**Australia’s response to the United Nations questionnaire on the impact of advertising and marketing practices on the enjoyment of cultural rights**

1. ***Has your country adopted specific regulations on advertising and marketing methods and contents aimed at protecting human rights? If so, please specify the content of such regulation. Does the regulation apply to off-line and on-line advertising?***

The Australian Privacy Act 1988 regulates the use of personal information for the purposes of direct marketing. Significant reforms to the Privacy Act took effect on 12 March 2014. The reforms include a new Australian Privacy Principle (APP) 7 which applies to private sector organisations. APP 7.1 generally prohibits the use or disclosure of personal information for the purpose of direct marketing unless an exception applies. Direct marketing involves the use or disclosure of personal information to communicate directly with an individual to promote goods and services. APP 7 does not distinguish between off-line and on-line marketing and applies equally to both activities. A number of specific exceptions are set out in APP 7.2 to 7.5. Where an exception permits an organisation to use or disclose personal information for the purpose of direct marketing, it must always:

* allow an individual to request not to receive direct marketing communications (also known as ‘opting out’); and
* comply with that request.

In addition, on request, an organisation must provide its source for an individual’s personal information, unless it is impracticable or unreasonable to do so.

Further detailed information about the operation of APP 7 and the regulator’s interpretation of the obligations set out in APP 7 is provided by the Office of the Australian Information Commissioner (OAIC) in the APP guidelines available from the OAIC website at: <http://www.oaic.gov.au/privacy/applying-privacy-law/app-guidelines/> .

Personal information that is credit reporting information is separately regulated by Part IIIA of the Privacy Act. Section 20G of the Privacy Act prohibits the use or disclosure of credit reporting information for the purposes of direct marketing. Subsection 20G(2) permits the use and disclosure of limited categories of credit reporting information for the specific purpose of pre-screening consumer credit offers by credit providers, subject to certain conditions (including that no information about individuals that have been removed from the credit offer is provided to the credit provider). In every case, individuals have the right to ‘opt out’ of the use of their credit reporting information for pre-screening purposes.

Education Services for Overseas Students legislation

Under the *Education Services for Overseas Students Act 2000* (ESOS Act) and its associated legislation which includes the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007 (National Code), all institutions delivering education services to overseas students must abide by the marketing and recruitment requirements set out in the legislation. Standard 1 of the National Code is designed to ensure that providers market their education and training services in a professional and accurate manner that maintains the integrity and reputation of the industry. Standard 2 sets out the requirements to recruit overseas students in an ethical and responsible manner and prescribes the information that needs to be given to students to enable them to make an informed decision about studying in Australia. These requirements apply to on-line and off-line advertising. In addition, the ESOS Act states that education providers must not engage in misleading or deceptive conduct in connection with the recruitment of overseas students or intending overseas students.

Advertising regulation

The Australian Association of National Advertisers (AANA) has established a number of self-regulatory industry codes of practice that apply to all advertising and marketing communications off-line and on-line, including the *Code of Ethics* and the *Code for Advertising and Marketing Communications to Children* with additional practice advisory notes. These codes seek to ensure advertisements and other forms of marketing communications are ethical, and have been prepared with a sense of obligation to consumers and fairness to competitors.

Broadcasting regulation

The *Broadcasting Services Act 1992* also imposes broader obligations on broadcasting licensees in relation to the classification, placement and amount of advertising. These obligations are contained in broadcasting industry codes of practice that are administered by the Australian Communications and Media Authority (ACMA).

ACMA is an independent statutory authority responsible for the regulation of broadcasting, telecommunications and radiocommunications. The ACMA registers the broadcasting industry codes of practice when it is satisfied that they provide appropriate community safeguards, are endorsed by the majority of broadcasters in the relevant sector and the public has had an adequate opportunity to comment on them.

