



# Coalition on Food Advertising to Children

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*Speaking out against unhealthy food advertising to children*

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## **Submission to the South Australian Government on Television Advertising and the Consumption of Unhealthy Food and Drinks by Children**

**October 2008**

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## 1.0 Overview

The Coalition on Food Advertising to Children (CFAC) appreciates the opportunity to offer this submission to the South Australian (SA) Government about television advertising and the consumption of unhealthy food and drinks by children. The CFAC congratulates the SA Government on its leadership on this issue.

The CFAC was formed in July 2002 and includes key organisations that recognise that the commercial promotion of unhealthy 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 unhealthy food and beverage advertising during television 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 Health Promotion Association
- ❑ Australian Medical Association
- ❑ Australian and New Zealand Obesity Society
- ❑ Cancer Council Australia
- ❑ Home Economics Institute of Australia
- ❑ Nutrition Australia
- ❑ Public Health Advocacy Institute of Western Australia
- ❑ Public Health Association of Australia
- ❑ Royal Australasian College of Physicians, Paediatric Branch
- ❑ Royal Australian College of General Practitioners
- ❑ Young Media Australia
- ❑ Ms Kaye Mehta, Senior Lecturer in Nutrition and Dietetics, Flinders University
- ❑ Dr. Rosemary Stanton, OAM

The CFAC believes that there is a substantial body of evidence that food advertising to children represents a serious harm to children. The evidence clearly demonstrates that:

- food advertising is an important contributing factor in the obesogenic environment;
- there is a strong link between exposure to TV food advertising and children's food preferences, food purchasing and food consumption;
- improved regulation will be a cost effective strategy to reduce childhood obesity;
- 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

- Government has an obligation to protect children from possible harms and the impact of food advertising on nutrition behaviours represents one such harm.

The CFAC does not suggest that food marketing is the only factor contributing to childhood obesity, and we support a comprehensive and whole of government approach to the prevention of obesity. However, specific statutory 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.

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. Specific restrictions on unhealthy food and beverage advertisements are needed during broadcasting periods when high numbers of children are watching television.

Governments have a duty of care to protect children from the possible harmful effects of television, which includes the harmful effects of television food advertising. The draft Children's Television Standards, as released by the Australian Communications and Media Authority, will do little to protect children from the well recognised harmful effects of unhealthy food advertising. Therefore it is essential that the SA Government act on this issue urgently.

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

## 2.0 Community Concern and Support for Regulatory Reform

Community concern and support for regulatory reform is high and must not be ignored.

Last year the CFAC collected and passed on 20,521 postcards from Australian community members urging the Australian Communications and Media Authority to introduce more effective regulations to address the high levels of junk food advertising during the times when children are watching television. The majority of public submissions received by Australian Communications and Media Authority, and published on their website, also supported stronger food advertising regulations.

Recent community surveys of Australian parents conclusively show that the majority of Australian parents believe the government should provide leadership in this area.

A nationwide survey, commissioned by the CFAC in 2007, questioned 400 randomly selected parents about their views on the Children's Television Standards and found that:

- 86% of parents supported a ban on advertising of unhealthy foods at times when children watch TV;
- 89% agreed the government should introduce stronger restrictions on food advertising at times when children are watching; and
- 75% parents were concerned about advertising using toys and giveaways to promote unhealthy food to children.<sup>1</sup>

These findings have been supported by more recent research, conducted in March 2008 by the consumer group Choice, which found that 88% of parents think the marketing of foods specifically to children contributes to difficulties ensuring children develop healthier eating habits.<sup>2</sup> The Choice survey also found that 82% of parents were in favour of tighter restrictions over the way unhealthy food is marketed to children in Australia.<sup>2</sup> These results have remained stable since an earlier survey conducted by Choice in 2006, which reported that 82% of respondents were in favour of government regulating the way food and drink is advertised and marketed to children.<sup>3</sup>

In addition, a South Australian government health survey conducted in 2004 (and 2006), which asked 2000 randomly selected households about their opinion on television food advertising to children also found strong support of restrictions on food advertising to children, and:

- 71% in 2004 and 78% in 2006 agreed that there is too much advertising of unhealthy food during children's viewing time;
- 89% in 2004 and 84% in 2006 agreed that television advertisements for food such as confectionery and fast food cause children to persuade their parents to purchase the advertised foods; and
- 94% in 2004 and 90% in 2006 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.<sup>4</sup>

These surveys show that consumer concern about the issue of unhealthy television food advertising to children is consistently high and pervasive. The community has

indicated strong support for restrictions to unhealthy food advertising during broadcast periods when high numbers of children are watching, and want the government to take decisive action on this issue. To fail to act according to these prevailing community standards is an affront to Australian parents.

