



Coalition on Food Advertising to Children

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Speaking out against unhealthy food advertising to children

Submission to the Australian Communications and Media Authority on the Review of Children's Television Standards

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Overview

The Coalition on Food Advertising to Children (CFAC) is pleased to offer this submission to the Australian Communications and Media Authority (ACMA) on the review of the Children's Television Standards.

The CFAC was formed in July 2002 and includes key organisations that recognise that the commercial promotion of foods and beverages high in fat, sugar and salt to children is a significant concern to their nutrition and future health. The Coalition's goal is to improve the diets and overall health of Australian children through a marked reduction in the commercial promotion of foods and beverages to children. The vital first step is to extend statutory regulations to prohibit television food and beverage advertising during programs where a significant number of children are watching. This does not preclude the promotion of healthy eating messages to children through non-commercial social marketing.

The member organisations of the CFAC are:

- ❑ Australian Dental Association
- ❑ Australian Dental and Oral Health Therapists Association
- ❑ Australian Medical Association
- ❑ Australasian Society for the Study of Obesity
- ❑ Home Economics Institute of Australia
- ❑ Nutrition Australia
- ❑ Public Health Association of Australia
- ❑ Royal Australasian College of Physicians, Paediatric Branch
- ❑ Royal Australian College of General Practitioners
- ❑ The Cancer Council Australia
- ❑ Young Media Australia
- ❑ Ms Kaye Mehta, Senior Lecturer in Nutrition and Dietetics, Flinders University
- ❑ Dr. Rosemary Stanton, OAM
- ❑ Professor Mike Daube, Curtin University of Technology

Food* advertising to children impedes the ability of parents and government programs to promote healthy eating. Food advertising to children contributes to an obesity-promoting environment, whereby unhealthy food choices are increasingly normalised and become the routine food choices.

The CFAC does not suggest that food marketing is the only factor contributing to childhood obesity, and we support a comprehensive approach to the prevention of obesity. However the overwhelming weight of the evidence suggests strong links between food promotions and children's food preferences, household purchases, and children's food consumption patterns. Restrictions on food marketing to children are a necessary ingredient for change and are also likely to be a cost-effective strategy, as part of a comprehensive approach to obesity prevention. The CFAC urges ACMA to take action on food marketing on its own merits and the body of current research, and protect children.

One of the ACMA's main objectives in the implementation of the Children's Television Standards is to "provide for the protection of children from possible harmful effects of television".¹ In keeping with this objective, the Children's Television Standards must do more to protect children from the obesity-promoting effects of food advertising, as they are a vulnerable group and susceptible to exploitation from food marketers.

* In this submission, the word "food" refers to food and beverages

The Children's Television Standards are implicitly premised on a recognition that children are different from adults and in greater need of the protection that regulation can provide. The Children's Television Standards provide this protection in two ways: they protect children as a 'minority' market by ensuring the availability of appropriate, high-quality programming; and they contain restrictions on advertising. The CFAC is primarily interested in the latter form of protection.

The CFAC urges ACMA to be mindful of its obligations of protecting children from all "possible" harms of food advertising and make a commitment to urgent reform in this area.

The review of the Children's Television Standards must:

- *Extend regulations to reflect children's peak viewing times more accurately*

The CFAC recommends that standards related to food advertising need to apply between 7am to 9am and 4pm to 9pm weekdays and 7am to 9pm on weekends.

- *Place the rights of children and parents above commercial interests*

Children do not have sufficient cognitive skills to counter the impact of food advertising, and as the majority of food advertisements are for unhealthy foods, they need to be protected from influences that may harm their wellbeing. Parents deserve to raise their children in an environment that is conducive to healthy eating.

- *Include new standards addressing the advertising of unhealthy foods to children to better protect children in the current advertising environment*

The CFAC supports the use of the FSANZ Nutrient Profiling Model to establish criteria for the advertising of healthy foods. Our preferred position is that there should be a prohibition on *all* food and beverage advertising (excluding non-commercial promotion of healthy eating). However we acknowledge the lack of support such an option might receive, and instead urge ACMA to address the high levels of unhealthy food advertising on television.

- *Provide clear and unambiguous specifications for all relevant standards*

The CFAC is concerned that food advertisers use a diverse array of marketing techniques to entice children to consume unhealthy foods. Clear and unambiguous standards are required, in particular, to regulate premiums, competitions, the use of personalities and characters, and the use of partial nutrition information to market food products to children.

- *Address monitoring of compliance and prompt and appropriate sanctions for breaches*

The current system of complaints is not adequate and very difficult for consumers to understand.

- *Allow adequate consultation with consumers and public health groups, and respect community concern on this issue.*

The CFAC has collected 20,521 sign ups (10,146 e-postcards and 10,375 hard copy postcards) to our Pull the Plug campaign, whereby members of community have pledged their support for better regulations to protect children from food advertising.

This submission will address all these issues in further detail.

Part 1 – Background on why ACMA needs to introduce more effective regulations

The serious problem of childhood obesity in Australia

Childhood obesity has reached alarming levels in Australia, and is now amongst the highest in the world.² The prevalence of overweight and obesity in children and adolescents has been estimated at 25%.^{2, 3} Of even more concern are data showing the rapid change in obesity prevalence. For example, over the decade between 1985 and 1995 in Australia, the prevalence of paediatric obesity more than trebled and that of combined overweight and obesity almost doubled.^{2,3}

There is a lack of recent national data on the levels of overweight and obesity in Australian children, although the Federal Government has embarked on a Children's Nutrition and Physical Activity Survey this year, in partnership with the Australian Food & Grocery Council.

The most recent state data are from the NSW Schools Physical Activity and Nutrition Survey (SPANS) conducted in 2004 with 5500 children.⁴ In this study, almost a quarter of students aged 5-16 were overweight or obese. Boys and girls aged 9-12 (school years 4-6) had some of the highest rates – up to 33% for some groups.⁴ Children from lower socioeconomic areas were more likely to be in an unhealthy weight range. The rate of increase in overweight also appeared to be higher in boys.⁴

Childhood overweight and obesity contribute to very serious health problems, which can impact on both their immediate health as children and increase their risk of chronic morbidity and premature mortality as adults. The health risks associated with overweight and obesity include:

- *Physical/medical risks in childhood* - orthopaedic disorders (back pain, flat feet, slipped growth plates in hips, knock knees), type 2 diabetes, fatty liver disease, menstrual problems, asthma and obstructive sleep apnoea^{5,6}
- *Psycho-social problems* – social isolation, discrimination, poor self esteem, depression, learning difficulties, and longer term poorer social and economic outcomes^{5,7}
- *Long term disease risks in adulthood* – type 2 diabetes, cardiovascular disease, stroke, hypertension, some types of cancer, musculoskeletal disorders and gall bladder disease^{5,6}
- *Reduced life expectancy* – increased mortality in later life may make this the first generation to have a shorter life expectancy than their parents⁸

It is important to note that both overweight and obesity levels in children are a concern. The NSW SPANS study mentioned above looked at blood biomarkers (i.e. early indicators of disease risk) of diabetes, cardiovascular disease and fatty liver disease.⁴ Disturbingly, more than 20% of boys who were overweight or obese had two or more risk factors for serious chronic disease.⁴ Almost 70% of obese boys, and an additional 30% of overweight boys, had elevated insulin levels, an early indicator of diabetes.⁴

The health problems of childhood overweight and obesity often carry on into adulthood. Growing out of “puppy fat” is a fallacy. Obese children have a 25-50% chance of progression to adult obesity, and this may be as high as 78% in obese adolescents.⁵

Overweight and obesity are attributed to 7.5% of the total burden of disease and injury in Australia, succeeded only by exposure to tobacco (7.8%) and high blood pressure (7.6%).⁹ The disease burden caused by overweight and obesity is only likely to increase as the

proportion of the population who carry excess weight soars. In 2005, 3.24 million Australians were estimated to be obese – 1.52 million males (15.1% of all males) and 1.72 million females (16.8% of all females).¹⁰ By 2025, a total of 4.2 million Australians (16.7% of the population) are predicted to be obese.¹⁰ However the true obesity prevalence could be as high as 7.2 million Australians by this time (28.9% of the population) if obesity continues to increase at historical rates.¹⁰

Costs of obesity

The health costs of obesity are significant. The direct medical costs of obesity are at least 4-5% of total health care costs,¹¹ but these are dwarfed by the lifetime personal costs (including attempts to lose weight), the costs of lost productivity and reduced quality of life.

Diabetes Australia commissioned Access Economics to estimate the economic cost of obesity in 2005*. The total financial cost of obesity in 2005 was estimated as \$3.767 billion.¹⁰ This figure includes productivity losses, health system costs, carer costs, taxation revenue foregone, and other indirect costs. This figure increases to \$21 billion when the cost of lost wellbeing (the total dollar value of the burden of disease) was included in the calculation.¹⁰

It is important that ACMA note the gravity of the childhood obesity problem in Australia and the urgent need for action. Again we state that we do not believe that food marketing reform is the only necessary action, but it must be part of a comprehensive range of strategies to address the problem. Without restrictions on children's exposure to unhealthy food advertisements, strategies to improve healthy eating are unlikely to be successful. Australia will not be able to afford the worsening obesity crisis.

Strong and convincing evidence of an “association” between food marketing and behaviours that contribute to childhood obesity

It has been well documented that the current levels of food marketing directed at children in Australia are a significant concern. Human environments have become increasingly obesogenic in recent decades. Obesogenic refers to the surrounding environment where it is seen as easier and normal to make unhealthy food and physical activity choices. For example, technology provides labour-saving devices, mechanised transport and a food system that supplies a large range of cheap, highly processed, energy dense foods. Large volumes of food and beverage marketing are a significant contributor to the obesogenic environment that Australian children live in today, as they favour unhealthy foods, thereby normalising the choice of those foods.

Public health experts agree that a focus on “upstream” policy interventions is necessary to curb the obesity epidemic, of which more effective marketing regulations is one such type of intervention.

In 2003, the World Health Organisation in the *Diet, Nutrition and the Prevention of Chronic Diseases Report* recognised that the heavy marketing of fast food and energy-dense micronutrient-poor foods and beverages is a probable causal factor in weight gain and obesity, and a target for preventive action.¹²

* This report only estimates the costs for obesity, not the cost of overweight and obesity combined.

There have been at least five major reviews of the evidence on the impact of food and beverage marketing to children,¹³⁻¹⁷ apart from the review commissioned by Ofcom in the United Kingdom.¹⁸ The summary of the findings of the three most recent reviews is shown in Table 1 below, and leaves no doubt as to the strong and convincing evidence that food marketing to children does work.

Table 1: Findings of reviews of the literature on the effects of food promotion on children

Finding – effect of food promotion on children	Hastings et al (2006)¹⁶	Livingstone (2006)¹⁸	Institute of Medicine (2005)¹³
Influences food preferences	Reasonably robust evidence	Modest direct effect on children’s food preferences (also likely to have indirect effect).	Strong evidence – influences children to prefer high-calorie and low-nutrient foods and beverages.
Influences purchase requests	Strong evidence	Evidence not reviewed	Strong evidence - influences children to request high-calorie and low-nutrient foods and beverages
Influences consumption	Modest evidence	Modest direct effect on children’s food choices/eating habits (also likely to have indirect effect).	Strong evidence that food promotion influences children’s short-term consumption
Influences diet and health status	Small but significant associations between television viewing and diet, and television viewing and obesity Direct link between food promotion and weight gain is probable (Hastings, 2003)	Modest but consistent association between overall television exposure and weight/obesity. This applies among children and teenagers.	Moderate evidence that food promotion influences the ‘usual dietary intake’ of children aged 2-5 years, with weaker evidence for 6-11 year olds. Strong evidence that exposure to television advertising is associated with adiposity in children ages 2-11 years and teens aged 12-18 years. Food promotion is a ‘likely contributor’ to less healthful diets.