The Commercial Television Industry Code of Practice seeks to ensure that television commercials are classified and broadcast appropriately, in light of current community attitudes, the need to limit the exposure of children to material intended for adult viewing, and the fact that such material is typically very brief, and cannot in practice be preceded by a warning. It also seeks to ensure that such commercials are subject to appropriate placement restriction when they are for products and services that are of particular concern and sensitivity, but that public health and safety messages are not unreasonably restricted.

Broadcasting industry codes of practice are regularly reviewed to ensure they are in accordance with current community standards.

Telecommunications regulation

Part 13 of the *Telecommunications Act 1997* places obligations on Australian telecommunications companies prohibiting them from using or disclosing information and data they have received for purposes other than which the information was collected. This includes disclosure to third parties for marketing purposes.

Anti-discrimination legislation

Commonwealth anti-discrimination legislation includes a range of provisions that protect people from discrimination, including as it relates to advertising. In particular, the *Age Discrimination Act 2004* makes it an offence to publish or display an advertisement or notice that in any way indicates an intention to engage in unlawful discrimination.

The *Disability Discrimination Act 1992* makes it an offence to publish or display an advertisement or notice that in any way indicates an intention to engage in unlawful discrimination or harassment.

The *Sex Discrimination Act 1984* makes it an offence to publish or display an advertisement or notice that in any way indicates an intention to engage in unlawful discrimination or sexual harassment.

The *Race Discrimination Act 1975* makes it unlawful to publish or display an advertisement or notice that in any way indicates an intention to engage in unlawful discrimination in land, housing and other accommodation or employment.

Australian Human Rights Commission

The Australian Human Rights Commission can investigate and resolve complaints of discrimination, harassment and bullying based on a person’s sex, disability, race and age.

In the past, this has included complaints relating to advertising.

1. ***Please indicate whether specific categories of the population are protected by such regulation, such as children, women, minorities and indigenous peoples.***

Advertising regulation

The AANA *Code of Ethics* states that advertising or marketing communications 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.

The AANA also administers the *Food and Beverages Code of Practice* and the *Code for Advertising & Marketing Communications to Children,* which include requirements to address concerns about the impact of advertising. The codes provide:

* advertisements for alcohol beverages must not have a strong or evident appeal to children or adolescents and only feature them in certain situations that do not imply they will consume or serve alcohol beverages; and
* advertising or marketing communications to children must not be for, or relate in any way to, alcohol products or draw any association with companies that supply alcohol products.

The Australian Food and Grocery Council also manage two voluntary industry initiatives introduced in 2009; the *Responsible Children’s Marketing Initiative* and the *Australian Quick Service Restaurant Industry's Initiative for Responsible Advertising and Marketing to Children*. These initiatives are also intended to provide safeguards for advertising to children.

Broadcasting regulation

The free-to-air and subscription television industry has regulation in place to provide safeguards for children with regard to advertisements.

For free-to-air television, the *Commercial Television Industry Code of Practice* and *Children’s Television Standards 2009* developed by the ACMA deal with the classification and placement of commercials at particular times, and include provisions designed to address concerns about the impact of advertising, especially to children.

For subscription television, the *Subscription Broadcast Television Codes of Practice* outline protections for children to ensure that advertisements are easily distinguishable from program material, do not exploit children and do not show products that could place children in physical, mental or moral jeopardy.

The commercial radio industry and free-to-air television industry also have advisory notes to provide guidance to reporters and producers about the portrayal of Indigenous peoples and women and men in any material broadcast, which includes commercials. The free-to-air television industry also has advisory notes on commercials directed towards children, the portrayal of cultural diversity and the portrayal of people with disabilities.

1. ***Is advertising covered by the general provisions on freedom of expression and/or does your country differentiate between commercial speech and non-commercial speech? Do specific regulations distinguish between advertising and other contents, and if so, which are the criteria used to make this distinction?***

Broadcasting regulation

The *Commercial Radio Industry Code of Practice* states that advertisements broadcast must not be presented as news programs or other programs, and comply with all other advertising codes of practice so far as they are applicable.