### **3.0 Protecting Children from Harm**

The CFAC urges the SA Government to take decisive action to protect children from the potential harms associated with unhealthy food advertising.

The Australian Communications and Media Authority have indicated in the release of the draft Children's Television Standards, that they will not address this guiding principle in any meaningful or significant way, so it is vital that the SA Government act to protect children from the harms of advertising.

#### **3.1 *Evidence about the 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, and this is touched on in the SA Department of Health Consultation Paper. Human environments have become increasingly obesogenic in recent decades. 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.<sup>5</sup>

There have been at least five major systematic reviews of the scientific evidence relating to the impact of food marketing to children.<sup>6-10</sup> In 2006, a systematic review commissioned by the United Kingdom (UK) Food Standards Agency, and considered 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.<sup>9</sup>

This review also concluded that food advertising has effects on children's food preferences at both the brand and the food category level. For example, advertisements for a particular brand of chocolate not only persuade children to desire that particular brand over another, but also influence children to prefer chocolate over other foods, such as fruit. In fact, the authors found only weak evidence of brand switching and much stronger evidence of category switching upon exposure to food advertising.<sup>9</sup> This evidence refutes claims by industry that advertising only serves to influence consumers to buy one brand over another. Such industry claims are also reminiscent of the equally flawed arguments used by the tobacco industry, which argued that cigarette advertising had no effect on non-smokers and sought only to change brand preferences among existing smokers.

The review conducted by the Institute of Medicine in the United States,<sup>6</sup> concluded that:

- 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; and
- 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.

Importantly, the association between obesity and exposure to television advertising remained even after taking into account other recognised harms of television viewing, such as sedentary behaviour.

As well, the Office of Communications (Ofcom) in the UK commissioned an independent review of available evidence as part of its process of guiding policy development relating to this issue,<sup>10</sup> which was updated to take account of more recent research.<sup>11</sup> Major conclusions from this review were that:

- television, including television advertising is one of many major influences on children's food choices including other individual, social, environmental and cultural factors;
- experimental research has identified causal relations between food advertising and food choice, but it remains unclear how these operate under the complex conditions of daily life at home and school;
- experimental evidence suggests that television food advertising has a modest direct effect on children's (age 2-11 years) food preferences and on their food choices. While the absolute measured effects of advertising/television are small, and are likely to account for approximately 2% of the variation in food choice and obesity, even small effects in statistical terms can have an appreciable affect at the population level; and
- the growing body of evidence shows a consistent association between overall television exposure and weight gain and obesity. This applies to children of all ages **up to 16 years**.

As a result of this review, together with consideration of the strong community views on this issue, Ofcom introduced restrictions on unhealthy food marketing to children (<16 years) in 2007.

A summary of the key findings of the three most recent systematic reviews, as discussed above, is shown in Table 1, and leaves no doubt as to the strong and convincing evidence that food marketing to children influences children's food preferences, their purchase requests (the food that they request from their parents) and their food consumption.

**Table 1:** Key findings from the most recent systematic reviews of the literature on the effects of food marketing on children

<b>Finding – effect of food promotion on children</b>	<b>Hastings et al (2006)<sup>9</sup></b>	<b>Livingstone (2006)<sup>11</sup></b>	<b>Institute of Medicine (2005)<sup>6</sup></b>
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	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

More recent research relating to the effect of food advertising on children also supports findings from these systematic reviews, and develops upon evidence of a causal link between food advertising and obesity. New Australian research, which examined associations between children's television viewing habits and their food-related attitudes and behaviour, found increased advertisement exposure was associated with more positive attitudes towards unhealthy food, the perception that other children ate more unhealthy food, and higher self-reported frequency of consumption of junk food among children.<sup>12</sup> This indicates that constant exposure to unhealthy advertising normalises the consumption of these unhealthy foods.

Further, in a Dutch study conducted in 2008, Buijzen and colleagues found that exposure to food advertising in children aged 4 to 12 years was not only associated with their consumption of advertised brands but also with consumption of unhealthy food products.<sup>13</sup> Therefore, this research indicates that food advertising operates at both the brand and food category level; affecting children's brand choice as well as their consumption of other unhealthy foods.

