



# **Australian Communications and Media Authority Children's Television Standards Review 2007**

Submission from the NSW Centre for Overweight and Obesity  
and the Australian Centre for Health Promotion  
University of Sydney

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**The University of Sydney**

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## 1. Research team

The NSW Centre for Overweight and Obesity (COO) was established at the University of Sydney in 2002 as a result of the priorities identified at the 2002 NSW Obesity Summit, and is funded by the NSW Health Department. COO's multidisciplinary research team has taken a leadership role in conducting research on overweight and obesity to inform Australian policy and programs, with an emphasis on children and adolescents. COO has worked in collaboration with the Australian Centre for Health Promotion (ACHP) to specifically conduct research on food marketing to children.

We are pleased to submit information from our research in this field to advise the Australian Communications Media Authority's (ACMA) review of the Children's Television Standards (CTS).

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## 2. Overview

### 2.1 Childhood obesity in Australia

Australia has one of the highest rates of childhood obesity in the world, with an estimated 25% of school-aged children now overweight or obese (1). Overweight and obesity in childhood have been shown to be strong predictors of obesity in adulthood (2), and overweight is a leading cause of premature death and illness in Australia, contributing 7.5% of overall disease burden (3). A recent large follow-up assessment of participants in the 1985 Australian Schools Health and Fitness Survey showed that the relative risk of an obese child becoming an obese adult, compared with those who had been a healthy weight as a child, was 4.7 for boys and 9.2 for girls (2). Almost 80% (79.7%) of participants who were overweight or obese as children became overweight or obese adults (2).

Weight gain and obesity are a result of a sustained positive energy imbalance due to increased energy intake, decreased physical activity, or a combination of both. A significant driving force behind the rising tide of child obesity in Australia has been shown to be excess energy intake due to poor diet (4).

### 2.2 Television food advertising and childhood obesity

There are multiple factors contributing to the current obesity-promoting (obesogenic) environment, and therefore a multi-faceted approach to tackling the issue is required. However, television advertising's specific role in the issue is well researched and understood. It remains the dominant force in food marketing, and it has high reach.

An overwhelming proportion of television food advertising in this country is for foods high in fat, salt and sugar (5-9), and television food advertising is known to independently influence children's food preferences and purchasing requests (10-12). Further, considerable evidence exists for a causal pathway between television food advertising and children's diet-related health outcomes (10-14) (see Figure 1).

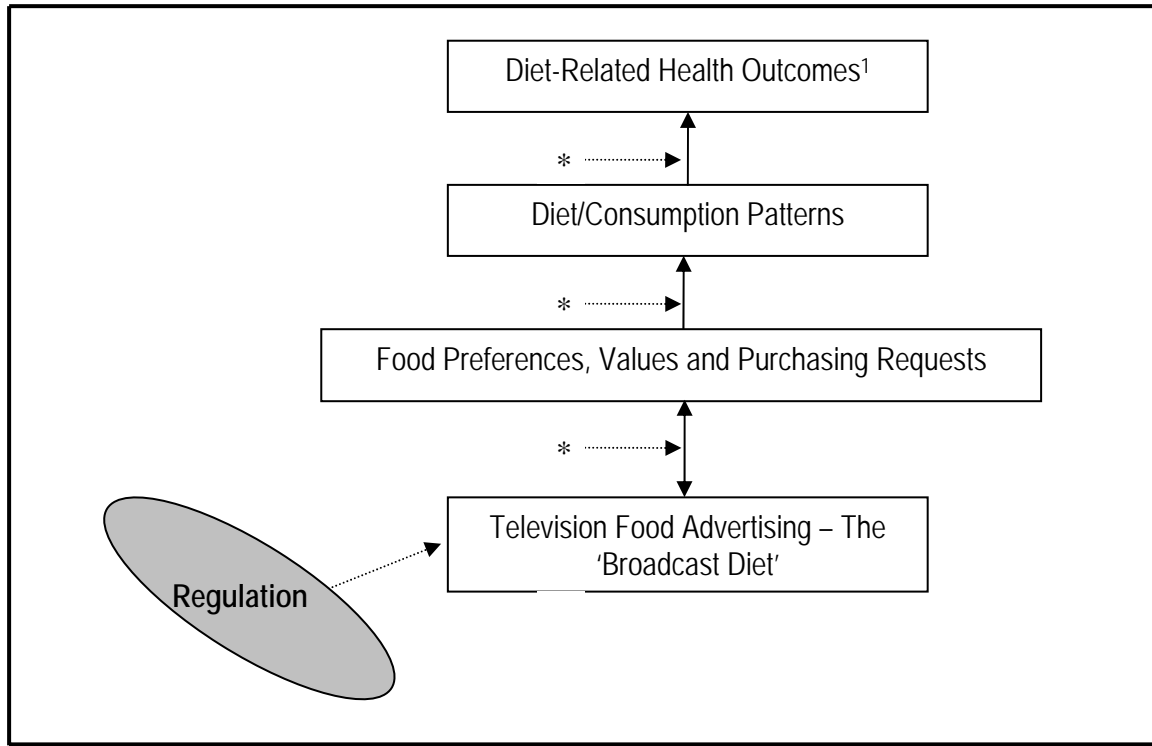
Stronger regulation of television food advertising as a means of tackling child obesity has been shown to be a highly cost-effective intervention with broad public and institutional support (15-20). In light of mounting scientific evidence and growing public concern, it is critical that ACMA uphold its responsibility to adequately protect children from the harmful effects of television food advertising.