The *Commercial Television Industry Code of Practice* contains specific guidelines regarding ‘product placement’ advertising in television programs. Where a broadcaster receives payment for material that is presented in a program or segment of a program, that material must be distinguishable from other program material, either because it is clearly promoting a product or service, or because of labelling or some other form of differentiation.

In addition, if a broadcaster enters into a commercial arrangement in relation to a current affairs program, documentary or infotainment program, the existence of that commercial arrangement must be disclosed either during the program or program credits.

The *Subscription Broadcast Television Codes of Practice* require that advertisements are readily distinguishable from program material.

The Australian Constitution

The Australian Constitution contains an implied freedom of communication on governmental and political matters. Communication protected by the implied freedom has previously been held to include political advertising (see *Australian Capital Television Pty Ltd v Commonwealth (No 2)* (1992) 177 CLR 106 where the High Court of Australia found a law prohibiting political advertising during an election period to be invalid).

1. ***Please provide a brief summary of any important decisions relating to advertising/marketing/sponsoring and human rights adopted by judicial authorities in your country over the last 10 years.***

We are not aware of any significant judicial decisions under Commonwealth anti‑discrimination legislation relating to advertising/marketing/sponsoring and human rights in Australia over the last 10 years

1. ***Which authority (government and/or self-regulatory body) monitors the advertising sector? Are specific mechanisms in place to receive complaints from citizens on advertising methods and content?***

Advertising regulation

The Advertising Standards Bureau (ASB) administers self-regulatory codes of practice developed by the AANA. It can also hear complaints under the *Federal Chamber of Automotive Industries Voluntary Code of Practice for Motor Vehicle Advertising* and the two Australian Food and Grocery Council initiatives (outlined in question two).

The ASB receives advertising complaints from the public and refers them to the Advertising Standards Board for determination. Since April 2008, decisions of the Board may be reviewed by an Independent Reviewer. Complaints must be in writing and can be made about issues including health and safety, the use of language, the discriminatory portrayal of people, concern for children and portrayals of violence, sex, sexuality and nudity. This is a free service to members of the public.

There are also some other bodies which deal with specific types of advertisements. For example, alcohol advertising is also regulated under the Alcoholic Beverages (and Packaging) Advertising Code. Complaints concerning alcohol advertising, depending on the complaint, may be considered by the Advertising Standards Board and the Alcoholic Beverages Advertising Code Chief Adjudicator.

Further, the Advertising Claims Board reviews complaints between competitors on matters of truth, accuracy and legality of advertisements.

Broadcasting regulation

The registered broadcasting industry codes of practice also include procedures for dealing with complaints. Complaints about material broadcast on radio or television will be assessed in terms of how that content breaches the relevant industry codes of practice.

In the first instance, complaints must be submitted in writing to the relevant broadcaster within 30 days of the broadcast at issue. If the complaint is not answered within 30 working days of being received or to the complainant’s satisfaction, the matter may be referred to ACMA. Subscription broadcasters have 60 days to respond to complaints.

If ACMA finds there has been a breach of the relevant broadcasting codes of practice, it may take action against the relevant broadcaster, such as imposing an additional licence condition on the broadcaster to comply with the relevant code, or obtaining an enforceable undertaking from them about their activities.

More information is available at the ACMA website at [*http://www.acma.gov.au/theACMA/About/The-ACMA-story/Regulating/how-to-make-a-report-or-complaint*](http://www.acma.gov.au/theACMA/About/The-ACMA-story/Regulating/how-to-make-a-report-or-complaint)*.*

1. ***Has your country adopted legislation on certain advertising or marketing practices such as neuromarketing or behavioural targeting? What challenges have been encountered in doing so?***

The *Broadcasting Services Act 1992* requires that the codes of practice developed for a section of the broadcasting industry prevent the broadcast of programs that depict the actual process of putting a person into a hypnotic state; or are designed to induce a hypnotic state in the audience; or use or involve the process known as subliminal perception or any other technique that attempts to convey information to the audience by broadcasting messages below or near the threshold of normal awareness.