In 2006, a systematic review commissioned by the United Kingdom’s Food Standards Agency, and probably the most comprehensive study of its type conducted to date, found that food advertising to children affects food choices and influences dietary habits, with subsequent implications for weight gain and obesity.¹⁶ **The literature review commissioned by ACMA did not give appropriate attention to the findings of this systematic review, especially as this review analysed a larger body of scientific studies than the ACMA literature review.**

The most recent report from the Institute of Medicine, which unfortunately was not included as part of the literature review commissioned by ACMA, concluded that:¹³

- There is strong evidence that television advertising influences the food and beverage preferences, purchase requests, and the short term consumption of children ages 2-11 years
- There is moderate evidence that television advertising influences the food and beverage beliefs of children ages 2-11 years
- There is moderate evidence that television advertising influences the usual dietary intake of younger children ages 2-5 years and weak evidence that it influences the usual dietary intake of older children ages 6-11 years
- There is strong statistical evidence that exposure to television advertising is associated with adiposity (i.e. body fatness) in children ages 2-11 years and teens ages 12-18 years
- The association between adiposity and exposure to television advertising remains after taking alternative explanations into account, but the research does not convincingly rule out other possible explanations for the association; therefore, the current evidence is not sufficient to arrive at any finding about a causal relationship from television advertising to adiposity. **It is important to note that even a small influence, aggregated over the entire population of children and youth, would be consequential in impact.**

During early 2004, Ofcom commissioned an extensive independent survey of existing research into the effects of television advertising on children's food preferences and consumption which was updated in late 2005 to take account of more recent research.^{18, 19} The conclusions were that:

- Multiple factors account for childhood obesity. Television viewing/advertising is one among many influences on children's food choices. These other factors include individual, social, environmental and cultural factors, all of which interact in complex ways not yet well understood. More research is needed into the multiple factors that contribute to children's diet and, within this broader picture, what is the role of food advertising/promotion. Very little is known about forms of food promotion other than in television advertising.
- Although experiments have identified causal relations between advertising and food choice, it remains unclear how these operate under the complex conditions of daily life at home and school. **However, there is a growing consensus that advertising works.** Given that most food advertising to children is for products high in salt, sugar and fat, this influence is likely to be **harmful** to children's health.
- The experimental evidence suggests that television advertising has a modest direct effect on children's (age 2-11) food preferences and – under experimental conditions – on their food choices (behaviour). In both experimental and survey studies, the measured effects of advertising/television are small. Estimates vary, but some suggest that such exposure accounts for some 2% of the variation in food choice/obesity. Although small in statistical terms, **cumulatively this may make an appreciable difference to the number of children who fall into the 'obese category'**, and may be no smaller than some other important influences on Body Mass Index (BMI). For example, one study suggests that the effect on BMI attributed to television viewing and advertising may be larger than the measurable effect of exercise and dietary intake.
- A growing body of well-conducted national and international surveys show a consistent association between overall television exposure and weight/obesity. This applies to children of all ages up to 16. It remains unclear whether this association reflects the specific influence of exposure to television advertising or whether it is due to increased snacking while viewing or to a sedentary lifestyle with reduced exercise.

This report was a significant reason why Ofcom finally decided to act on this important issue, and introduce more effective regulations for reducing high fat, sugar and salt advertisements in the United Kingdom.

Of note is a recent study in the UK of 59 children aged 9 to 11 years conducted by Boyland et al, which has investigated the effects of weight status and TV food advertising on food choice and intake.²⁰ Again the literature review commissioned by ACMA did not include this study in its literature review. The children in the study were shown ads for toys (control group) and for foods (experimental group), followed by a cartoon. The children were then given the opportunity to eat ad libitum from an assortment of foods. Total energy intake was significantly higher following the food ads than after the toy ads, with food intake increasing by 84%, 101%, and 134% in the lean, overweight and obese children respectively.²⁰ Food ad exposure increased consumption of all food items except for low fat savoury foods.²⁰

The study concluded that food ad exposure promotes consumption.²⁰ Obese children in particular had heightened responsiveness to food promotion cues.²⁰ It is unclear whether this is due to greater real world exposure to ads or a greater salience of ads as food cues.

The arguments made by the food and advertising industries that advertising only persuades consumers to buy one brand rather than another, thereby increasing that brand's market, share, but does not increase overall consumption of a product category, are reminiscent of the equally flawed arguments used by the tobacco industry, who argued that cigarette advertising had no effect on non-smokers and sought only to change brand preferences among existing smokers. They are not supported by the intervention study above which showed food advertising increased consumption of all unhealthy foods.²⁰ Furthermore the Hastings review found only weak evidence of brand switching and much stronger evidence of category switching.¹⁶

Children's dietary and physical activity trends

As well as the evidence listed above from systematic reviews of the published literature on food marketing to children, data on the nutritional intake and physical activity levels of children are quite compelling. It is well accepted that overweight and obesity result from an undesirable positive energy balance due to increased energy intake or decreased physical activity or both. However, increased energy intake has been shown to be the dominant driver of the increasing obesity levels seen in Australia,^{21, 22} despite the public assertions from the advertising and food industries that it is a lack of physical activity.

In NSW there have been increases in physical activity by 15-25% over the period 1985-2004, and associated increases in fitness.⁴ On the other hand, there has been an increase in the energy intake of children. From 1985 to 1995, the mean energy intake of 10-15 year olds increased by 12% for girls and 15% for boys, even though the total weight of food consumed remained stable.²³ The increased total energy intake was due to substantial increases in the energy density of food consumed, particularly processed foods like cakes, sweet biscuits, pies, pizza, confectionery and soft drinks, which reflect the foods predominantly marketed to children.²³

The CFAC is disappointed in the scope and findings of the literature review commissioned by ACMA, as part of the review of the Children's Television Standards. Given the strong public concern about the relationship between food advertising, children's food choices and childhood obesity, ACMA's literature review failed to assist public understanding of this matter for the Children's Television Standards' review purposes. This literature review did not comprehensively and systematically review the existing scientific literature on food marketing and associated nutrition behaviours, which has been reported elsewhere.

The literature review is inconsistent with the findings from other major systematic reviews. We are concerned that some key reviews on the impact of food marketing and food related behaviours have not been included in ACMA's literature review.

We also do not believe that the review focused on the important questions – whether food marketing influences nutrition related behaviours and whether improved regulations will be an effective intervention for addressing childhood obesity. Instead the literature review focused on trying to answer the impossible question of whether food marketing is a direct causal factor for childhood obesity. In order to have unimpeachable empirical proof of whether food marketing causes childhood obesity, it would be necessary to adequately control for all the other confounding factors that contribute to childhood obesity, and such a study would be impossible to conduct in today's society.

The CFAC believes that the evidence base on the relationship between TV food advertising directed at children is compelling enough for ACMA to respond in line with its obligations of protecting children from "possible" harms. Deferring action until a specific causal relationship between advertising and obesity levels has been established would overlook actions that could be taken using knowledge of how advertising supports and maintains behaviour.

ACE Report – Cost effectiveness of interventions to address childhood obesity

The Assessing Cost Effectiveness (ACE) of Obesity Report showed that a restriction of unhealthy food advertising on television was potentially the most cost effective and cost saving intervention of 13 interventions assessed for preventing and managing childhood obesity.²⁴ This modelling study, commissioned by Victoria's Department of Human Services, focused on government expenditure and therefore did not take into account the financial impact of such a ban on broadcasters. We will comment on this aspect later in our submission (see page 21 about the Ofcom review and pages 23-24 about tobacco ad bans).

Specifically the interventions considered in the ACE Report included a range of school based nutrition and physical activity interventions, surgical and pharmacotherapies for overweight and obese children, whole family approaches and the restriction of advertisements for high sugar and/or high fat foods and beverages or fast food outlets during television viewing hours where 15% or more of the viewing population were children up to the age of 14 years. It was recognised that for this final intervention to be implemented, there needed to be an extension of the current regulations governing television advertising to children, with clearer definitions, improved monitoring and better enforcement of regulations.

Projected costs of each intervention were presented as disability adjusted life years (DALY); a measure of the number of life years lost due to premature death or premature mortality. A restriction of unhealthy food advertisements to children was estimated to cost just \$3.70 per DALY saved. This compares to other interventions, which cost many thousands of dollars for each DALY saved. Whilst this estimation was based on only one randomised control trial, which assessed food choice following reduced advertising exposure in a camp environment, it also considered corresponding evidence for other product marketing, including toys, tobacco and alcohol.

Whilst this intervention is predicted to reduce individual children's risk of obesity to only a small degree, the restriction of advertisements for high sugar and/or high fat foods and beverages to children would have considerable beneficial effects over the entire population. The decision by Ofcom to introduce greater restrictions of advertising is consistent with such an analysis.

ACMA must acknowledge the favourable cost-benefit balance of action in this area and instigate more effective regulations.

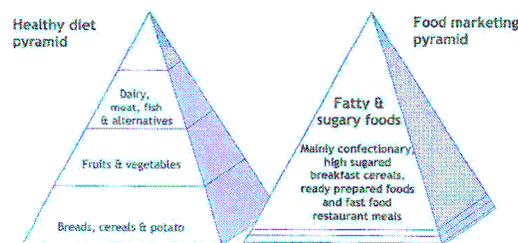
Moreover, the CFAC questions the construction of regulation as imposing costs on industry. Arguably what is happening now is that industry is externalising the costs of food advertising; improved regulation would shift the costs back where they belong.

The CFAC reminds ACMA that an important part of the logic of this regulatory regime is to require broadcasters to accept certain obligations to the community. A consequence of these obligations must be to place limits on the profitability of broadcasters' business, or to cost them money, otherwise they would not be obligations.

Inconsistency with other government guidelines and programs

As a legislated policy the Children's Television Standards should be in-line with other government policy aimed at children. The current advertising messages are in direct opposition to government guidelines for healthy eating and the prevention of childhood obesity. Food advertising in Australia has been depicted as an inverted healthy food pyramid – see figure below. The healthy food pyramid is a graphical depiction of the messages for healthy eating, whereby the bottom and largest section of the pyramid contains the foods that should be eaten most, the middle section contains the foods that should be eaten in moderation, and the top and smallest section contains the foods that should be eaten least or only occasionally. Several studies have described the content of food advertisements in Australia as being predominantly for foods in the 'eat least' section.²⁵⁻²⁹ This means that children and their families are bombarded with messages for foods that should only be eaten in small amounts.

The case for banning television food advertising to children



The National Health and Medical Research Council (NHMRC) have released *Dietary Guidelines for Australian Adults, and Children and Adolescents*.^{30, 31} The current Children's Television Standards are not in-line with these dietary guidelines by allowing a regulatory system for food advertising that counteracts advice for healthy eating.

Both the National Obesity Taskforce in Australia and the World Health Organisation have recognised the problem of food advertising to children. The National Obesity Taskforce's *Healthy Weight 2008*, the national action agenda for children, young people and their families, included a key objective of "better protection for young people against the promotion of high-energy, poor nutritional value foods and drinks and/or sedentary lifestyles through advertising and media that encourage unhealthy eating, inactivity and overweight".³² One of the actions listed in this national action plan is to "monitor and assess the effectiveness

of the Children’s Television Standards and the revised regulatory framework for food and drinks advertising to children in meeting health objectives and recommend modifications (eg the inclusion of health objectives in the regulatory code of practice).”

