPC considers that the ACMA should consider engaging with broadcasters to develop provisions within broadcast codes that would more effectively protect children from harmful advertising. The method chosen would need to capture programs that are watched by large numbers of children, without requiring that a particular *proportion* be reached before the restrictions apply. Appropriate methodologies may include time-zone based interventions, preventing the broadcast of unhealthy food advertisements during the morning and evening time slots when most children are watching.

¹⁷ It is noted the Australian Food and Grocery Council has indicated its intention to reduce the threshold proportion of children to 35% for the purposes of the RCMI. This will still fail to protect children during the highest rating shows among children because the threshold is still too high to capture the vast majority of programs popular with children.

¹⁸ Australian Bureau of Statistics Population Data, catalogue 3235.0 - Population by Age and Sex, Regions of Australia, 2011 <http://www.abs.gov.au/ausstats/abs@.nsf/Products/3235.0~2011~Main+Features~Main+Features#PARALINK0>

¹⁹ Australian Government, Australian Communications and Media Authority *Review of the Children’s Television Standards 2005*; Report of the Review, 2008; see also David Knox ‘What kids really watch’ October 12, 2011, *TV Tonight* <http://www.tvtonight.com.au/2011/10/what-kids-really-watch.html>

An alternative method would be to prohibit unhealthy food advertising in shows where the *number* of children in the audience (as opposed to the *proportion*) was significant. The OPC would be glad to provide more specific submissions as to these methods for restricting unhealthy food advertising in due course.

The Issues Paper queries whether time zone restrictions are anachronistic in the modern broadcast environment, as parental lock technology is included in all television reception equipment sold in Australia. It also notes that increased use of view-on-demand (and view online) technology also detracts from the utility of traditional time zone interventions. The OPC submits that the available data shows that hundreds of thousands of children watch G or PG rated television shows during regular commercial TV broadcast timeslots.²⁰ Our view is therefore that time zone interventions are not out-dated, and could be used very effectively within broadcast codes to protect children from harmful advertising. We consider there is excellent scope for the ACMA to expand existing time zone interventions to incorporate restrictions on advertising into broadcast codes.

²⁰ Ibid

Section 3B: Ethical standards – Advertising

Question 61: Should the concept of ‘ethical standards—advertising’ be relevantly included as a guiding core principle in contemporary broadcasting codes of practice?

The OPC considers the concept of “ethical standards - advertising” should be included as a core principle in broadcast codes. The OPC is extremely concerned about unethical promotion of unhealthy foods to children, and considers there is great potential for the ACMA to uphold ethical standards in advertising by introducing content-based advertising interventions into broadcast codes.

Ethical advertising conduct

The OPC considers the ethics of advertising harmful products to children should be a key concern of the ACMA in reviewing broadcast codes. The International Obesity Taskforce Working Group has consulted globally with stakeholders regarding development of a rights-based approach to reducing unhealthy food marketing to children. Consultation revealed strong support among stakeholders, including industry, for the principle of protecting children’s rights to be central in any system for protecting children from food marketing.²¹ Our view is that advertising to children who are too young to understand the persuasive intent of advertising is unfair and unethical, breaching the primary ethical principle of non-maleficence, particularly if the advertised products may be detrimental to health. Children cannot make informed choices where beguiling advertising is directed at their sense of fun or adventure, or if they believe promotional material is simply information or entertainment. Food companies spend hundreds of millions of dollars on marketing and advertising, in order to maintain and increase market share, with spending increasing significantly in recent decades.²² It is reasonable to infer that they have good evidence that influencing children through targeted food advertising increases sales.²³

Corporate advertising to children, although unethical, is a function of a company’s legal obligation to maximize its sales and profits for its shareholders. Food industry bodies have an inescapable conflict of interest when they are asked to reduce their profits by making advertising less effective. Any attempt to limit children’s exposure to harmful advertising that relies on self-regulation by the food industry can never succeed as corporate interests cannot be balanced against the health interests of children. Accordingly, the OPC strongly agrees that focus on ‘ethical standards – advertising’ in broadcast codes will be essential if the harmful effects of unethical food advertising practices are to be ameliorated.

