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AANA Code of Ethics Review Discussion Paper
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SUBMISSION TO THE AANA CODE OF ETHICS REVIEW

Thank you for the opportunity to provide a submission to the review of the *AANA Code of Ethics*.

The Australian Council on Children and the Media (ACCM) is a peak not-for-profit national community organisation whose mission is to support families, industry and decision makers in building and maintaining a media environment that fosters the health, safety and wellbeing of Australian children.

ACCM membership includes ECA (Early Childhood Australia), ACSSO (Australian Council of State Schools Organisations), APPA (Australian Primary School Principals Association), AHISA (Association of Heads of Independent Schools Australia), AEU (Australian Education Union), Parenting Research Centre, Council of Mothers' Union in Australia, SAPPA (South Australian Primary Principals Association), and other state-based organisations and individuals.

ACCM's core activities include the collection and review of research and information about the impact of media use on children's development, and advocacy for the needs and interests of children in relation to media use.

This submission has been written by our President, Professor Elizabeth Handsley, in consultation with our Hon CEO, Barbara Biggins OAM. Our comments in response to the AANA's questions are set out in green below.

Objectives

The objectives of the Code of Ethics are to:

Ensure that advertisements and other forms of marketing communications are legal, decent, honest and truthful and that they have been prepared with a sense of obligation to the consumer and society and a sense of fairness and responsibility to competitors.

1. Does the Code of Ethics continue to meet its stated objectives? If not, why not?

It can be questioned whether the Code of Ethics has ever met these objectives, at least as far as 'sense of obligation to the consumer and society' is concerned. This is partly because of the way that the Code is drafted (discussed in detail below), and partly because of the way it is applied, which seems consistently to give the benefit of any doubt to communications that have already been prepared and disseminated. Underlying all this is the fact that there are no sanctions for non-

compliance with the Code, and therefore no incentive to comply. In this sense the Code is unable to 'ensure' anything at all.

2. Do the current objectives need to be amended? If so, what are the objectives that the Code of Ethics should address?

The objectives should be redrafted to address more specifically the power imbalance between advertisers and audiences, and the risk that advertisers' power will be abused. They should also refer to objective, evidence-based standards rather than the vague and subjective concept of a 'sense of obligation'.

3. The AANA welcomes comments on steps that could be taken to simplify and streamline the current Code and Practice Notes to provide clarity for consumers and reduce regulatory burden.

The provisions of the Code should be drafted in a sufficiently clear way that the need for Practice Notes is minimal.

4. Should the substantive provisions of the Code of Ethics, Practice Note and Industry Practice Notes be incorporated into fewer documents?

Yes. Members of the public who are considering whether to go to the trouble of making a complaint should not have to cross-reference between different documents to determine whether a provision has been breached.

5. Are there any other comments on the contents and structure of the Code, Practice Note or Industry Practice Notes?

No

6. Are there any comments on the introduction of Industry Practice Notes in addition to the Practice Note, and/or their content and structure?

No

Evolution

7. Should the Code of Ethics and Practice Notes continue to evolve outside of formal public reviews?

In principle, no. At the very least there should be a form of stakeholder consultation before any changes are made.

Compliance

Complaint volumes

ACCM would like to comment on the high number of complaints about scary advertisements for horror films. Since the end of June there have been multiple complaints about promotions for *It: Chapter Two*, *Child's Play*, *Annabelle Comes Home* and *Hellboy*. According to our inquiries, to the end of June 2019, promotions for two horror movies (*Us* and *Pet Sematary*) were in the top 10 most complained about ads. In 2018, promotions for two such movies (*Halloween* and *Venom*, 97 and 43 complaints respectively) were in the top 10 most complained about. This would seem to indicate a systemic failure to address such advertising, hence we are recommending a new provision in the *Code of Ethics* (see below).

Code of Ethics Provisions

Section 1 – Competitor Complaints

8. Are any changes required to Section 1 of the Code of Ethics? If yes, please give reasons.

ACCM has no comments on this.

Section 2 Consumer complaints

Section 2.1 - Discrimination and vilification

Advertising or Marketing Communication shall not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.

9. Are any changes required to Section 2.1 of the Code of Ethics? If yes, please give reasons.

Discrimination and vilification are strong concepts, and content falling short of them can still have an impact on societal attitudes and expectations, especially when it is presented in the subtle and powerful way that most advertising is. Bearing in mind that much advertising is disseminated in situations where audience members have no choice but to see it (and no choice over the precise content they see), Section 2.1 should have broader application, extending to things such as perpetuation of harmful stereotypes about disempowered or marginalised groups, and belittling of such a group or its members.