Both the federal and state health departments have funded social marketing campaigns largely comprising advertising messages on the importance of fruit and vegetables in the diet, *Go for 2 & 5*[®]. These campaigns will only have limited impact and waste taxpayer dollars while they are drowned out by the volume of unhealthy food advertising.

The current high volumes of unhealthy food advertising are significantly higher than for healthy food advertising.²⁵⁻²⁹ A review of television advertising for fruit and vegetables showed that fruit and vegetable advertising was diminutive when compared with unhealthy food advertising.³³ In 2002, fruit and vegetable advertising made up 0.1% of total food advertisements, 4.6% in 2005, and 3% in 2006. The highest proportion of fruit and vegetable advertisements was seen in 2005, when the Federal Government funded the *Go for 2 & 5*[®] campaign at a cost of \$5 million for a 10-week period. The present government investment in worthwhile social marketing campaigns to encourage healthy eating constitutes a drop in the ocean of food advertising.³³

Many state jurisdictions have moved to mandatory policy guidelines for school canteens to promote and support healthy food choices, with which the regulatory environment of the Children’s Television Standards is again inconsistent. These school canteen guidelines are premised on the fact that children need to be protected from unhealthy foods and encouraged to eat appropriately at school, which further confirms the need for similar protection for children from unhealthy food advertisements that they face at home.

The CFAC urges ACMA to be mindful of the role that advertising plays in reinforcing and normalising behaviour. Children learn food habits early in their lives and this continues into adulthood.¹³ Advertising plays a role in reinforcing behaviour patterns, and by the high levels of unhealthy food marketing on television, it contributes to normalising unhealthy foods on a regular basis.³⁴ Social marketing and education programs will achieve limited results while they are not powerful enough to alter established behaviour patterns.

Children require protection

There is substantial evidence from psychological research that children are highly vulnerable to advertising and marketing because they are unable to interpret advertising messages critically due to a lack of the necessary cognitive skills and experience. ACMA’s own literature review is consistent with the findings from a review of the evidence by the American Psychological Association that concluded that most children cannot understand that the purpose of advertising is to persuade until at least the age of eight.³⁵ This means they cannot effectively evaluate advertising claims, and tend to accept advertising as truthful, accurate and unbiased. Even by this age, children’s ability to understand advertising’s purpose tends to be only rudimentary – they may understand that ads are intended to sell products, but this does not mean they can recognise the bias inherent in persuasive messages and interpret them critically.³⁵

Advertisers utilise powerful and persuasive techniques to attract children’s attention and create desire for their products.

This evidence demands effective restrictions on marketing of unhealthy foods to children for ethical reasons as well as health reasons. Since children cannot understand the persuasive purpose of advertising or interpret it critically, they cannot be expected to make informed

choices on the basis of information gleaned from advertisements. Advertising of food products to children that may be detrimental to their health is therefore unfair and unethical, and contravenes children's right to be protected from influences that may harm their wellbeing.

Existing advertising regulations pay lip service to the fact that children are vulnerable because they are not equipped, developmentally, to view advertising and marketing approaches from a critical perspective. As the health of children is at stake, ACMA must exercise great caution and protect children from possible harm by making the Children's Television Standards a more effective instrument and not merely a tokenistic gesture.

Community support for better regulation

There is strong community support, particularly from parents, for more effective regulations that limit food and beverage advertising for when children are watching television.

This year the CFAC commissioned a random survey of 400 parents about their views on the Children's Television Standards and found the following:³⁶

- 86.2% support a ban on advertising of unhealthy foods at times when children watch TV.
- 88.7% agree the government should introduce stronger restrictions on food advertising at times when children are watching.
- 74.6% of 366* parents are concerned about advertising using toys and giveaways to promote unhealthy food to children.

These findings from the CFAC's independent survey are backed up by other independently conducted surveys of the community. In 2006, the Australian Consumers Association, now known as Choice, commissioned a Newspoll survey of 1200 people aged 18 years and over and found that 82% of respondents, and 86% of parents, were in favour of government regulating the way food and drink is advertised and marketed to children.³⁷

In 2004, a government health survey randomly selected 2000 households in South Australia and asked their opinion about television food advertising to children.³⁸ The findings were:

- 71.3% agreed or strongly agreed that there is too much advertising of unhealthy food during children's viewing time
- 88.6% agreed or strongly agreed that television advertisements for food such as chocolate and lollies and food from fast food restaurants cause children to persuade their parents to purchase the food advertised
- 94.2% agreed or strongly agreed that the advertising on television of toys and giveaways associated with food products influence children to want to buy the food

Members of Parents Jury have also called for more effective regulations that limit food and beverage advertising directed at children. Parents Jury is an online network of Australian parents who are concerned about food and physical activity environments. Currently Parents Jury has 2700 members across Australia. The Parents Jury runs annual TV Food Advertising Awards, where parents nominate and then subsequently vote for the TV food advertisements they believe deserve the "*smoke and mirrors award*" (an advertisement that does not tell the

* 400 parents were asked if they were aware that food was advertised to children in various ways (e.g. toys and giveaways, fundraisers, sport sponsorship). A further question about how concerned they were about this form of advertising was only asked of the parents who had responded that they were aware of the advertising technique, which is why the number of respondents is less than the 400 in the total study sample.

full story and cleverly disguises products of low nutritional value and gives the impression that the food is healthier than it really is) and the “*pester power award*” (an advertisement that promotes nagging from children to buy a particular food or beverage through the use of free toys, cartoon characters, celebrity endorsements and movie tie-in’s to tempt children).

The CFAC has also collected 20,521 sign ups (10,146 e-postcards and 10,375 hard copy postcards) postcards from members of the community across Australia who are calling for more effective regulations that limit food and beverage advertising directed at children. These postcards have been collected by The Cancer Council NSW on behalf of the Coalition and are now forwarded onto ACMA.

ACMA has a duty to respect community views when re-drafting the Children’s Television Standards. The CFAC is sure ACMA will agree that community support is strong for change and must not be ignored in favour of commercial interests.

Parental responsibility

There have been frequent assertions by some politicians and members of the food and advertising industries that a child’s eating is solely the responsibility of parents and that education is the way to address the rising rates of obesity. The CFAC and its member organisations believe that this is a naïve and overly simplistic solution to a complex problem. Strategies are needed that focus on the environmental factors that induce obesity-promoting behaviours in individuals. It is unrealistic and impracticable to expect parents to exercise the necessary control, such as requiring televisions to be switched off at each advertisement break or selectively prohibiting their children from watching television channels which show advertisements, or refusing all subsequent requests for the products advertised, no matter how insistent. The CFAC believes it is unacceptable that advertisers have the right to manipulate and exploit children with high volumes of appealing food ads, and yet the onus of responsibility is solely placed on parents to monitor and moderate the consequences of advertisements. Even the most cautious and conscientious parent cannot monitor their child’s viewing behaviour constantly.

As television is the largest source of media messages about food to children, and while it disproportionately promotes high-energy low nutrient foods, it is imperative that standards be put into place to more effectively ensure food advertising to children is appropriate.

The CFAC does not necessarily accept the premise children’s diets are the sole responsibility of parents, but would like to point out the implications if one does accept it. The logical conclusion from that premise, and from the fact that children’s diets have deteriorated to the point where we have an obesity epidemic on our hands, is that parents have been irresponsible. Therefore, on its own logic, the government is abandoning children to their irresponsible parents. This would be considered unjustifiable in any other arena, and the CFAC questions whether diets and obesity should be thought of any differently.

The CFAC’s preferred view is that parents have a key role in guiding their children’s food choices, and that government regulation should support them in that role. Ineffective regulation of television food advertising effectively ties parents’ hands behind their backs in the fight to maintain healthy diets for their children, in a way that, in our view, is impossible to justify.

The interests of advertisers and the television industry must not be placed higher than the rights of parents to raise their children in an environment that is conducive to healthy eating

behaviours, nor above the rights of the child not to be exploited. ACMA must be mindful of its obligations and ensure that this does not happen.

Media literacy

There have been calls from industry and government that the solution to the high volumes of food marketing is to teach children media literacy skills. “Media literacy” assumes that children, who are not equipped to cope with commercial communications, nevertheless can be educated to understand and be aware of the purpose of advertising. However, despite the evidence that younger children are particularly vulnerable to advertising, evidence shows that food advertising influences children’s food consumption across all age groups, including adolescents.¹⁹ The research does not indicate, as might be expected, that children and adolescents become better able to resist food advertising as they become older and more media literate.

It also needs to be remembered that very young children watch television – certainly children who are too young to read and do not attend any compulsory education. As we have seen, these children are the most vulnerable to marketing messages. Even if such children have the cognitive ability to benefit from a media literacy program (which is open to doubt), it is difficult to imagine how one might ensure they were provided with one. Realistically, media literacy programs can be introduced only for school aged children, but they would be needed well before that.

Initiatives to improve media literacy in children are unlikely to be effective in counteracting the influence of food advertising on children’s food choices and consumption, and ACMA must not rely on this as a solution.

Part 2 - Problems and inadequacies with the current Children's Television Standards

High levels and unfair tactics in Australia

Food companies use a variety of advertising practices that have a detrimental impact upon children, including:

- high levels of food advertisements during programs of popular appeal to children and at times when a significant number of children are watching (Australian studies have reported that unhealthy foods make up between 55-80% of total food advertisements²⁵⁻²⁹);
- repetition of food advertisements during programs of popular appeal to children and at times when a significant number of children are watching;
- offers of premiums with products, such as collectable cards, free toys and entry into competitions;
- endorsement of products by personalities or characters popular with children;
- manipulation of peer pressure by using techniques to make children think consumption of products is socially desirable or will attract peer admiration or acceptance;
- association of unhealthy products with improved energy levels, performance, strength, skill or abilities;
- appeals to children's imagination through use of fantasy characters and scenes;
- association of food products with fun, happiness, adventure;
- food shaped, coloured and packaged in ways designed to appeal to children;
- use of techniques, such as catchy jingles, animation and special effects, to attract children's attention;
- 'tie-in' promotion of unhealthy food products with popular children's films;
- 'advergames' (computer games on food company websites which promote unhealthy products);
- the portrayal of nutrition as tiresome or 'nagging';
- manipulation of "pester power" by use of techniques, such as those described above, to make children want products so they will pester parents to buy them; and
- by arming children, or providing parents, with information about 'beneficial' attributes of products (such as nutritional characteristics that suggest products are good for children, when in fact they are unhealthy) to reduce parents' resistance to pester power.

Children are exposed to the dual risk of high volumes of unhealthy food advertisements and unfair advertising techniques. Unfortunately the ACMA Issues Paper has not acknowledged the diversity of methods that advertisers use to exploit children. ACMA should act to protect children from these risks.

Problems with the current system

The current Australian television advertising regulations are complex and confusing, particularly as they exist as a system of co-regulation. The Children's Television Standards and the Commercial Television Industry Code of Practice exist side by side, and it is usually difficult to tell which document one needs to refer. Both documents lack precise definitions and rely on concepts that mean different things to different people. This has left open interpretations of the standards' and code's wording that fail to protect children from large

volumes of unhealthy food advertising and inappropriate methods of advertising on television. Of concern is the fact that the types of food that can be advertised and the number of food advertisements that can be shown on television are not currently regulated in Australia.