Emerging experimental studies also provide convincing evidence of a causal relationship between food advertising and children's food behaviours and food preferences. Halford and colleagues exposed children aged 5 to 7 years to advertisements for both food and non-food products and found that children's consumption of sweet and savoury, and high and low-fat foods (except fruit) increased significantly after watching food advertisements.<sup>14</sup> As foods were presented to children with their packaging removed, this experiment further demonstrates how the effect of food advertising on children's food consumption extends beyond brand preferences to food category preferences.

It is important that the SA Government note that the current Australian Communications and Media Authority's position is inconsistent with the conclusions from international health authorities and findings from other major systematic reviews.

In view of the possible harms of advertising, consideration must also be given to other aspects of children's health and well being, beyond weight gain and obesity. Other potential harms that may result from the over-consumption of unhealthy food include dental caries, inadequate nutrition, and risk of high blood pressure and fatty liver disease.

Even modest behaviour change across a whole population can make a significant impact on population health level behaviours and health outcomes. Deferring action until a specific causal relationship between advertising and obesity levels has been established overlooks actions that could be taken using knowledge of how advertising supports and maintains behaviour.

### **3.2 Action in other jurisdictions**

The Australian communication regulations are lagging behind others in relation to the issue of television food advertising to children. The United Kingdom (UK) has moved beyond debate over the effect of food advertising to children and, taking account of available evidence, is taking action to protect children from harm.

Conversely, in Australia, advertising and broadcast industry groups, who do not wish to move this issue forward, have dominated this debate. The CFAC believes the SA Government should not be swayed by those who have a vested interest in blocking restrictions to television food advertising. The SA Government should consider the reasoning that food companies would not be so willing to pay high television advertising rates if television advertising were not an effective strategy in selling their products.

It should be noted that while the UK has at least taken some decisive action on this issue, OfCom regulations are not as effective as they initially appear. The UK restrictions apply to programs that attract a high proportion of child viewers, respective to the overall audience for that program (when proportion of the audience watching a particular program is more than 20% higher than the proportion of under-16s in the UK), rather than the absolute number of children watching at a particular time period. Because of this, many of the most popular children's programs are not covered by the new regulations. Research by the UK consumer organisation Which? shows that 16 of the top 20 children's programs, in a typical broadcast period spanning two weeks, were not covered by the restriction.<sup>15</sup>

To avoid such major shortcomings, the SA Government should consider the restriction of unhealthy food advertising during broadcast periods when high **numbers** of children are watching.

Additionally, Consumers International, a consumer organisation spanning 155 countries and including over 220 member organisations, has developed recommendations for an *International Code on Marketing of Foods and Non-Alcoholic Beverages to Children*.<sup>16</sup> Briefly, this code specifies a ban on radio or TV advertisements promoting unhealthy food between 6:00am and 9:00pm; a restriction on unhealthy food marketing using new media (including the Internet and SMS messaging); restrictions on the promotion of unhealthy food in schools; and the prohibition on the inclusion of free gifts, toys or collectible items which appeal to children and the use of celebrities, cartoon characters, competitions or free gifts to market unhealthy food.<sup>16</sup> This code has also been endorsed by the International Obesity Taskforce and the International Association for the Study of Obesity.

### **3.3 Evidence of benefits of food advertising restrictions**

Quebec, Norway and Sweden, and more recently the UK have all implemented bans on food advertising to children. Unfortunately no systematic evaluations of the impact of these bans have been conducted, and the nature of broadcasting in many of these jurisdictions has meant that children remain exposed to unrestricted television food advertising via satellite channels.<sup>17</sup> For example, in Sweden, advertising restrictions only apply to broadcasting that originates in Sweden, and not to other European Union member states.

Similarly, despite advertising bans children in Quebec remain exposed to cross-border advertising from the United States. However, research has shown that French-speaking children living in Montreal, Quebec, who do not watch television broadcast from the United States, have a lower consumption of sugary breakfast cereals, compared to English-speaking children.<sup>18</sup> That is, English-speaking children continued to be exposed to unhealthy food advertisements for sugary breakfast cereals, and thus their consumption of these food products remained high.