10. Are any changes required to the Practice Notes for section 2.1? If yes, please give reasons.

Generally we have few comments on the Practice Notes as on the whole they provide useful context for the decision-making. As stated elsewhere in this Submission, the difficulty is that the Code should be expressed in such a way as to obviate much of the need for Practice Notes.

One matter on which we would like to comment is the statement in the introduction to Section 2 that the Community Panel can rely on the gating of social media sites to determine the age of the audience. This is unrealistic and should be reviewed, as unfortunately many children under 13 lie about their age to gain access to social media. As always, the Code and decisions under it should be based on actual likely audiences, not theoretical ones.

Section 2.2 - Exploitative or degrading

Advertising or Marketing Communication shall not employ sexual appeal:

(a) where images of Minors, or people who appear to be Minors, are used; or

(b) in a manner which is exploitative or degrading of any individual or group of people.

11. Are any changes required to Section 2.2 of the Code of Ethics? If yes, please give reasons.

ACCM applauds the recent change to this section, broadening its application. However, there is no reason that the prohibition against exploitation and/or degrading content should be limited to sexual appeal. As the experience of such content to date has been limited largely to women, and it is women who are systematically exploited and/or degraded in our broader culture, the Section should be amended to refer specifically to the intent to protect women against such representations, which often employ sexual appeal but do not always do so.

12. Are any changes required to the Practice Notes for section 2.2? If yes, please give reasons.

See 10. above.

Section 2.3 - Violence

Advertising or Marketing Communication shall not present or portray violence unless it is justifiable in the context of the product or service advertised.

13. Are any changes required to Section 2.3 of the Code of Ethics? If yes, please give reasons.

Depictions of violence are one area where there is solid research evidence indicating a risk of people developing problematic thoughts, attitudes and behaviours. People exposed to violent content are at increased risk of developing unwarranted fears about the world around them; of perceiving aggressive intent in others where it does not exist; of becoming desensitised to violence and seeing it as an appropriate means of resolving conflict; and of responding to conflict with aggression. The Code has a role to play in reducing people's exposure to such content, and the current form of Section 2.3 falls short in this regard.

In principle, the fact that a product is connected to violence in some way is not a justification for exposing the general public to depictions of violence. As the next question anticipates, there should be limits on violence in advertising based on the nature of the audience, not the nature of the product.

14. In particular, should the audience likely to view the advertisement be a consideration under Section 2.3?

Yes. ACCM is particularly supportive of a formulation that refers to the likely actual audience and not the intended or target audience. If the likely audience includes children and young people, restrictions on the depiction of violence should be stronger, just as they are for films and games under the *National Classification System*. The restrictions should not revolve around the proportion of children in the audience, as this is always likely to be low, simply by virtue of the fact that children make up a minority of the population.

15. Are any changes required to the Practice Notes for section 2.3? If yes, please give reasons.

The practice note includes several examples to illustrate what "violence" is. This indicates that a definition is needed as part of para 2.3. The definition of "violence" most commonly used in the research literature is "an act intended to cause harm, injury or death to a human or humanoid" and includes the threat, or consequences, of such actions.

Section 2.4 - Sex, sexuality and nudity

Advertising or Marketing Communication shall treat sex, sexuality and nudity with sensitivity to the relevant audience.

16. Are any changes required to Section 2.4 of the Code of Ethics? If yes, please give reasons.

This section should be more specific about the 'relevant audience' and what it means to be 'sensitive' to it. As discussed above in relation to Section 2.3, the 'relevant audience' should be replaced by the 'likely audience'; and 'sensitivity' should be replaced by a more specific reference to the kind of harms that the Section is seeking to avoid and the kinds of content that create a risk of such harms.

ACCM endorses the further comments on the matter set out in the submission of Collective Shout (see Appendix 1).

17. Are any changes required to the Practice Notes for section 2.4? If yes, please give reasons.
See 10. above.

Section 2.5 - Language

Advertising or Marketing Communication shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided.

18. Are any changes required to Section 2.5 of the Code of Ethics? If yes, please give reasons.
See above re 'relevant audience'. Regarding 'relevant ... medium', it is not clear that the appropriateness of language varies depending on the medium, if this is understood in the normal way ie to refer to the platform. Rather appropriateness depends on the place and time of the communication, including the nature of the editorial or entertainment content in association with which the advertising is disseminated. Section 2.5 should be reframed to reflect this.
19. Are any changes required to the Practice Notes for section 2.5? If yes, please give reasons.
See 10. above.

Section 2.6 - Health and safety

Advertising or Marketing Communication shall not depict material contrary to Prevailing Community Standards on health and safety.