The ACMA Issues Paper states “*children spend significant time watching free-to-air television. In 2006, 0–14 year olds spent an average of two hours 22 minutes per day watching free-to-air television, predominantly (average **two hours one minute**) commercial television.*” (Page 9). This level of commercial television viewing and concomitant advertising of unhealthy foods pose a considerable risk to children, and it is imperative that ACMA act to protect children from the possible harms of food advertising, as mandated under the Broadcasting Act.

The Children’s Television Standards only cover ‘C’ and ‘P’ programs/periods, when in reality children are exposed to food advertising at times outside of these programs/periods. This is highlighted by the OzTam viewing data provided in the Issues Paper, which provides a compelling argument for ACMA to develop regulations that afford protection when children are exposed to high levels of food advertising:

*“OzTAM ratings data for 2006 shows that, during the week, child audience numbers on commercial free-to-air televisions are low at the times C and P programs are usually broadcast. The peak viewing time for 0–14 year olds on commercial free-to-air television is in the evening between **7.00 pm and 8.00 pm**, with average child audiences close to 500,000, compared with around 80,000 between 4.00 pm and 5.00 pm”* (page 19)

“Child audience numbers remained at over 100,000 from 7.00 am to 11.00 pm on Saturdays and Sundays, with audience numbers of almost 200,000 between 8.00 am and 10.00 am and a peak of 450,000 at 7.00 pm to 8.00 pm” (page 19)

“C and P programs are often placed in isolated time-slots during the week” (page 21)

As children’s peak viewing time is between 7 and 8pm, and with large numbers of children still watching until 9pm, the CFAC believes the most appropriate course of action is to introduce a ‘watershed’ on food advertising up to 9pm.

The CFAC believes that ACMA must be very mindful of the need to protect children from the impact of food advertising shown outside the times that the Children’s Television Standards apply. It is imperative that any new standards apply to when children are watching, rather than the proportion of the audience that is made up of children. We note that the Issues Paper states that children make up only a small proportion of the overall viewing audience, an average of 13% of the total audience (page 9). The CFAC believes that regardless of whether parents are also viewing television at the same time, children must be protected from the possible harms of food advertising.

The CFAC supports that advertising standards need to apply between 7am to 9am and 4pm to 9pm weekdays and 7am to 9pm on weekends. More specific detail about how ACMA can address these concerns is provided later in this submission (see pages 25-30).

Australian studies on the level of food advertising in Australia

As stated in the literature review commissioned by ACMA, research on food advertising on Australian commercial television has repeatedly shown that children are exposed to high levels of food advertising and that the majority of these advertisements are for unhealthy foods and beverages.

A study that was conducted in 2005, the largest in Australia to date to measure the frequency of television food advertising to children, assessed 645 hours of television data from two Australian capital cities (Sydney and Brisbane) and two regional areas (Tamworth in NSW and Ballarat in Victoria). Food advertisements were classified according to the Australian Guide to Healthy Eating, a nationally recognised food guide for Australians. Unhealthy food advertisements contributed to 81.5% of all food advertisements between 7:00 and 21:00, with a higher frequency of unhealthy food advertisements between 18:00 and 21:00.²⁵ Data obtained from OzTAM indicate that this time period corresponds to peak children's viewing times.³⁹ The overall average frequency of high fat/high sugar advertisements was over four per hour per channel, which was more than four times the frequency of core food advertisements, such as for fruit and vegetables.

Similar research has also been conducted in 2006²⁷ and 2007⁴⁰, which both assessed food advertising on all three Sydney commercial television channels (357 hours), using a more conservative food classification system. Both of these studies found that during the times currently set out as children's viewing hours (or 'C' periods) by ACMA in the Children's Television Standards (Monday to Friday 07:00-08:00 and 16:00-20:30, Saturday to Sunday 07:00-11:30), there were significantly more high fat/high sugar food advertisements, when compared to viewing times outside of these designated children's hours.^{27, 40} In 2006, high fat/high sugar food advertisements made up 49% of all food advertisements during children's viewing times, compared to 39% during other viewing hours; in 2007 these advertisements contributed to 48% of all food advertisements during children's viewing times, compared with 31% in other times. This slight decrease of 1% of high fat/high sugar food advertisements during children's viewing times between 2006 and 2007 was **not** statistically significant, and does not represent any real reduction in unhealthy food advertising during this time.

In 2006, the most frequently advertised foods during children's viewing periods were fast food restaurants (15% of all food advertisements during children's viewing hours) and confectionery (12%). In 2007, the proportion of advertisements for fast food restaurants during children's viewing hours increased to 17% of all food advertisements.

The frequency of high fat/high sugar food advertisements were consistently highest during programs most popular with children aged 5 to 12 years, as determined by OzTAM data. In 2006, during these programs 66% of food advertisements were for high fat/high sugar foods. This compares to 42% during programs most popular with adults, aged 18 years and above. Based on a very conservative estimate of one hour of television viewing per day, the authors estimated children's exposure as 96 food advertisements per week, of which 63 would be for high fat/high sugar foods.²⁷ In 2007, this already exceedingly high proportion increased still further, with 72.5% of all food advertisements during the most popular children's programs being for high fat/high sugar foods.

A further study by these researchers, which applied different regulatory scenarios to the television advertising data collected in 2006 (as described above), found that relatively simple regulatory changes could potentially have a huge impact on children's exposure to unhealthy food advertising.⁴¹ These regulatory scenarios were based on variations limiting the timing of food advertisements (the time periods in which food advertisements permitted to be broadcast), the volume of food advertisements (the number of food advertisements permitted to be broadcast per 30 minute period during children's peak viewing times) and the types of food allowed to be advertised. The most effective regulatory scenario was a restriction of all unhealthy food advertisements (in this instance, as determined by the Australia Guide to Healthy Eating) during the major viewing period, between 07:00 and 20:30 daily. This time period incorporated the current 'P' and 'C' viewing bands, as defined by the Children's Television Standards. Under this scenario, exposure to unhealthy food advertisements would be cut by 80%. While this research is theoretical, and the authors acknowledge that it is likely

that advertising patterns would change under a different regulatory system, the results highlight the impact of simple changes on children's exposure to unhealthy food advertising on television.

Breaches to the standards

The CFAC was surprised to note that the ACMA Issues Paper did not examine the degree of breaches to the current Children's Television Standards. Despite the advertising and food industry arguing that the current Children's Television Standards are adequate, several research studies have found serious and repeated breaches of the current Standards.^{25, 42, 43}

In a study of 63 hours of children's programming collected in Adelaide in April 2001 to monitor compliance with the Children's Television Standards, over one-third of food advertisements (36%) in 'C' time contained a premium offer compared with 17% in 'G' time.⁴² The authors of the study believed that 31% of food advertisements were in breach of the standard (CTS 20.2) during 'C' programs.⁴²

In a study of 645 hours of Australian television conducted in 2005, a total 194 breaches of the Children's Television Standards were identified, of which 78% related to breaches of the CTS 20.2a using premium offers to market a food product to children.²⁵ Ten percent of breaches related to the advertisement containing misleading information (CTS 17) and 2% were related to the advertisement implying the food would make the child superior to their peers (CTS 18.2a).²⁵

The most recent examination of breaches to the Children's Television Standards was conducted in 2006, and examined whether any food advertisements breached CTS 16, whereby an advertisement may be broadcast no more than twice within a 30-minute children's viewing period (C period).⁴³ In 357 hours of television viewing during the study week, 14 breaches of CTS 16 were observed for food advertisements during surmised 'C' periods.⁴³ Most (80%) were for high fat and/or high sugar foods.⁴³ While the number of breaches represents a small proportion of total advertisements, it is important to remember that these data correspond to only one clause of the Children's Television Standards in one week of television broadcasting. In addition, the study found that food marketers circumvented or exploited a loophole in this clause 26 times during the study week. Such circumventions included advertising a different variation of the product more than twice per 30-minute period (e.g. advertising four chocolate bars from the same company during the period), and advertising the same product twice per 30-minute period over consecutive periods (e.g. advertising a chocolate bar eight times in two hours). Although not outright breaches, these instances illustrate that there are loopholes in the Children's Television Standards that allow constant repetition of advertisements to children. Although the letter of the code may not be contravened in these cases, the spirit of the code certainly is. It is also important to note that compliance with the Children's Television Standards is supposed to be a condition of licensing!

We acknowledge that the studies described above mainly relate to academic examinations of breaches to the standards, and in the majority of instances formal complaints were not made. However ACMA should acknowledge that the complex and onerous nature of the formal complaints process makes it difficult for public health professionals, and very difficult for members of the public, to make complaints.

The CFAC has lodged two complaints to the Australian Broadcasting Authority about food advertisements, which we strongly believed to be in breach of the Children's Television Standards. These complaints centred on the use of premium offers being offered in conjunction with the purchase of McDonalds, Hungry Jacks, KFC, Milo, Mondo Lollipops, and Kellogg's breakfast cereals. None of these complaints were upheld because of the

ambiguous nature of the Standards. In December 2001, a complaint by the advocacy network on Food Advertising to Children (the predecessor organisation to the CFAC), under CTS 20.2(a) was rejected on the basis that a food outlet can construct a 'product' containing both food and a toy, so that the toy will not be considered a premium accompanying the food.⁴⁴ This interpretation allowed food companies to bundle food and non-food items (toys) as a single "product" and to advertise that "product" in a way that focuses solely on the non-food item. It has also been interpreted so that the "incidental" reference is measured by the extent to which the advertisement might stimulate unreasonable expectations of the product. Therefore it is apparently permissible under the current Standards for food outlets to advertise in a way that focuses primarily or even exclusively on the toys they give away. The CFAC regards this as a bizarre interpretation that highlights weakness of the Children's Television Standards to adequately protect children from advertising practices that exploit children's credulity and vulnerability, and to create demand for unhealthy food by ulterior means. (Please refer to pages 35-36 in this submission for further discussion about premiums.)

The Children's Television Standards need to be strong and unambiguous to offer children protection and defined clearly enough so as to prevent manipulation of the meaning of the standards. It is essential that ordinary people be able to determine whether a breach has occurred.

Although we acknowledge ACMA's commitment toward a co-regulatory system, the CFAC believes that ideally the Children's Television Standards should be monitored regularly by an independent body. We question whether ACMA is sufficiently detached from the industry to fulfil such a function, and it may be desirable for a separate 'watchdog' body to be set up.

Inadequacy of industry self regulation

The CFAC is concerned about the current system, which allows for co-regulation with industry. The International Association of Consumer Food Organisations (IACFO) concluded in a report to the World Health Organisation that industry self-regulation is unlikely to be adequate to protect children against heavy marketing of high energy, low nutrient foods.⁴⁵ Industry self-regulation has been referred to as the "foxes guarding the hen-house".⁴⁶ Self regulation is only likely to address minor content issues, and not the important outcomes that result from high levels of food advertising.

One of the conclusions from the WHO Forum and Technical Meeting on "*Marketing of Food and Non-Alcoholic Beverages to Children*" was that self-regulation alone is not sufficient.⁴⁷ Self-regulation is likely to be more effective if it operates within a legal framework with incentives for change and penalties for non-compliance.

The CFAC recognises that co-regulation is a legislative requirement for broadcasting in Australia, but this does leave it open for ACMA to take particular matters, such as food advertising to children, into their exclusive purview. This is the approach that we prefer for such an important issue where it is difficult to imagine a fair and appropriate balancing of interests under industry self-regulation.