### 2.3 Our position

We strongly urge ACMA to develop CTS which prohibit the advertisement of high fat/high sugar (HFHS) foods during times when children are watching TV in large numbers. These restricted time periods should reflect children's actual viewing patterns, and all advertising broadcast both during and immediately before and after these times, regardless of programming, should be subject to the CTS. Further, we recommend that the CTS be revised to encompass stronger provisions relating to food advertising, improved clarity, and greater efficiency and effectiveness in monitoring and enforcement.

**Figure 1.**

**Relationship between television food advertising and children's diet-related health outcomes**



<sup>1</sup>Health outcomes (short, intermediate and long-term) of poor diet in children include: Overweight/obesity; psychological dysfunction associated with body dissatisfaction, low self esteem, and social isolation/bullying; gastrointestinal, cardiovascular, orthopaedic, endocrine and reproductive abnormalities; asthma; Type-II diabetes; insulin resistance; dyslipidemia; hypertension; hypercholesterolemia; poor dentition/dental caries; sleep apnoea; long-term elevated cardiovascular disease risk factors into adulthood.

\*Moderators include genetics/biology, socio-economic status, race/ethnicity, cultural and social norms/values, family/home environment including parental knowledge and influence, school/peer/community environment.

### 3. The 'Broadcast Diet'

A substantial body of research indicates that the current 'broadcast diet' (consisting of the foods that are advertised on television) promotes unhealthy food preferences and consumption, and contributes to childhood obesity. The research evidence is outlined below.

#### 3.1 Television food advertising in Australia

- Australian children's overall exposure to television food advertising is among the highest in the world (5, 6, 21, 22).
  
- A 2006 study conducted by the Australian Centre for Health Promotion (ACHP), which assessed advertising on three commercial television stations in Sydney (channels 7, 9 and 10), found that, based on a very conservative estimate<sup>1</sup> of one hour of television per day, children were exposed to 96 food advertisements per week of which 63 were for HFHS foods (8). A similar pattern was observed in an identical study conducted by the ACHP twelve months later, in May 2007 (9).
  
- A 2005 survey by The Cancer Council NSW of national Australian commercial broadcasting found that:
  - 31% of all advertising was for food, and of this 81% was for unhealthy/non-core foods (equating to 25% of all advertising) (7).
  - The most frequently advertised foods were fast foods (30% of all food advertisements), and chocolate and confectionery (13%)
  - An average of 4.13 advertisements broadcast per hour were for HFHS foods
  
- A 2002 study conducted by Neville *et al* (5) across five Australian metropolitan centres reported a similar finding: An average of 4.4 advertisements broadcast per hour were for HFHS foods.
  
- In a 2001 analysis of commercial television broadcasting in Adelaide, 79% of food advertisements were found to be for non-core foods, with almost 50% of food advertisements for fast food, chocolate or confectionary products (23).

Australians are exposed to high levels of television food advertising, with a high proportion of advertising for unhealthy foods.

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<sup>1</sup> In fact, actual audience data obtained by ACMA from OzTAM for its 2007 report "*Children's viewing patterns on commercial, free-to-air and subscription television*" shows that children aged 0-14 yrs are watching an average of 121minutes (just over 2 hours) of commercial television per day, and are therefore likely to be exposed to even higher volumes of food advertising than estimated in this study.

### 3.2 Food advertising during children's viewing times

- The 2006 ACHP study described above showed that advertisements for HFHS foods are broadcast more frequently during children's scheduled viewing hours (as defined by the current CTS), than at any other time (8):
  - 49% all food advertisements broadcast during children's viewing periods were for HFHS foods, compared to 39% during other viewing times outside of these defined children's hours.
  - This proportion increased further to 66% during the most popular children's programs (5-12 years), as based on Australian Television Audience Measurement (OzTAM) data on program audience numbers during the study period.
  - 9.1 high HFHS advertisements were broadcast per hour during the most popular children's programs, compared to 3.1 HFHS advertisements per hour during programs most popular with adults (OzTAM data).
  