20. Are any changes required to Section 2.6 of the Code of Ethics? If yes, please give reasons.
Matters like health and safety should be judged by objective, evidence-based standards, not community standards. It is not to the point if the community considers a practice healthy or safe as the community does not necessarily have the experience or expertise to determine whether it actually is or not. Advertising, like other media, should lead community opinion in this regard, not follow it.
21. In particular, should the audience likely to view the advertisement be a consideration under Section 2.6?
It may be appropriate to introduce such a consideration, in that some audiences might be expected to be aware of the health and/or safety risks of a practice being depicted whereas others (for example younger ones with less experience, or more of a propensity to take risks) might be more impressionable. However, the AANA should be wary of introducing such subtleties into a Code that relies on complaints from the public for enforcement. The more nuanced a provision is, the more work it makes members of the public do in deciding whether a complaint is justified; and members of the public are unlikely to be able to determine the nature of the audience at any given time and in any given place, let alone the kind of health and safety messages that are likely to influence them. This may be a provision where it is appropriate to set a high standard for all advertising, so as to maximise protection for the whole population.
22. Are any changes required to the Practice Notes for section 2.6? If yes, please give reasons.
See 10. above.

2.7 Clearly Distinguishable advertising

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

23. Are any changes required to Section 2.7 of the Code of Ethics? If yes, please give reasons.

The blurring of the line between advertising and editorial/entertainment content in recent times has made this an even more pressing issue than before. Therefore, strong measures are required and, in particular, the reference to the 'relevant audience' should be removed; that is, all members of the community should be protected at all times. Failing that, the phrase should be replaced to make it clearer that the intent is to protect the likely actual audience, rather than the intended or target audience (see above).

There is also a need at this point to address more precisely the issue of advergames and apps, and in addition the covert tracking and gathering of people's personal data for marketing purposes. All of these have the potential be indistinguishable to the audience.

24. Are any changes required to the Industry Practice Notes for section 2.7? If yes, please give reasons.
See 10. above.

25. Should the Practice Note and Industry Practice Notes associated with section 2.7 be amended to provide more clarity on the disclosure requirements for influencers, vloggers and bloggers where payment, payment in kind (e.g. free product) or any other benefit has been received? If yes, please give reasons.

Yes, for obvious reasons: these forms of marketing are widespread and insidious. They are also most likely to influence the most vulnerable members of society, including the young and inexperienced.

Other topics

26. Are there any other issues, rules or standards that should be included in the Code of Ethics? If so please, give details.

As it stands, the Code of Ethics does not deal explicitly with ad content that is likely to scare or distress children. The *Code for Advertising and Marketing Communications to Children* does have such a provision, but this is of very narrow application and in particular it leaves untouched many frightening and distressing images (mostly from horror films) placed in public places where children have every right to be, and to which they cannot avoid exposure. For example such images appear on posters at bus shelters and on the backs and sides of buses, on billboards, and on trailers in the early evening hours on TV. Such exposure is not trivial, and can cause long-lasting unnecessary fears and anxieties, and sleep disturbance. Such anxieties can be triggered by only brief exposures to such images.¹ As one parent wrote to us:

¹ Cantor, Joanne (1998) *Mommy I'm scared: how TV and movies frighten children*. US, Harvest; Ey, Lesley-Anne (2019) <https://childrenandmedia.org.au/news/news-items/2019/it-chapter-2-raises-fresh-concerns-about-horror-movie-promo-and-children>.

The image is menacing and designed to be scary and it terrifies my 7 year old who now has nightmares about it. ... He is a normal happy 7 year old but every time we pass a bus or outdoor with the ad he starts to cry and the man is watching and following him.

Another reported to us that she has spent over \$1000 in psychologist fees to undo the harm caused to her daughter by an advertisement for *Annabelle Comes Home*. Moreover the psychologist has advised her that 'she has had a number of children mention this ad and be upset by it'.

The very recent Determination 0301-19, about posters for *It: Chapter Two*, went some way towards addressing such concerns, but we note that the complaint(s) were upheld against only one of the two images in question, and then only by a majority. The minority view, which relies heavily on the distinction between violence and scariness, serves as a clear illustration and reminder of the difficulties associated with using a provision about the former to address the latter. Even the majority view is heavily dependent on the explicit link to violence created by the blood in the first image. We noted further that both the minority on the first image and the Panel as a whole on the second saw the admitted impact on children as trumped by the Community Standards which, apparently, make it OK to frighten children in this way.

The Code of Ethics should therefore provide clearer direction to the Panel, by including a rule that advertising likely to be seen by children "must not display images that are likely to be frightening or distressing to Children". Such a Code provision will necessitate advertisers, and the Community Panel, informing themselves about which types of images fall within the description in the provision. This will require reference to the research literature.