The current co-regulatory system in Australia does not adequately protect children from the obesogenic effects of television food advertising. Industry self-regulation coupled with government regulation for 'C' and 'P' programs has not thus far protected children from heavy marketing of high-energy, low nutrient foods. As stated above, Australian studies have consistently shown one-third of advertisements directed at children are for food and of those up to 80% were for unhealthy non-core foods, as defined by the Australian Guide to Healthy Eating.²⁵⁻²⁹

The Issues Paper refers to the Australian Association of National Advertisers (AANA) *Food and Beverages Advertising and Marketing Communications Code* and *Code for Advertising to Children* (page 28) but does not examine the many limitations within these self-regulatory codes. The CFAC considers the *Food and Beverages Advertising and Marketing Communication Code* disappointing in its lack of true commitment to ensure responsible advertising and to address the current concerns about the levels of unhealthy food advertising directed at children. The standards continue to be ambiguous and open to interpretation. It primarily addresses advertising problems that do not actually exist or are of minor concern. Most importantly it fails to tackle the core of the problem with food marketing to children, namely:

- the very *raison d'être* of marketing which is to create desire for the product (the basis for *pester power*),
- the subject matter of the advertisements (i.e. unhealthy foods) and the volume and intensity of food advertisements watched by children, and
- many advertisements are inherently misleading to children through their use of language, techniques and visuals, and the Code does not show any attempt to provide practical guidance in avoiding misleading and deceptive practice.

The current *Code for Advertising to Children* only applies to advertising or marketing where a third party has been paid to publish or broadcast. Consequently, direct marketing to children from a food company, including on food company websites, SMS messages or mail outs are not covered by the code. The CFAC believes there should be an extension of the code to apply to all food advertisements and marketing directed at children, regardless of the involvement of a third party.

The definition for “Advertisements to Children” in the *Code for Advertising to Children* refers to advertisements “directed primarily for children”. This terminology is extremely ambiguous and leaves open an escape for many advertisers. The definition of “advertisements to children” must also include: the appeal of the food product; the programs in which they appear; and by the numbers of children watching the programs in which the advertisement occurs. This is discussed further in section 3.

Furthermore, the issue of food advertising to children does not meet the criteria specified in the Commonwealth Interdepartmental Committee on Quasi-regulation’s checklist⁴⁸ for when self regulation should be considered, namely:

- there is no strong public interest concern, in particular, no major health and safety concern
- the problem is a low risk event, of low impact/significance
- the problem can be fixed by the market itself, that is, there is an incentive for individuals and groups to develop and comply with self-regulatory arrangements
- there must be a viable industry association with adequate coverage of the industry concerned and a cohesive industry with like-minded participants committed to achieve the goals
- cost advantages from tailor made solutions and less formal mechanisms, such as access to quick complaints handling and redress mechanisms

Clearly the issue of food advertising to children does not meet these criteria for self-regulation. As documented in our submission, there is very strong community concern and a legitimate health concern about the impact of food advertising on nutrition related behaviours which can impact on obesity. As well the complicated complaints procedures is not consistent with quick complaints handling.

As these Industry Codes of Practice require compliance with the Children’s Television Standards, it is imperative that the Children’s Television Standards are reviewed and

strengthened in such a way as to provide unequivocal clarity on the standards required to protect children's interests.

Monitoring and compliance

Another failing of the current Children's Television Standards is the lack of an adequate monitoring and compliance system, and the Issues Paper is essentially silent on how compliance with the new Children's Television Standards will be monitored. Complaints processes are mentioned in Option 9.3 on page 31 whereby "*all complaints regarding advertising to children on television at any time, rather than only P and C periods, could be made directly to ACMA rather than the current system*". However there is no proposal put forward for monitoring compliance with the Children's Television Standards.

The current system that relies on complaints to monitor compliance with both the Children's Television Standards and Industry Code of Practice, does not provide the public with sufficient assurance of protection. In fact, it is left to the public to lodge complaints of breaches. This is not satisfactory on a number of levels: (1) members of the public do not always have the time to lodge complaints; (2) members of the public do not have an adequate understanding of the details of the Standards to make informed complaints; (3) members of the public do not fully understand the process for making complaints; and (4) members of the public may be fearful of the threat of litigation from food industry. Relying on complaints as the mechanism for monitoring compliance with the Children's Television Standards therefore falls short of a true commitment to ethical and responsible practice by government, and the advertising and television industries.

The CFAC agrees with the recommendation from the WHO Forum on *Marketing of Food and Non-Alcoholic Beverages to Children* that any fines for breaking codes of practice should take into account the annual turnovers of the business involved and should be an adequate disincentive.⁴⁷ Maintaining the reputation of a brand might be a sufficient incentive to most companies to avoid breaking the rules. In case of a controversy about the effects of an advertisement, the burden of proof should be with the advertiser rather than with the person or organisation complaining about the advertisement.⁴⁷

Regulatory models in other countries

The CFAC does not believe that ACMA has fully investigated regulatory models from other countries, except as a passing mention in the Issues Paper. Several countries have begun to take steps toward the reduction of food promotion to children through television advertising, and Australia is in threat of lagging behind on this important issue, and not doing enough to protect our children.

Advertising to children is prohibited on television in Sweden (since 1991), Norway (since 1992) and in all media in Quebec Canada (since 1980). In all three cases, the ban is enforced by a government agency. Although to date no systematic evaluation of the impacts of these bans on children has been undertaken, and would of course be very difficult to measure, there is sufficient merit to adopt a similar approach in Australia.

The ban on commercial advertising directed at children under the age of 13 in Quebec Canada is often cited as an example of best practice in this area. Evaluation of the Quebec ban shows:⁴⁹

- a reduction in recognition of toys by children and fewer high sugar breakfast cereals in homes;

- no reduction (in fact an increase) in the quantity of children's television programs
- no effect on quality or diversity of children's programs;
- inconclusive effects on decrease in total advertising revenue (possibly around US\$10 million), but far lower than predicted by the advertising and television industries; and
- children in Quebec have the lowest prevalence of obesity across all Canadian provinces, and the second lowest prevalence of overweight (significantly lower than the Canadian average).

Ofcom decision

This year the UK regulator, Ofcom, after an extensive review and consultation decided to restrict the scheduling of television advertising of food and drink products to children. The restrictions include:

- scheduling restrictions confined to food and drink products that are assessed as high fat, sugar and salt as defined by the UK Food Standards Agency's nutrient profiling scheme;
- advertisements for high fat, sugar and salt products must not be shown in or around programs specifically made for children (which includes pre-school children). For the avoidance of doubt this measure will remove all high fat, sugar and salt advertising from dedicated children's channels;
- advertisements for high fat, sugar and salt products must not be shown in or around programs of particular appeal to children under 16; and
- these restrictions apply equally to program sponsorship by high fat, sugar and salt food and drink products.

Ofcom has also decided that, alongside these scheduling restrictions, revised content rules will apply to all food and drink advertising to children irrespective of when it is scheduled. Key elements of the content rules include a prohibition on the use of licensed characters, celebrities, promotional offers and health claims in advertisements for high fat, sugar and salt products targeted at pre-school or primary school children, which go much further than the current Australian Children's Television Standards.

Ofcom also detailed the estimated cost of advertising regulation models to broadcasters. It was acknowledged that whilst this economic analysis was of interest when determining appropriate regulations, it should be balanced with public policy considerations. The *maximum* loss of advertising revenue for broadcasters was estimated to be 15.3% of their annual advertising revenue. However, a much lower estimation of between 0.3-0.4% total loss of revenue was considered after mitigation of revenue losses by placing new advertisements for non-unhealthy food and beverage products. The CFAC believes that ACMA should undertake an independent cost analysis of the probable impacts to broadcasters and advertisers of further restrictions of food advertising during times when children make up a significant number of the viewing audience, as part of the review of the Children's Television Standards. Any loss of revenue to the broadcasters must be considered against the cost benefits associated with a reduction in childhood obesity rates.

Limitations of the Ofcom regulations

Although the CFAC applauds some of the measures taken by Ofcom, it is important to highlight the areas where they fell short of achieving a true commitment to protecting children from the harms of unhealthy food advertising.

Scheduling restrictions for food and beverage advertisements are based on program appeal to children, such that regulations will only apply during programs that have a child audience composition of at least 20% higher than exists in the general population. This regulatory requirement is based on children's viewing statistics.

- Data on program popularity can only reliably be produced retrospectively. That is, prior to the broadcast of any new program, information about audience composition, and hence the proportion of children that will be viewing the program, cannot be accurately assessed. Therefore unhealthy food and beverages can be advertised freely.
- Information on child audience composition will not be available for public scrutiny. Therefore, as the regulatory system relies on the public for complaints it would be impossible for the general public to determine exactly when the regulations apply.
- There is no evidence to indicate that a larger number of adults viewing a program will reduce the impact of advertising on children. This approach is nonsensical; programs with a small total audience, of which a high relative proportion are children, would be covered by the regulations, whereas a program that enjoys a large total viewing audience, with higher absolute numbers of children viewing, but a relatively lower proportion of children compared to adults, would not be covered. For example, if 1,000 children and only 500 adults watch Program A, then this would represent low absolute numbers of children but a high relative number of children, and would thus be covered by the advertising regulations. However, if 5,000 children and 10,000 adults watched Program B, then although this is a higher absolute number of children, it would not be covered by the advertising regulations, as the proportion of children in the total viewing audience would be smaller. The data on children's viewing patterns in the ACMA Issues Paper suggest that there are probably more programs in the same category as Program B than in the Program A category. It is sometimes suggested that the presence of adult viewers will mediate the impact of the advertisements on the children, but this can be questioned on two grounds. First there is no reason to believe that all parents take on the role of media literacy teacher with their children. Second, many children have televisions in their bedrooms, and therefore do not have an adult present when viewing.

Timing restrictions rather than program restrictions would overcome these difficulties. The CFAC urges ACMA to show its leadership and ensure the new Children's Television Standards adequately address the shortcomings of the regulations introduced by Ofcom.

Nutrient profiling

It is interesting to note that ACMA did not propose a separate option of banning only unhealthy high fat, sugar and salt foods and beverages, as occurred from the UK's Ofcom review. ACMA state in the Issues Paper that Australia has no equivalent nutrient profiling scheme like the UK. This is untrue as Food Standards Australia New Zealand (FSANZ) has put forward an adapted model of the UK nutrient profiling scheme, as part of the proposal for health claims on food labels.

Nutrient profiling can be defined as the science of categorising foods according to their nutritional composition. The FSANZ Nutrient Profiling Model is a system that considers both positive and negative nutritional characteristics, and is mostly consistent with dietary recommendations. The positive nutrients include protein, fibre, and fruit and vegetable content. The negative nutrients assessed include energy, saturated fat, sugar and sodium. FSANZ has provided a website for manufacturers to calculate whether their products are

permitted to use a health claim <http://www.foodstandards.gov.au/foodmatters/Healthnutritionandrelatedclaims/nutrientprofilingcal3499.cfm>.

Although the CFAC acknowledges that the interpretation of the Nutrient Profiling Model is inherently difficult and its practicality for use by the general public, in recognising breaches to the standards is questionable, we do acknowledge the strong public support for bans on unhealthy food ads. The CFAC believes that the Nutrient Profiling Model provides the best option for classifying foods as healthy or unhealthy.

The CFAC supports in principle the adoption of Nutrient Profiling Model as being a sensible approach for classifying foods as healthy or unhealthy, subject to further modelling being undertaken by FSANZ. An advantage of this Nutrient Profiling Model is that it encourages the food industry to innovate and develop healthier products.

The CFAC suggests that ACMA liaise with FSANZ and the Australian government about establishing a “universal” scheme for classifying foods as healthy and unhealthy.