While there is little available evidence on the effect of food advertising bans on children, due to a lack of published data and likely attrition of advertising bans by unrestricted cross-border broadcasting, tobacco advertising bans provide a clear precedent for the potential effects of advertising restrictions on product consumption. As part of a multi-strategy approach to tobacco control, tobacco advertising

restrictions have assisted in lowering the smoking rate of Australians to one of the lowest in the world.

#### 4.0 Inadequacy of Industry Self-Regulation

The CFAC is concerned about the current system, which allows co-regulation with industry, and recommends the SA Government introduce statutory regulations. The International Association of Consumer Food Organisations (IACFO) concluded in a report to the World Health Organization that industry self-regulation is unlikely to be adequate to protect children against heavy marketing of high energy, low nutrient foods.<sup>19</sup> Industry self-regulation has been referred to as the “foxes guarding the hen-house”.<sup>20</sup> 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.<sup>21</sup> 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 the SA Government 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 envisage 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. 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.<sup>22-26</sup>

The CFAC considers the codes developed by the Australian Association of National Advertisers (AANA), namely the *Food and Beverages Advertising and Marketing Communication Code* and *Code for Advertising to Children* disappointing in their 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 industry codes only apply 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 that regulations covering food marketing to children should 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.

The CFAC also acknowledges that the Australian Food and Grocery Council (AFGC) are finally recognising the concerns of Australian parents and health experts by developing the *Responsible Children’s Marketing Initiative*. The AFGC themselves admit that “*children are impressionable, and potentially vulnerable to promotions which may inappropriately influence their (or their parents) purchase and use of products*”.<sup>27</sup> However, the CFAC believes that this additional self-regulatory code will not be sufficient in curbing unhealthy food marketing to children, and the need for government action remains unchanged despite this recent re-position by the food industry.

The main limitations of the proposed *Responsible Children’s Marketing Initiative* are that:

- The code will not apply during television broadcast periods when large numbers of children are watching. Advertising restrictions will be based on the proportion of the total program audience that are children, rather than the absolute numbers of children watching. Television audience measurement data indicate that many of the programs that are most popular with children also have high appeal to older adolescents and adults. For example, industry data indicate that children’s most popular programs in 2005 included the AFL grand final, Big Brother, Australian Idol and The Simpsons.<sup>28</sup> These programs would not be covered by the proposed code.
- Not all food companies will be signatories to the code.
- There are no significant deterrents to ensure food companies will comply with the industry’s code.
- It is unclear what nutrient criteria will be used to define healthy and unhealthy foods.
- Restrictions will not apply to all forms of food marketing directed at children. For example, the proposed code will continue to allow the use of proprietary characters/spokes-characters. Spokes-characters, have been shown to be associated with children’s recognition of, and positive attitudes towards, food products, creating long-term brand recognition and loyalty from an early age.<sup>29</sup>
- The proposed code adds very little to those codes already in place by the AANA, and does not substantively address the concerns of parents.

Furthermore, the issue of food advertising to children does not meet the criteria specified in the Commonwealth Interdepartmental Committee on Quasi-regulation’s checklist<sup>30</sup> 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

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 that can impact on obesity. As well the complicated complaints procedures is not consistent with quick complaints handling.

## 5.0 Defining unhealthy food and beverages

### 5.1 *Nutrient Profiling Model*

The CFAC recognises that a practical, actionable definition of what defines an unhealthy or healthy food product is vital to enact standards to restrict unhealthy food advertising and supports the use of the Food Standards Australia New Zealand (FSANZ) Nutrient Profiling model as the tool for defining healthy and unhealthy foods.

While this tool has been developed by FSANZ for the classification of foods permitted to use health claims on food, it was originally developed by the Ofcom in the United Kingdom to classify foods as healthy and unhealthy for the purpose of television advertising restrictions. In fact, modifications made to this tool by FSANZ have substantially improved the tool's specificity in identifying healthy and unhealthy foods.<sup>31</sup>

New research from New Zealand, which applied the UK nutrient profiling tool to television food advertisements showed that the tool could easily be applied to real world television food advertisements and could clearly identify unhealthy products that are high in fat, sugar and salt.<sup>32</sup> This study assessed four weeks of television data broadcast between 3:30pm and 6:30pm daily on one popular children's free-to-air commercial television channel. The authors found that 66% of all food advertisements were classified as for unhealthy products, according to the UK nutrient profiling tool.<sup>32</sup> These results are consistent with previous research from New Zealand and Australia, which have identified a similar proportion of unhealthy food advertising using different food classification systems.<sup>22,26,33,34</sup>