In addition, if the Practice Notes continue to include instruction on how to determine the 'relevant audience' or similar for outdoor media, they should refer to scary content as well as sex and language.

27. Do you know of any other evidence-based research which could inform the evolution of the Code of Ethics? If so, please give details.

ACCM systematically gathers and collates research findings on children's engagement with the media, including advertising and marketing. Such is made available freely on our website and through our various publications. If the AANA would like to have access to curated content ACCM would be happy to discuss this.

28. Do you have any additional suggestions or comments on the review of the Code of Ethics?

Data collection

Content is not the only aspect of advertising that can cause harm. In recent years we have seen an explosion of the use of data collection techniques that bypass the knowledge or consent of the media consumer, and ACCM submits that a Code of Ethics should cover such techniques, at least when the data is then used to market or advertise to children. No doubt bodies like the AANA have relied up until now on the US *Children's Online Privacy Protection Act (COPPA)* as having a strong enough impact in that country to protect the rest of the world, given the global nature of the internet. However there is evidence that even within the US, a high proportion of content that is

supposed to be *COPPA*-compliant is not. It would therefore be appropriate for national industry bodies like the AANA to fill the gap.²

Ad clearance

ACCM would like to raise some concerns about the quality of decision-making in ad clearance or advice processes eg by Clearads Australia. As the recent case involving the film *Venom*³ shows, in case of TV, reliance on such advice, even incorrect advice, allows an ad to go to air without penalty under the co-regulatory system for broadcasting. Therefore it is crucial that such advice be correct, and it appears to us that the AANA is the only body that has power to address this. We understand that processes are not up for comment in this review but we would welcome the opportunity to discuss ways of improving the accuracy of Clearads decisions, as there is a good deal at stake with them.

² [Reyes, I., Wijesekera P., Reardon J., Elazari A., Razaghpanah A., Vallina-Rodriguez N., et al. \(2018\). "Won't Somebody Think of the Children" Privacy Analysis at Scale: A Case Study With COPPA. Proceedings on Privacy Enhancing Technologies.](#)

³ ACMA Investigation Report no *BI-443*

Appendix: Extract from Collective Shout draft submission

11. Are any changes required to Section 2.2 of the Code of Ethics? If yes, please give reasons.

Some of the cases [cited in CS submission] that have been dismissed raise a concern about how well the standards expressed in the AANA Code of Ethics reflect community standards – or at least how those standards are interpreted in Ad Standards determinations.

For example in case 0005/17 determined on 8 February 2017 the Board opined:

The Board noted there is a level of community concern about the sexualisation of children and acknowledged the placement of the advertisement meant that the relevant audience was very broad and could include children. The Board noted that the style of lingerie worn by the women in the advertisements is sheer and includes straps and neck collars. The Board noted that this lingerie is sold in the store and considered that although it is reasonable for advertisers to promote their products they should take care when using products which have a more sexualised, bondage look rather than just normal lingerie. The Board noted that the type of lingerie being modelled in these advertisements is designed to be of visual appeal rather than comfortable for the wearer and considered that although the advertiser is targeting female customers it should be noted that the complainants are themselves women.⁴

All excellent points! But the Board nonetheless dismissed the complaint apparently concluding that women finding such sexualised objectification offensive or parents concerned about the impact of such imagery on their children are outliers in the range of community standards whose concerns cannot be allowed to prevail.

27. Do you know of any other evidence-based research which could inform the evolution of the Code of Ethics? If so, please give details.

There is a growing body of evidence that pervasive advertising that sexualises and objectified women is associated with “a greater support for sexist beliefs, attitudes that blame victims for sexual violence, a greater tolerance of sexual aggression, and men’s use of sexually coercive behaviour. Attitudes and beliefs that condone violence against women are recognised as an important underlying cause of violence against women ... the effectiveness of interventions to ... reduce violence against women in other settings, such as in schools and workplaces, will be undermined if businesses, brands and the advertising industry continue to rely on ... sexualised portrayals.”⁵

END

⁴ <https://adstandards.com.au/cases?ref=0005/17>

⁵ Women’s Health Victoria, *Advertising (in)equality: the impacts of sexist advertising on women’s health and wellbeing*, December 2018, p. 6, [https://womenshealthvic.com.au/resources/WHV_Publications/Issues-Paper_2018.12.06_Advertising-inequality-the-impacts-of-sexist-advertising_Dec-2018_\(Fulltext-PDF\).pdf](https://womenshealthvic.com.au/resources/WHV_Publications/Issues-Paper_2018.12.06_Advertising-inequality-the-impacts-of-sexist-advertising_Dec-2018_(Fulltext-PDF).pdf)