There is strong public support for a ban on unhealthy food advertising, with 86.2% of parents supporting a ban on advertising of unhealthy foods at times when children watch TV.³⁶ The CFAC would urge ACMA to consider an alternative regulatory option to those listed on page 32 of the Issues Paper, that uses the nutrient profiling scheme to classify foods as healthy and unhealthy and therefore permissible for advertising. Although there are inherent difficulties in the use and interpretation of the Nutrient Profiling Model, it does provide an opportunity to decrease unhealthy food advertising directed at children.

If ACMA is not prepared to adopt the Nutrient Profiling Model, until FSANZ has ratified the food classification tool, we would urge ACMA not to use this as a reason for not introducing stronger regulations. ACMA must then consider a system to look at unhealthy food categories in order to protect children from unhealthy food and beverage advertising. For example studies have shown that chocolate, confectionery, fast food takeaways, sugar sweetened cereals, snack foods and sugar-sweetened soft drinks are the most commonly advertised foods, as well being foods high in energy and low in nutritional quality.

Bans on television advertisements for tobacco and alcohol

The ACMA Issues paper did not explore advertising bans for tobacco or alcohol to any great degree. This submission provides some details on the introduction and effect of those bans, because they provide a useful comparison, and possibly a precedent, for prohibitions on food and beverage advertising.

It is important to note that limits are imposed on the times when alcoholic beverages can be advertised (ie not before 9pm).

The ban on television advertisements for tobacco was phased in between 1973 and 1976, with very little, if any, negative economic impact. It is not possible to measure the sole impact of the advertising ban on smoking prevalence rates, as advertising bans were part of an array of tobacco control interventions. Similarly the CFAC believes that a ban on television food advertising needs to be part of a multi-strategic effort to control childhood obesity. Contrary to claims occasionally made in the media about those who support tightening restrictions on food and beverage advertising, the CFAC certainly does not believe that a ban on television food advertising will on its own reverse trends in childhood obesity; however we all agree that without a ban on food advertising, no progress can be made on the issue of childhood obesity.

After the completion of the phasing-in of a ban on tobacco advertisements, there was a slight acceleration in the rate of the decline in overall smoking prevalence.⁵⁰ Smoking rates in females did go up during the phase-in period but declined between 1976 and 1980. It is important to note that the mid 1970s was a period of extensive targeting of women by the tobacco industry, and print media advertising of cigarettes was rife. The important conclusion is that smoking among women and men went down after the television advertising ban was fully in force.

The table below shows total advertising revenue collections from radio and television between 1970 and 1980.⁵⁰ The figures show that advertising revenue for both radio and television continued to increase after the ban on tobacco advertising. There were some negative figures between 1973 and 1975, but this has been attributed to the severe general economic recession that was occurring at that time, rather than the bans on tobacco advertising per se.

Table 15.1: Advertising revenue from Australian television and radio before and after the ban on tobacco advertising

Year	Television \$ '000			Radio \$ '000		
	Actual revenue	Inflation adjusted [*]	% change	Actual revenue	Inflation adjusted [*]	% change
1969/1970	91,192	385,380		37,059	56,600	
1970/1971	87,869	354,410	-8.0	39,481	159,240	1.7
1971/1972	92,040	347,600	-1.9	43,630	164,770	3.5
1972/1973	105,389	375,270	8.0	46,696	166,270	1.0
1973/1974	118,381	373,200	-0.6	53,494	168,640	1.4
1974/1975	136,816	369,100	-1.1	59,017	159,430	-5.5
1975/1976	195,916	468,450	26.9	74,378	177,840	11.2
1976/1977	257,049	539,860	15.2	92,884	195,070	9.7
1977/1978	303,929	582,740	7.9	107,688	206,470	5.8
1978/1979	366,909	650,260	11.5	121,476	215,140	4.2
1979/1980	428,238	689,200	6.0	134,253	216,060	0.4

* Actual revenue has been adjusted to allow for inflation, rounded to the nearest \$1,000 and is expressed at constant 1985 prices.

Source: Australian Broadcasting Tribunal.

One researcher has claimed that the removal of unhealthy food advertising could be more effective and produce more immediate results than bans on cigarette ads.³⁴ As high fat and sugar foods do not create a physiological addiction in the same way as nicotine, the removal of high fat and sugar advertising could produce more immediate results. At the very least it would eliminate a reinforcer that supports continued consumption of unhealthy foods, by reducing the social approval that advertising confers on a product category.³⁴

Part 3 - Recommended Changes to the Children's Television Standards

In considering changes to the Children's Television Standards, the CFAC believes the regulations need to be:

- (a) strong enough to afford protection to children from possible harm, and
- (b) clear enough to parents so that they can make appropriate parenting decisions to control children's exposure to food and beverage advertisements.

The CFAC urges ACMA to ensure that the new Children's Television Standards address both the volume and frequency of advertising of unhealthy foods during programs when children are watching and not just individual instances of inappropriate or misleading marketing, as it is the combination of these elements that impact on children preferring, demanding and consuming unhealthy foods.

The CFAC proposes that the application of existing and any new advertising restrictions in the Children's Television Standards be broadened so that all restrictions apply to food advertisements broadcast during time periods immediately before, during or after programs for which, the television audience is likely to consist of a significant number of children. Current advertising restrictions in the Children's Television Standards apply only during 'P programs' or 'C programs' or during 'P periods' or 'C periods' (which are periods nominated by broadcasters within certain time bands during which they will broadcast 'C programs' and 'P programs' to meet their quota obligations under the Children's Television Standards).

Prohibition of television food advertising

Clearly the CFAC is keen to see ACMA include some degree of prohibition on food and beverage advertisements to children in the Children's Television Standards.

The options for prohibiting unhealthy food and beverage advertising or all food and beverage advertising

The preferred position of the CFAC is that there should be a prohibition on *all* food and beverage advertising (excluding non-commercial promotion of healthy eating). This is because of (1) the difficulty and complexity in defining 'unhealthy' food and beverages, (2) the difficulty for members of the public to understand to which advertisements a ban on unhealthy food and beverage advertisements would apply, and (3) the potential for industry to exploit or circumvent a ban on unhealthy food and beverage advertising (for example, fast food chains could advertise 'healthy options' to children in order to promote brand recognition).

Nevertheless the CFAC recognises that a prohibition on all food and beverage advertising may conflict with ACMA's interests to support the television industry, and the CFAC therefore proposes as an alternative that any advertised food and beverage product must meet criteria for being 'healthy'. In order to implement this policy position, 'unhealthy' and 'healthy' will need to be defined carefully to ensure healthy or unhealthy foods are not included or excluded from either definition inappropriately. The most appropriate method for defining 'unhealthy' and 'healthy' food and beverages would be FSANZ's Nutrient Profiling Model, as described on pages 22-23.

The CFAC does not wish to exclude those few advertisements that may encourage children to eat healthily. Advertising of healthy food is required to break down social norms of unhealthy eating that have already been created by unhealthy food and beverage advertising. The CFAC also hopes that if advertising of healthy food and beverages is allowed, the food

and beverage industry may be encouraged to produce new healthy products and/or to make existing products healthier so they are able to meet the criteria to be able to advertise their products.

The CFAC's preferred position is that the prohibition should apply to all food and beverage advertising. However the CFAC is prepared to support a position that the advertising of healthy food or beverages are exempted, which would require the use of the nutrient profiling model for classifying foods as healthy or unhealthy. This would require a separate option to those put forward by ACMA in its Issues Paper.

Prohibitions on food and beverage advertising should apply to all commercial food and beverage advertising

Whether the ban extends to all food advertisements, or only advertisements for unhealthy foods, the CFAC supports an exception for non-commercial advertising for healthy food or beverages, for example paid advertisements funded by government or not-for-profit organisations (as Community Service Announcements are advertisements broadcast for free to meet broadcasters' quota obligations). Therefore, the CFAC proposes that there be a prohibition of *commercial* food and beverage advertising, which would permit broadcast of Community Service Announcements and paid but non-commercial advertising.

CFAC's position is that a prohibition should apply to all *commercial* food and beverage advertising.

Application of prohibition

CFAC's preferred position is that the prohibition of food and beverage advertising be during particular times during which children are most likely to be watching television, rather than based on characteristics of the advertising (such as being 'directed at' children or similar).

The CFAC supports that advertising standards need to apply between 7am to 9am and 4pm to 9pm weekdays and 7am to 9pm on weekends.

The application of a ban on television food advertising should be based on one or more of the following elements:

- a food product that appeals to children (even if it appeals to adults as well);
- being broadcast during a program that appeals to children (even if it appeals to adults as well); and
- by the numbers of children watching the programs in which the advertisement occurs.

Section 122 of the *Broadcasting Services Act 1992* (Cth) requires ACMA to determine children's television standards. Currently the Children's Television Standards' advertising restrictions apply only during C periods. The CFAC believes that this limitation has worked against children's interests in two ways. First, it affects only a small amount of the television that children watch, for reasons that ACMA explains well in the Issues Paper. Second, it makes enforcement difficult as it is next to impossible for any would-be complainant to know when a given licensee's C periods fall.

The CFAC believes that section 122 would allow ACMA to determine standards with a broader application. For example, the Children's Television Standards could apply to advertisements broadcast during programs intended for or likely to appeal to children; or

advertisements intended for children or likely to appeal to children irrespective of the program during which they are broadcast. The fact that such standards might apply also to some ‘adult’ programs or advertisements does not necessarily take them outside the purview of section 122.

Alternatively, ACMA may have the power to impose prohibitions on food and beverage advertising under section 125 of the Broadcasting Services Act, which requires ACMA to determine a standard in relation to a matter set out in section 123(2) of the Act if ACMA is satisfied that there is convincing evidence that a registered code of practice is not operating to provide appropriate community safeguards for that matter. Matters set out in section 123(2) of the Act include ‘*methods of ensuring that the protection of children from exposure to program material which may be harmful to them is a high priority*’, ‘*broadcasting time devoted to advertising*’ and ‘*matters relating to program content as are of concern to the community*.’* CFAC believes there is a strong argument that food and beverage advertising to children is harmful to them and is a matter of concern to the community. We would also argue that the Commercial Television Industry Code of Practice is not operating to provide appropriate community safeguards for the amount of broadcasting time devoted to advertising at times when children are likely to watch television and the nature of the advertising broadcast.#

Prohibition based on time

A ban on food advertisements during certain ‘children’s viewing times’ when a significant number children make up the viewing audience (e.g. between 4pm and 9pm on week days) would be the most effective way to reduce children’s exposure to food advertising as it would apply not only during primarily children’s programs or viewing times, but also during programs and at times when the television audience is likely to consist mainly of adolescents or adults but also of a significant number of children. This would assist parents to control children’s exposure to food advertising (i.e. by allowing children to watch television only at times when the ban applies). A time-based ban would provide clear guidance and certainty to broadcasters as to when they can and cannot broadcast food advertisements, and would enable members of the public to easily identify food advertisements in breach of the ban.

Prohibition based on program

A second option could be a prohibition on food advertising during and immediately before or after particular programs, for example ‘children’s programs’ or programs that are popular with children.

To be effective, a program-based prohibition would need to apply not only to programs specifically designed or intended for children or primarily watched by children, but also to programs that a significant number of children would be likely to watch, for example, soaps, reality TV shows, game shows, sporting events, etc. We acknowledge the inherent difficulty of drafting a prohibition in a way that could achieve this, but it is equally difficult to determine which programs are, and which are not, specifically designed or intended for children. Ultimately these difficulties are one of the reasons for our primary support for time-based restrictions, rather than program-based ones.