²¹ Swinburn, B., Sacks, G., Lobstein, T., Rigby, N., Baur, L., Brownell, K., Gill, T., Seidell, J., Kumanyika, S as the International Obesity Taskforce Working Group on Marketing to Children (2008) The ‘Sydney Principles’ for reducing the commercial promotion of foods and beverages to children 11(9) *Public Health Nutrition* 881–886

²² Coalition on Food Advertising to Children; ‘Children’s Health or Corporate Wealth?’ A Briefing Paper 2nd edition January 2007

²³ Swinburn, B.A., Gill, T., & Kumanyika, S. ‘Obesity prevention: a proposed framework for translating evidence into action’, *Obesity Reviews*, 2005, 6, 23-33.

Question 62: The ACMA has drawn a connection between ‘ethical standards—advertising’ and interventions around transparency and the limits on advertising. Do you agree with this connection? Are there other interventions or safeguards that should be included here?

The OPC agrees that a connection between ‘ethical standards – advertising’ and interventions around transparency and the limits on advertising should underpin broadcasting codes.

Transparency in advertising

The inclusion of interventions around transparency and limits on advertising in broadcast codes should be considered by the ACMA as a step to enhance the protection of children from unhealthy food advertising to which they are particularly susceptible.

Children’s abilities to understand and critically view advertising develop over time, with cognitive growth and intellectual development.²⁴ We consider that food advertising material that is often not transparent, including embedded advertising, product placement, sports sponsorship, celebrity endorsement, advergames and social media links are particularly concerning because of children’s limited capacity to understand the commercial or promotional intent of the material. These forms of advertising are not consistent with frank and fair disclosure of interests, as they cannot be readily understood by the target audience.

Achieving transparency in advertising has become an increasingly complex issue as a result of the converged media environment, with advertising in Australia now including a range of devices beyond simple TV advertisements. Modern TV advertising frequently features embedded marketing, brand sponsorship or links to innovative forms of advertising such as apps, which then engage children with branded activities or games over much greater periods of time than could have been achieved by exposure to the TV advertising alone.

Additional safeguards required - Content-based restrictions

In order to uphold ethical standards relevant to transparency, content-based limits should be incorporated into broadcast codes. Content-based restrictions the ACMA may consider seeking to include in broadcast codes should restrict advertising that targets children through its themes, visuals or other features. The OPC has observed the continuing use of animation, fantasy and magic themes, animals, movie tie-ins, games and links to social media sites by TV advertisements for unhealthy products, in which the promotional intention is not transparent. We therefore urge the ACMA to consider content-based limitations on all advertising of unhealthy food, which would assess advertising with reference to common salient features such as: -

- The nature of the food product advertised.
- The age of people (actors or presenters) in the advertisement.
- Any personalities or characters featured in the advertisement.

²⁴ Kunkel, D., Wilcox, B.L., Cantor, J., Palmer, E., Linn, S. & Dowrick, P. ‘Report of the APA Task Force on Advertising and Children.’ Washington, DC: American Psychological Association, February 20, 2004.

- Any premium offers, competitions, prizes or other benefits promoted in the advertisement.
- The presentation or design of the advertisement.
- The content of the advertisement (themes, plots, concepts, activities, etc).

If content-based restrictions were brought within broadcasting codes through the ACMA's engagement with broadcasters, rather than remaining within ASB-administered voluntary codes, the Act's object of protecting children and the ACMA's concern to uphold ethical standards would be much more effectively and consistently realised.

Question 63: What is the extent of concern, if any, about branded content and embedded advertising being transparent?

The OPC has grave concerns about the transparency (or lack of transparency) of branded content and embedded advertising of unhealthy food and drinks, particularly as it impacts children. The issue of embedded advertising in TV programs is one specific instance of advertising practice that, in the OPC's view, is entirely unethical in so far as it exposes children and other vulnerable persons to advertising material they may not readily comprehend. This concern will be elaborated upon in answer to questions 64 and 65, below.