The Australian Digital Advertising Alliance, a group of leading business and industry associations in the online advertising sector in Australia, has developed the *Australian Best Practice Guideline for Online Behavioural Advertising.* These Guidelinesoutline seven self-regulatory principles for industry when engaged in third party online behavioural advertising activities.

1. ***Is the use of private data for commercial purposes regulated in your country? If so, please describe briefly such regulation.***

[Privacy Act 1988](http://www.comlaw.gov.au/Series/C2004A03712)

The [*Privacy Act 1988*](http://www.comlaw.gov.au/Series/C2004A03712) is an Australian law which regulates the handling of personal information about individuals. This includes the collection, use, storage and disclosure of personal information, and access to and correction of that information. The Privacy Act includes 13 [Australian Privacy Principles](http://www.oaic.gov.au/privacy/privacy-act/australian-privacy-principles) that apply to the handling of personal information by most Federal Government agencies and Australian private sector organisations

The Act applies to organisations with an ‘Australian link’, which includes businesses that carry on business in Australia and collect personal information from Australia – this will apply to businesses that only operate online. Note that small businesses which have an annual turnover of less than $3 million are exempt from the APPs, subject to some limitations on the scope of the exemption – for example, the exemption does not apply to any small business that is a health service provider or is in the business of dealing with personal information;

The Act also included credit provisions that apply to the handling of credit-related personal information that credit providers (which includes any small business that satisfies the definition) are permitted to disclose to credit reporting bodies for inclusion on individuals’ credit reports.

Further detailed information about the Privacy Act is provided on the website of the OAIC at: <http://www.oaic.gov.au/privacy/privacy-act/the-privacy-act> .

Telecommunications Act 1997

Part 13 of the *Telecommunications Act 1997* imposes industry-specific obligations on telecommunications companies to maintain the confidentiality of information carried over the telecommunications network. These obligations apply to information that relates to the contents of communications, the carriage services supplied, and the affairs of personal particulars of a person. There are a range of exceptions that can apply including with the consent of the individual concerned; in the performance of duties as an employee or contractor; for prescribed business needs of other carriers or service providers; authorisation under law; and for the relevant enforcement bodies to carry out their functions and powers.

1. ***Does your country have regulations on marketing research standards? How is this sector regulated in particular for marketing research involving human beings?***

Australia has no comment on this question.

1. ***Please describe rules regulating outdoor advertising including the use of billboards or screens in your country. Have enforcement mechanisms been established in this respect? Please indicate whether other forms of communication, such as public interest messages and artistic creation, can also be displayed outdoors, including on billboards and screens, and how these are regulated.***

There are three tiers of government in Australia referred to as jurisdictions: federal (national), state and territory, and local government (local councils). There is no specific and targeted regulation at a national level governing the public outdoor display of art works. However, a core function of the Australia Council, Australia’s principal arts funding body at the federal level, is to uphold and promote freedom of expression in the arts.  This function is set out under its legislative mandate, the *Australia Council Act 2013*.

Artists, galleries and other individuals or organisations are able to display art works outdoors provided that they comply with regulation at a state and/or local government level intended to manage vandalism and visual amenity. Some states and territories have in fact taken measures to promote the creation of artistic works. For example, in 1989 the [Western Australian state government](http://en.wikipedia.org/wiki/Government_of_Western_Australia) established a "[Percent for Art](http://en.wikipedia.org/wiki/Percent_for_Art)" policy. The scheme requires that up to one percent of the construction budget for new public works over $2 000 000 be expended on public artwork. Most of the works mentioned are sculptures, although several notable memorials are listed also. Public art may include [statues](http://en.wikipedia.org/wiki/Statue), sculptures, [monuments](http://en.wikipedia.org/wiki/Monument), memorials, [murals](http://en.wikipedia.org/wiki/Mural) and [mosaics](http://en.wikipedia.org/wiki/Mosaic). It does not include artwork on display inside a museum.