Clarity and certainty for broadcasters and the public could be provided by basing the restriction on program classification – for example, that it apply to all P, C, G, and PG programs. Such a structure may be an effective way to reduce children’s exposure to food advertising (since under the Commercial Television Industry Code of Practice, MA programs may only be broadcast between 9pm and 5am). However, the efficacy of a prohibition based

* Note that ‘program’ is defined to include advertising or sponsorship matter

The Code adopts the CTS limits on advertising time during C and P periods and otherwise limits the amount of broadcasting time that may be devoted to advertising to 15 minutes between 6pm and midnight and to 16 minutes at other times.

on program classification would depend on it extending to PG programs, which many children are known to watch, as shown by OzTam data described in the ACMA Issues Paper.

Alternatively, the prohibition could apply to programs which meet certain criteria indicating that they were intended or designed for children, likely to appeal to children and/or likely to be watched by a significant number of children or a significant proportion of children relative to adults. Criteria could relate to the content and manner of presentation of the program and the time at which the program was broadcast. However, restrictions applying to ‘children’s programs’ thus defined would be inherently weak because of the number of programs that are ostensibly for adults but that children are likely to watch. These are precisely the programs that gain the largest child audiences. To be effective, the restrictions would need to apply not only to programs intended primarily for or watched primarily by children, but also to programs intended for or likely to be watched by both adults and a significant number of children.

Also, the criteria mentioned above are open to interpretation and reasonable minds may differ as to whether a program fell on one side of the line or the other. In any such case, members of the public may have difficulty understanding to which programs such a prohibition would apply.

Prohibition based on advertisement

In addition to the prohibition of food advertisements broadcast during ‘children’s programs’, another option is that the prohibition apply to individual food advertisements intended for or directed to children or likely to appeal to children (similar to the regulatory models in Quebec, Norway and Sweden, and also under the Commercial Television Industry Code of Practice). Whether an advertisement is directed to children or likely to appeal for children could be determined by reference to factors such as:

- the content and manner of presentation of the advertisement,
- the nature of the product advertised, and
- the time when and program during which the advertisement was broadcast.

The Commercial Television Industry Code of Practice contains an Advisory Note listing seven considerations for determining to whom an advertisement is directed for the purpose of Clause 6.23 of that Code.

However, we believe that even with such criteria listed, such a prohibition would be uncertain and difficult to interpret, and it would be very difficult for members of the public to understand which advertisements would be subject to the prohibition. Furthermore the CFAC believes there would be a risk that advertisers and broadcasters could circumvent this type of prohibition, for example, by designing food advertisements which contain elements that would appeal to children, but are nevertheless addressed ostensibly to adults. There have already been examples of such advertisements on Australian television, such as the campaign for a highly sugared breakfast cereal featuring a popular children’s entertainer, claiming to speak as a parent to other parents.

These problems could be avoided, to some extent, by the adoption of a ‘single element’ test: that is, the prohibition would apply to any food or beverage advertisement that is presented in a way likely to appeal to children (eg animation); *or* uses a children’s entertainer as a presenter; *or* contains child actors; *or* is shown during a children’s program, and so on. Such a test would avoid the need for a vague and uncertain balancing process, and provide at least some clarity for members of the public and for advertisers in determining what kinds of food and beverage advertisements are permissible. Therefore it is likely to be more effective in limiting the impact of advertising on children’s food choices.

Prohibition based on product

The CFAC would support a prohibition applying to advertisements for children's food and beverage products, i.e. products intended for children, marketed as suitable for children and/or likely to appeal to children. The advantage of this prohibition is that it would apply to advertisements for children's products that are broadcast during supposed 'adult' viewing times or 'adult' programs when a significant number of children are in fact likely to be watching television. However the CFAC regards this as an adjunct not a total solution, for a number of reasons. First, the very category of children's foods may be quite small, as most foods are eaten by both adults and children. Second, there would be a difficulty in distinguishing between products for adults and children, and a resulting potential for advertisers to blur this distinction. Third, a prohibition based solely on the concept of children's food products would allow advertisements for 'adult' food and beverage products to be broadcast during children's programs or peak viewing times. Yet many food and beverage products intended for adults would be likely to appeal to children, and promotion of products as 'adult' may actually increase their appeal to children.

Summary

In summary the CFAC submits that the aim of increasing restrictions on food and beverage advertising should be to limit the amount of such advertising to which children are exposed. The most effective way of doing so, and the measure that the CFAC supports most strongly, is a prohibition on food and beverage advertising during times of day when the viewing audience is likely to constitute a significant number of children. The CFAC supports that advertising standards need to apply between 7am to 9am and 4pm to 9 pm weekdays and 7am to 9pm on weekends.

The CFAC would also support a prohibition applying to advertisements intended for or likely to appeal to children (determined according to the 'single element' test described above, that is, the prohibition would apply to any food or beverage advertisement that is presented in a way likely to appeal to children (eg animation); *or* uses a children's entertainer as a presenter; *or* contains child actors; *or* is shown during a children's program) *and* to advertisements broadcast during programs intended for or likely to appeal to children (determined according to the content and manner of presentation of the program and the time when the program was broadcast). Such a prohibition should extend to programs and advertisements intended for or likely to appeal to both adults and children (rather than just to programs and advertisements intended primarily or specifically for children or likely to appeal primarily to children).

CFAC would support a prohibition on advertisements for children's foods but cautions that this would not make very much difference to children's exposure to food advertisements unless the food categories were defined broadly. In particular they should include foods that appeal both to adults and to children.

Prohibitions need to apply to a significant number of children

The CFAC proposes that television food advertising should be prohibited at times when, and during or immediately before or after programs for which, a significant number of children are likely to be watching television. This should be considered in the context of data on the number and proportion of children in the Australian population, the number of children who watch television, and typical television audience sizes and numbers of children in the audience at different times of the day. In considering what constitutes a significant number or proportion of children, it should be borne in mind that what might seem like a small proportion of children, e.g. 10%, may equate to a significant number of children. (Please refer also to pages 21-22 for discussion about the Ofcom regulations)

Additional advertising restrictions on television food advertising

The CFAC proposes the inclusion of additional restrictions and/or the tightening of existing restrictions on food advertising in the Children's Television Standards. Additional advertising restrictions which should apply during time periods immediately before, during and after programs for which the television audience is likely to consist of a significant number or proportion of children) should include the following:

- Restriction of the time (e.g. number of minutes per hour) that food or beverage, especially unhealthy products, can be advertised.
- Restriction of the number of food or beverage advertisements, especially unhealthy products, that may be shown (per hour or program).
- Prohibition of advertisements that would be likely to influence children to consume more than the amount of 'unhealthy' food or beverages recommended by dietary guidelines. The CFAC acknowledges that there would be few advertisements that blatantly encourage over consumption. We are more concerned about the issue that persuasive and high-volume advertising normalises foods that should be for special occasions and makes unhealthy foods look like every day foods.
- Prohibition of advertisements that undermine the importance of, or may discourage children from eating, healthy food or beverages, including fruit, vegetables and water;
- Prohibition of advertisements that undermine the importance of, or may discourage children from participating in, physical activity. Again the CFAC acknowledges that there would be few advertisements that undermine the importance of physical activity, but feel this should be clearly stated in the Children's Television Standards.
- Prohibition of food or beverage advertisements that promote, imply or may lead child viewers to believe that an unhealthy product has certain health, energy or nutritional benefits, or that state such a product contains 'natural' ingredients or is additive-free.
- Prohibition of advertisements that suggest, imply or may lead viewers to believe that processed products are the same as or similar to, or may provide the same or similar benefits as, fruit or vegetables.

Complaints process

The ACMA Issues Paper has not addressed the complaints system. The CFAC believes the complaints system is not adequate and very difficult for consumers to navigate. We are also concerned about the long lag time for dealing with complaints. The ACMA website states that it may not respond to a complaint for four or five months, which means children have already been exposed to the harmful effects of a particular advertisement. Improvements to the complaints procedures could include:

- Removing the requirement for complaints to be in writing – genuine consumers should be able to complain over the telephone and via email. This would allow complaints to be made at the time of broadcast.
- ACMA should provide a toll-free number for consumers to submit telephone complaints
- The procedures for making complaints and the advertising restrictions should be more easily accessible within the ACMA website, and be advertised on television.
- Consolidate all the provisions on advertising to children in the Children's Television Standards so that it is clear for consumers that complaints are dealt with by a single point of contact.
- Ensure the burden of proof should be with the advertiser rather than with the person or organisation complaining about the advertisement.

Part 4 – Response to ACMA issues and questions

Provisions in the Children’s Television Standards that need further consideration

The Issues Paper (pages 24-26) tends to assume that many parts of the current regulations are operating effectively, and then reaffirms the regulations, without fully considering whether they in fact achieve their stated goal. ACMA states that they are of the view that the following provisions in the Children’s Television Standard are operating effectively: –

- Unsuitable material (CTS 10)
- Advertising during P time (CTS 13.2)
- Time limits for advertising during C time (CTS 14)
- Separation of advertisements and sponsorship announcements (CTS 15)
- Repetition of advertisements (CTS 16)
- Undue pressure in advertisements (CTS 18)
- Competitions (CTS 21)
- Use of program personalities and characters (CTS 22)
- Advertising of alcoholic drinks (CTS 23)

In response to *Question 14* in the Issues Paper, the CFAC believes that the following areas need to be addressed and tightened up in the revised Children’s Television Standards:

- *Repetition of advertisements (CTS 16)* – This standard is not operating effectively and a study described in the Medical Journal of Australia found repeated breaches to this standard⁴³ – see page 17 for details of the study. Therefore ACMA needs to acknowledge that this standard is being breached and more properly address a system for monitoring compliance. Compliance monitoring is discussed further in this submission at page 20.
- *Undue pressure in advertisements (CTS 18)* - This standard relates to the phenomenon of ‘pester power’ and the Issues Paper suggests that ACMA is satisfied with the provisions within this standard, and does not fully acknowledge that the very nature and purpose of advertising creates the phenomenon of pester power. In the Issues Paper, ACMA acknowledges that children have not developed the cognitive development skills and so need to be protected from this type of harm. What ACMA has failed to acknowledge is that this standard does not capture a true recognition of how ads work to create in children a desire for the product, so that they will naturally pester their parents, whether or not the ad explicitly encourages them to do so. The use of ‘undue pressure’ as a criterion represents a serious limitation in this standard’s ability to address the problem it appears to address. ACMA needs to recognise this effect, and do more to counter it through advertising regulation. In any event, CTS 18 might be seen as putting the ‘undue’ element in the wrong place: no ad should *in any way* encourage children to put pressure on their parents.
- *Competitions* - The Issues Paper states that ACMA is not considering the provisions in the Children’s Television Standards related to competitions. The Children’s Television Standards currently states that competitions, in both programs and advertisements, “*must ensure that a summary of the basic rules is stated and that the chances of winning are clear, fair and accurate*”. In the literature review commissioned by ACMA, it was noted that young children are unable to process more than one dimension of an advertisement. Therefore if a food product and competition offer are shown simultaneously, which is often the case, children are unlikely to register the competition rules. The CFAC would argue that competitions act in much the same way as premiums by enticing children to desire the product. With this in mind, regulations on competitions should be strengthened in line with premiums. The issue of regulation of competitions is out of step with community

views. In a recent community attitudes survey of parents across, 74.6% expressed concern about the use of toys or gifts as marketing strategies.³⁶

- *Use of Program Personalities and Characters (CTS 22)* - The Issues Paper states that ACMA is not considering the provisions in the Children's Television Standards related to the use of program personalities and characters. The Issues Paper acknowledges that this is an important standard and must be maintained and ACMA bases this decision on the findings from the literature review. However the current standard only applies to personalities and characters from 'C' or 'P' programs, and these programs have low audiences so the characters are unlikely to have much impact in advertising. CTS 22 does not address the more widespread problem of a whole range of popular celebrities, sports people and animated characters that are used to appeal to children. The literature review commissioned by ACMA on television advertising to children found that "*both animated and real-life characters draw children's attention to advertising and are positively associated with memory and attitudes toward products advertised*" (page 26). ACMA must extend the Children's Television Standards to include **all** popular celebrities, sports people and animated characters.