Question 64: To the extent that there is any concern about branded content and embedded advertising failing to be transparent—does that level of concern differ according to the type of content being consumed? For example, are different concerns raised by this content appearing in current affairs programs as opposed to scripted dramas?

The OPC considers that the level of concern about branded content and embedded advertising that is not transparent is affected by the content in which it appears. In particular, we draw the ACMA's attention to the special case of food promotion through professional and children's sport.

Embedded advertising – sponsorship of children's sport and celebrity endorsement

In order to properly understand and interpret advertising messages, children need to be able to distinguish between commercial and non-commercial content, understand that the purpose of advertising is to persuade, and interpret advertising critically with these motivations in mind. Achieving this level of understanding will often not be possible in the case of children, particularly when associated content is of powerful appeal, including when it features sporting stars idolised by children or depicts children participating in sport. This type of advertising unfairly leads children to associate brands with healthy sporting activities, where the food products do not represent healthy dietary choices.

The potential impact of this type of advertising on children is highlighted by recent research, which has shown that celebrity endorsements influence pre-adolescent children's preferences towards energy dense, nutrient poor food products, notwithstanding the products do not represent a healthy dietary choice.²⁵

The OPC is able to provide more detailed information to the ACMA regarding our observations of sport and celebrity endorsement of unhealthy products in due course. For present purposes, however, we draw the ACMA 's attention to the following instances of advertising, where unhealthy food sponsorship has been mixed in with celebrity sports personalities' endorsements and junior or professional sport, in a highly unethical manner: -

1. Cricket Australia partnership with KFC

Through the summer 2012/2013 cricket season, ads shown during cricket coverage promoted participation in junior cricket along with KFC products including fried chicken, nuggets and chips. Former cricket star and commentator Ian Healy featured, encouraging children to sign up for junior cricket, while images of families enjoying KFC at the edge of a cricket oval were shown. The OPC complained to the ASB that this ad breached the QSRI, but KFC advised that the ad was paid for by Queensland Junior Cricket, which was not a signatory to any voluntary code. The ASB therefore declined to consider the complaint. This highlights the need for sponsorship and embedded advertising to be restricted at broadcasting code level, so that it applies consistently to all advertisers.

2. McDonald's "MacPack" TV advertisements and website.

The 2012 McDonald's MacPack TV ad showed children playing football at the MCG wearing McDonald's branded footy clothing. The ad promoted a competition to win "full VIP treatment to a footy game at the MCG." The ad referred viewers to www.macpack.com.au, where football stars wearing McDonald's branded clothing are pictured interacting with young children, also in heavily branded gear.

The OPC complained to the ASB regarding the TV promotion of McDonald's products to children. The ASB agreed that the advertisement was directed primarily to children, but found the promotion of a competition is not of itself a promotion of food products, therefore the industry-based codes did not apply.²⁶

This reasoning was at odds with ACMA's own findings in relation to the OPC's 2012 complaint about McDonalds advertising during the branded game show program "It's a Knockout". The show featured teams competing in challenges, including "team Maccas", who wore McDonald's branded clothing and hats. Although the complaint was not upheld on other grounds, the ACMA found that the promotion of McDonald's branding, which is widely recognized as being associated with a fast-food restaurant chain, amounted to promotion of McDonald's products.

²⁵ Dixon H., Scully M., Niven P., Kelly B., Chapman K., Donovan R., Martin J., Baur L.A., Crawford D., Wakefield M., (2013) 'Effects of nutrient content claims, sports celebrity endorsements and premium offers on pre-adolescent children's food preferences: experimental research' *Pediatric Obesity* first published online 29 April 2013, ahead of print.

²⁶ See ASB decision 0324/12.

The OPC considers that the inconsistency between the ACMA's own views and the findings of the ASB in relation to whether branded content constitutes advertising material highlights the need for these matters to be included in broadcast codes, rather than left to an uncertain and inadequate system of self-regulation. The large loopholes in the present system, which allow major brands such as KFC to promote unhealthy food in junior sport while entirely side-stepping the voluntary code they purported to subscribe to in order to protect children, also highlight the need for broadcast-code based interventions.