Outdoor advertising is subject to the self-regulatory codes administered by the AANA. In addition, outdoor advertisers are governed by the Outdoor Media Association Code of Ethics. Complaints about outdoor advertising can be made to the ASB as outlined in question five.

1. ***Does national legislation regulate advertising, sponsoring and commercial practices in public and private schools (including on school buses and within the school’s immediate surroundings)? Do companies engaging in sponsorship of schools enjoy a tax deduction?***

The Australian Government does not own or operate schools. State and territory government and non-government education authorities are responsible for the regulation and registration of schools. Legislation concerning advertising, sponsoring and commercial practices in schools is therefore not the responsibility of the Australian Government Department of Education. Any relevant regulations are more likely to be implemented by state and territory education authorities (for example [www.austlii.edu.au/au/legis/wa/consol\_reg/ser2000279/index.html#s51](http://www.austlii.edu.au/au/legis/wa/consol_reg/ser2000279/index.html#s51), which has some Western Australia-specific regulations around sponsorship at Division 7).

There are some supporting documents that have been produced at the national level to provide general guidance for schools and businesses in relationships:

* The Guiding Principles for School-Business Relationships ([www.education.gov.au/partnerships-between-schools-businesses-and-communities-reports-and-research](http://education.gov.au/partnerships-between-schools-businesses-and-communities-reports-and-research)) highlight features that contribute to effective and sustainable school-business relationships. Importantly, they place enhanced student learning and outcomes at the centre of all such relationships. The Guiding Principles have been endorsed by the Australian Government Department of Education.
* In 1992, education ministers released the National Code on Commercial Sponsorship and Promotion in School Education (1992). It outlines five key principles for schools and sponsoring organisations and can be found here: [www.mceecdya.edu.au/mceecdya/national\_code\_sponsorship-1992,12054.html](http://www.mceecdya.edu.au/mceecdya/national_code_sponsorship-1992,12054.html)**.**

1. ***Does national legislation regulate adverting in Universities as well as cooperation between research institutes / universities and business, in particular regarding research sponsorship?***

Education Services for Overseas Students legislation

The ESOS Act and its associated legislation apply to all institutions delivering education and training services to overseas students or intending overseas students. This includes Universities (refer question 1).

1. ***Are there specific measures such as inter alia, tax incentives to encourage private sponsorship of artistic creation? Please provide a brief description of these measures. Is the private sponsorship for cultural institutions receiving public funding regulated and if so please provide details. Do such regulations also apply to monuments and national heritage buildings?***

The Australian Government offers a range of targeted tax incentives to attract private investment in the arts and to stimulate cultural production.  These incentives provide deductions for donations to certain types of arts organisations. This includes:

* The Cultural Gifts Program, which enables donors of cultural goods to Australian collecting institutions to receive a tax deduction for the value of the donation,
* The Register of Cultural Organisations - cultural bodies listed on the [Register of Cultural Organisations](http://arts.gov.au/funding/tax/roco) can receive tax deductible donations to assist them with a wide range of activities, for example the creation of a new theatrical work, the publication of a literary magazine or the building of a community arts centre.

These incentives apply to gifts, which are provided with no benefit to the donor.  The Australian Government does not currently provide tax incentives to encourage sponsorship of artistic creation, where the sponsor will receive a benefit in return for their support from the recipient organisation.

Each of the cultural institutions in the Australian Government arts portfolio is established and regulated by its own enabling legislation.  In addition, private support for cultural institutions is also regulated by the general Commonwealth accountability requirements of the Financial Management and Accountability Act 1997 and the Commonwealth Authorities and Companies Act 1997. These Acts ensure accountability, transparency and the auditing of institutions financial statements by the auditor general.