Age definition of a child

The ACMA Issues Paper has not addressed the age definition of a child. The current Children's Television Standards define children as people younger than 14 years. The CFAC recommends ACMA review the age definition and ensure consistency with other health policies and the age restrictions established in other jurisdictions, such as Ofcom.

Food and beverage advertising to children

Question 15(a) Should the CTS be amended to specifically address the issue of food advertising independently or advertising more generally?

(b) If so, what form should these amendments take?

Yes the Children's Television Standards should be amended to specifically address the issue of food advertising. As outlined throughout our submission:

- food advertising is an important contributing factor in the obesogenic environment;
- there is strong evidence that there is a link between exposure to TV food advertising and children's food preferences, food purchasing and food consumption;
- there is evidence that improved regulation will be a cost effective strategy to reduce childhood obesity;
- there is evidence that children are not sufficiently cognitively developed to understand the persuasive intent of advertising;
- the current high level of unhealthy food advertising undermines the role of parents in promoting healthy eating; and
- ACMA has an obligation to protect children from possible harms and the impact of food advertising on nutrition behaviours represents one such harm.

Specific restrictions on food and beverage advertisements are warranted due to their high concentration during children's viewing times and the dire public health consequences of childhood obesity.

The CFAC acknowledges that some jurisdictions have restricted all commercial messages to children. However, the primary concern of the CFAC is food advertising to children. The

above evidence provides a strong case for singling out food and beverage advertising for special attention.

The CFAC supports that advertising standards need to apply between 7am to 9am and 4pm to 9pm weekdays and 7am to 9pm on weekends.

The televising or advertising of events, activities or programs sponsored by companies to promote the use of unhealthy foods should be restricted to ensure that children are protected from the promotion of unhealthy foods, in particular during children's peak viewing periods

Q16(a) Should industry be required to adopt a monitoring and reporting role regarding the outcomes of the new AANA Food and Beverages Marketing and Communications Code before any changes to the CTS be considered?

(b) Why or why not?

The CFAC does not support this option of industry being required to adopt a monitoring and reporting role regarding the outcomes of the new AANA *Food and Beverages Marketing and Communications Code* before any changes to the Children's Television Standards be considered. The important point here, as we have outlined throughout our submission, is that there is an urgent need for ACMA to enact stronger regulatory standards. We have outlined the shortcomings of the AANA Code, which does little to protect children from the high volumes and persuasive marketing techniques used to advertise unhealthy foods and beverages (see pages 18-19). The CFAC sees no point in delaying the introduction of stronger statutory measures, especially for a toothless code that will do nothing to change the current problem.

However, the CFAC considers that it may be helpful to have systematically-collected information from industry about the kinds of foods that are advertised, how often, at what times of day, using what techniques and so on. The public health community has completed a number of research projects analysing the content of advertising shown on television (as described on pages 15-17), but more detailed information from industry would free up resources for other kinds of research. Imposing a requirement on industry to provide the information would not be inconsistent with any of the substantive proposals we are supporting.

Q17(a) Should advertising provisions to children (currently in both the CTS and the Commercial Television Industry Code of Practice) be consolidated under the CTS?

(b) Why or why not?

Yes advertising provisions to children (currently in both the Children's Television Standards and the Commercial Television Industry Code of Practice) should be consolidated under the Children's Television Standards. As stated in this submission, the CFAC supports stronger statutory measures to protect children from possible harm, and this extends to enforcement structures. The consolidation of responsibility for all food and beverage advertising to children under ACMA's direct regulation will provide the public with a clear picture of all the available regulations on food advertising, and a single complaints procedure. The CFAC supports the proposition that all complaints regarding food and beverage advertising to children on television at any time should be made directly to ACMA, in contrast to the current system, which is confusing and makes it difficult to determine where to direct complaints.

However, the CFAC believes that simply adopting the Commercial Television Industry Code of Practice provisions into the Children's Television Standards would not go nearly far enough. ACMA needs to introduce new provisions to both clarify the existing standards and address the current loopholes and limitations as discussed throughout this submission.

The CFAC also believes that there should be an independent monitoring agency, which has the ability to act as a consumer watchdog with full law enforcement powers. It is essential that this watchdog body be independent of food, advertising, and broadcast industries, to ensure that “no foxes are guarding the hen house”. This watchdog should also have statutory authority to enforce compliance and appropriately punish any breaches identified.

Q18(a) Should the amount of food advertising allowed during C programs be limited?

(b) Why or why not?

The amount of food advertising, especially unhealthy food advertising, allowed during C programs should be limited. However the CFAC believes this needs to go further as TV viewing data has shown that children’s viewing is not limited to these programs. Indeed, far fewer children watch these programs than those shown during weekday prime time. The largest public health impact is likely to come from restricting food advertising to children, while children are actually watching in large numbers. Therefore restrictions on volume during C programs would not go nearly far enough.

Q19(a) Should food advertising be banned during C programs?

(b) Why or why not?

Yes food advertising, especially unhealthy food advertising, should be banned during C programs. However the CFAC repeats its observations in response to the last question in relation to what TV viewing data show about children’s viewing patterns. This ban needs to go further than is currently proposed here.

Q20(a) Should all food advertising directed at children be banned?

(b) Why or why not?

Yes CFAC supports that all food advertising directed at children should be banned.

The preferred position of the CFAC is that there should be a prohibition on *all* food and beverage advertising (excluding non-commercial promotion of healthy eating). This is because of (1) the difficulty and complexity in defining ‘unhealthy’ food and beverages, (2) the difficulty for members of the public to understand to which advertisements a ban on unhealthy food and beverage advertisements would apply, and (3) the potential for industry to exploit or circumvent a ban on unhealthy food and beverage advertising (for example, fast food chains could advertise ‘healthy options’ to children in order to promote brand recognition).

However we acknowledge the lack of support such an option might receive. Therefore the CFAC supports the use of the FSANZ Nutrient Profiling Model to establish criteria for the advertising of healthy foods.

The CFAC however has reservations about the criterion of “directed at children” and sees an urgent need to define that concept clearly. Otherwise the CFAC is very concerned that it would create further loopholes and be ineffectual at protecting children from the harmful effects of food advertising. Ideally we would prefer to see a prohibition based on the time of day when the advertisement is broadcast, as this is objectively verifiable and easily determined by members of the public. However, if the concept of “directed at children” is preferred for any reason, the CFAC believes that it should be defined to mean advertising that contains **one** of the following elements:

- a food product that appeals to children (even if it appeals to adults as well);
- being broadcast during a program that appeals to children (even if it appeals to adults as well); and

- by the numbers of children watching the programs in which the advertisement occurs

Q21(a) Should the CTS provisions (CTS 20) in relation to premium offers be maintained?

(b) If not why?

The CTS provisions (CTS 20) in relation to premium offers should be strengthened. As stated in this submission, premiums are a high concern in influencing poor dietary choices in children. The CFAC does not believe that the current standard offers any significant protection of children from this manipulative form of marketing, particularly in light of the previous restrictive interpretation made by the Australian Broadcasting Authority in response to a complaint lodged by CFAC.⁴⁴ This interpretation allowed food companies to bundle food and non-food items (toys) as a single “product” and to advertise that “product” in a way that focuses solely on the non-food item. It has also been interpreted so that “incidental” reference is measured by the extent to which the advertisement might stimulate an unreasonable expectation of the product.

There is strong support in the parent community for a ban on this type of marketing for food and beverages, and CFAC also believes that a ban would be justified. However other measures short of a ban would be an improvement. At a minimum CTS 20 should make it clear that food and non-food items cannot be treated as a single product for these purposes, and require that any advertisement for food should focus primarily on the food and should mention any accompanying non-food item only incidentally. In addition, CTS 20 should be re-drafted so as to remove the possibility of interpreting “incidental” as a sub-set of “unreasonable expectation”. Rather the two criteria should be clearly made separate and independent. It should not be possible to conclude that presentation of a non-food item is “incidental” simply because it does not stimulate an unreasonable expectation of the food. It should be made clear that “incidental” is measured by the amount of time and emphasis devoted to the non-food item within the ad.

Q22(a) If the CTS provision relating to premium offers is maintained, do the definitions contained within the provisions need to be clarified?

(b) If so, what changes need to be made?

Yes the definitions for premiums contained within this standard do need to be clarified. It should be inadmissible for a toy and food to be considered a ‘bundled product’. As mentioned above, the current standard is breached frequently so that children are not protected from this type of harm.

The wording of the standard must be less ambiguous and ensure that premiums are not permissible in any shape or form. The CFAC is concerned about that the Australian Broadcasting Authority has taken a restrictive interpretation of this standard when a complaint was made with regard to it. The ABA decided that toys included as part of ‘bundled’ fast food meals are not premiums and that the standard only applies if references to the premium “stimulate unreasonable expectations about the product”.

Q23(a) Should the use of premium offers in food advertising be banned during C programs?

(b) Why or why not?

Yes the use of premium offers in food advertising should be banned during C programs. However the CFAC reiterates its comments above about bans only during C programs being insufficient to protect children in view of their actual viewing patterns. The CFAC believes this option needs to go further than is currently worded here, so that children are not targeted by premiums at any times when they are watching TV in significant numbers.

Q24(a) Should the use of premium offers in all food advertising to children be banned?

(b) Why or why not?

Yes the use of premium offers in all food advertising to children should be banned. The Issues Paper has acknowledged the community concern about the use of premium offers in food advertising to children. Clearly the CFAC is of the view that premium offers are problematic, as they impact on requesting and purchasing behaviour in children.

The CFAC would request that ACMA clearly define “advertising to children”/ “targeted at children”. As this option is currently worded, the CFAC is very concerned that this would create further loopholes and be ineffectual at protecting children from the harmful effects of food advertising. Ideally we would prefer to see a prohibition based on the time of day when the advertisement is broadcast, as this is objectively verifiable and easily determined by members of the public. However, if the concept of “directed at children” is preferred for any reason, the CFAC believes that it should be defined to mean advertising that contains one of the following elements:

- a food product that appeals to children (even if it appeals to adults as well);
- being broadcast during a program that appeals to children (even if it appeals to adults as well); and
- by the numbers of children watching the programs in which the advertisement occurs

Conclusion - Action by the Australian Communications and Media Authority

As the Children's Television Standards fall under the responsibility of the ACMA, we urge you to take action against unhealthy food advertising that is pervasive and overwhelming in quantity, and that is unfairly manipulative in quality, by updating the standards that specifically relate to food advertising.

An update of the Children's Television Standards would help to reduce children's exposure to the advertising of unhealthy food, which is a critical public health strategy to address Australia's childhood obesity crisis.

Should you wish to discuss any of the issues raised in this submission, please contact the Chair of the CFAC, Ms Kathy Chapman, at the address below.

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