Question 65: To the extent that there is any concern about branded content and embedded advertising failing to be transparent, would that level of concern be assuaged by adequate identification/disclosure of advertising material?

The OPC's view is that in the case of branded content and embedded advertising impacting children, concern about ethical disclosure cannot be assuaged by identification. This is because such "transparency" will not adequately put a child on notice of the promotional intent of the material, as their limited capacity to understand the commercial motivations behind the communication makes real transparency a practical impossibility.

Our view is that this type of material, where advertising targets children using powerful endorsement by sports personalities, where adequate transparency is not possible because of children's young age and developing cognitive capacity, is entirely unethical and should be prohibited through broadcasting codes. We ask the ACMA to give close consideration to this special vulnerability of children with particular regard to promotion of unhealthy products through sport sponsorship and endorsement.

Section 7: Redress

Question 107: Should the concept of 'Redress' be relevantly included as a guiding core principle in contemporary broadcasting codes of practice?

The OPC considers the concept of 'redress' should be included as a guiding core principle in contemporary broadcasting codes, which should provide clear and consistent complaints processes that are readily accessible by members of the public. As noted by the ACMA, Australians should have confidence in media and communications safeguards and should have access to effective avenues of redress if standards are not met.

Our view is that the ACMA should consider incorporating the complaints process relating to advertising into broadcasting codes, to enable complaints regarding unethical or harmful advertising to be dealt with consistently, decisively, independently and expediently.

Question 108: The ACMA has drawn a connection between 'Redress' and complaints-handling. Do you agree with this connection? Are there other interventions or safeguards that should be included here?

The OPC agrees that a connection should be drawn between the principle of 'redress' and complaints-handling. The concept of redress requires particular consideration as it applies to unethical and harmful advertising because in order to provide an effective disincentive for advertisers, complaints must be addressed swiftly and decisively. Remedies should include mandatory removal of advertising found to be harmful as well as meaningful sanction for the advertiser.

At present, though the ACMA deals with certain advertising complaints under broadcasting codes and the CTS, a majority of complaints about unethical and harmful advertising to children are handled by the ASB, which considers all reported breaches of voluntary industry codes. Currently, the complaints process overseen by the ASB gives rise to the following problems: -

- Where a breach of voluntary industry-codes is found, there are no meaningful sanctions for the advertiser;
- As there are no meaningful sanctions, there are no real disincentives for advertisers to push the boundaries of what is allowable advertising conduct;
- The process for making complaints online is a reasonably complex multi-stage process that may prevent many members of the public from airing legitimate concerns;
- There are no effective procedures and rights for appealing decisions;

- The ASB does not act consistently with the ACMA's own decisions on the same issues, as in the case of the McDonald's MacPack TV advertisement discussed in answer to question 64, above. This leads to uncertainty and confusion regarding the rules that are applicable to food advertising;
- The current system of self-regulation does not meet the Australian Competition and Consumer Commission guidelines for effective voluntary industry codes of conduct, in that it does not provide for independent review, monitoring and does not ensure accountability.²⁷

The OPC therefore considers that pursuant to its powers and responsibilities under the Act, the ACMA should engage with broadcasters to introduce into broadcasting codes a system of independent, accessible and certain complaints handling, underpinned by the inclusion of 'redress' as a key principle of the Codes.

Conclusion

A broadcast code-based review, taking into account the core principles identified by the ACMA, would give an opportunity for the inclusion of protective advertising interventions into broadcasting codes. This would give rise to a simpler, more certain system of advertising regulation that would apply consistently across different sections of the broadcast industry and would be more easily understood and accessed by the public. The OPC appreciates the opportunity to provide a submission to the ACMA and would be very willing to provide more detailed comment in due course, regarding the form of broadcast code provisions limiting advertising of unhealthy food to children.

²⁷ Australian Competition and Consumer Commission - Guidelines for developing effective voluntary industry codes of conduct, July 2011, available at <http://transition.accc.gov.au/content/index.phtml/itemId/658186> .