## 6.0 Application of television food advertising bans

It is imperative that the SA Government apply advertising restrictions to the broadcast periods when high numbers of children are actually watching television. The application of such bans exclusively during P and C programs will have only limited impact, as fewer children are watching television at these times. As indicated in the Australian Communications and Media Authority Issues Paper, Australian Television Audience Measurement (OzTAM) Data shows that “*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*”. Further, “*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*”.<sup>35</sup>

The CFAC urges SA Government to develop advertising restrictions to broadcast periods when high numbers of children are actually watching television. That is, between **7am to 9am and 4pm to 9pm weekdays and 7am to 9pm on weekends**.

The South Australian parliament has the constitutional power to impose restrictions on food advertising on television and elsewhere within the State. Although the Commonwealth Parliament has power under section (s) 51(v) of the Constitution to legislate with respect to broadcasting, this power is concurrent with the States, not exclusive to the Commonwealth (cF s 52). Nor is broadcasting within those powers in s 51 where it would be inappropriate or pointless for the States to legislate (for example defence, external affairs).

The only possible constitutional impediment to State legislation on television advertising would be s 109 of the Constitution which invalidates State legislation that is inconsistent with Commonwealth legislation. State legislation imposing more onerous burdens on food advertisers would not be inconsistent in the direct sense with the *Broadcasting Services Act* and/or the *Children’s Television Standards*, in that it would be possible to comply with both at the same time.

It is further arguable that such State legislation would not breach the principle that State law cannot take away a right or privilege bestowed by Commonwealth law. The broadcasting licences that the Commonwealth grants do provide a right to broadcast, but it has never been suggested that this right is not subject to the general law. Therefore it is consistent with any right bestowed under the licences for a State to legislate restrictions on the advertisements that can be broadcast.

Finally, there is nothing to suggest that the Commonwealth has intended to ‘cover the field’ of food advertising to children on television. Indeed, if the currently proposed changes to the CTS go through, the Commonwealth will have evinced a conscious decision to cover only the field of advertising during C and P periods/programmes, as this is the extent of the coverage of the CTS. Therefore, at the very least, it is open to South Australia to legislate on advertising that is broadcast outside those periods; which is precisely when the restrictions are most needed.

As with all constitutional issues, it is difficult to say precisely what the outcome would be, in the event that the new State regulations were challenged. Nowhere is this more the case than when it comes to the application of the 'cover the field' test, on which there is little recent authority. However, there are strong reasons to think that in principle a State should be able to add further restrictions on certain kinds of advertising without falling foul of s 109. CFAC would encourage the State to proceed with the legislation as there is nothing to lose, and much to gain.

## 7.0 Recommendations from CFAC

The CFAC makes the following recommendations to the SA Government:

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

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

- *Introduce statutory regulations that restrict the advertisement of unhealthy foods to children.*

The CFAC supports the use of the FSANZ Nutrient Profiling Model to establish criteria for the advertising of healthy foods and urges the SA Government to address the high levels of unhealthy food advertising on television.

- *Introduce statutory regulations that accurately reflect the times when children are actually watching television.*

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

- *Develop clear and unambiguous statutory regulations that address persuasive marketing techniques*

The CFAC is concerned that food advertisers use a diverse array of marketing techniques to entice children to consume unhealthy foods. Clear and unambiguous statutory regulations 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.

- *Ban the use of premiums in advertisements for unhealthy food.*

The CFAC recommends a ban on the use of premiums (such as the use of competitions and give aways) in advertisements for unhealthy food, as they are highly persuasive to children, during broadcast periods when high numbers of children are watching; that is between 7am to 9am and 4pm to 9pm weekdays and 7am to 9pm on weekends.

- *Reflect and respect community and public health concerns on this issue.*

The CFAC collected 20,521 sign ups to our Pull the Plug campaign, whereby members of community pledged their support for better regulations to protect children from unhealthy food advertising. As well, the depth and breadth of concern about this issue from prominent health and medical groups must be heeded.

## **8.0 Conclusion - Action by the South Australian Government**

We urge the South Australian government to take action against unhealthy food advertising that is pervasive and overwhelming in quantity, and that is unfairly manipulative, by introducing statutory regulations that specifically relate to food advertising. We applaud the South Australian Government's leadership on this issue and look forward to meaningful change.

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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