- The 2007 ACHP study showed that HFHS advertising continues to be broadcast at higher rates during children's viewing times, and peaks during programs most popular with children aged 5-12 years (9):
  - 48% of 49% all food advertisements broadcast during children's viewing periods were for HFHS foods, compared to 31% during adult viewing times.
  - This proportion increased further to 73% during the most popular children's programs (5-12 years), as based on Australian Television Audience Measurement (OzTAM) data on program audience numbers during the study period.
  - 10.6 HFHS advertisements were broadcast per hour during the most popular children's programs, compared with 2.1 HFHS advertisements per hour during programs most popular with adults (OzTAM data).
  
- Therefore, based on these two studies, the proportion of food advertisements broadcast during the most popular children's programs that were for HFHS products increased from 66% to 73% between 2006 and 2007. This increase is in spite of the introduction of a new industry self-regulatory code specifically focussed on food advertising during this time period – the Australian Association of National Advertisers' 'Food and Beverages Advertising and Marketing Communications Code'
  
- According to the overall body of evidence, unhealthy foods are the subject of between 48 -81% of food advertisements broadcast during children's viewing hours in Australia (9, 22).

A high proportion of food advertisements broadcast during children's viewing times are for unhealthy foods, and this peaks during programs most popular with children 5-12 years.

### 3.3 The 'Broadcast Diet' and the Australian Guidelines for Healthy Eating

- The Australian Guide to Healthy Eating (AGHE) (24) recommends that children consume no more than two serves of 'non-core' foods (high in sugar and/or fat) each day. This is equivalent to approximately 14% of daily energy intake for children aged 5-12 years (25).
- In reality, 41% of children's daily energy intake is coming from non-core foods (3 times the recommended level) (25, 26).
- Television advertising of 'core' foods such as fruits and vegetables has been described as merely 'a drop in the ocean' in comparison to the pervasiveness of commercial advertising for junk foods (27).
- The 2005 Cancer Council NSW study found that only 4.6% of total food advertisements broadcast during children's viewing periods were for fruit and vegetables, despite the study period coinciding with the Federal Government's 'Go for 2&5' nutrition promotion campaign (7).
- The 1995 National Nutrition Survey showed that only 50% of children meet the recommended intake for fruit and only 33% of children and adolescents meet the recommended intake for vegetables.(28)

There is a direct discrepancy between the recommended dietary guidelines for children and the 'diet' being advertised to children on television. Australian children's diets are mirroring the 'broadcast diet' rather than meeting dietary guidelines.

## 4. Issues with the current Children's Television Standards

A key objective of the CTS is to limit the amount and content of advertising directed at children. This is in recognition that "children, due to their developmental levels, require special consideration in areas such as advertising and the presentation of material that may be harmful to them" (29). In investigating the effectiveness of the current CTS at achieving the above objective, we have identified the following significant issues:

### 4.1 The 'C' bands outlined in the CTS do not correspond with children's actual viewing times

The current CTS (30) regulate advertising broadcast immediately before, during and after C programming, and prohibit advertising during P programming, within designated C time bands (7-8am and 4-8:30pm weekdays; 7am-8:30pm weekends and holidays) and P time bands (7am-4:30pm). Therefore, advertisements broadcast during a C time band but not immediately before, during or after a C program are not subject to the CTS.

This regulatory approach does not adequately reflect children's actual viewing patterns:

- OzTAM ratings data obtained by ACMA and reported in the present review's Issues Paper indicates that child audience numbers are low at the times C and P programming is usually broadcast (C=16:00-16:30; P=9-9:30 and 15:30-16:00) (31).
- OzTAM ratings data for the period January-June 2006 indicates that the most popular weekday viewing period for children aged 5-12 years is 18:00-22:00; and for children aged 0-4 years is 17:00-21:00, peaking at 19:00-20:00 (average child audience numbers of 500,000) (32).
- Many of the programs most popular with children older than 12 years are broadcast outside of C time bands, and therefore not subject to the CTS. In 2006, such programs included NCIS, Desperate Housewives, Lost and Prison Break (33).

Children are being exposed to high volumes of broadcasting and advertising not regulated by the CTS.

## 4.2 Dominance of advertising for unhealthy foods

The current CTS contain basic provisions relating to maximum advertising time during a C program (CTS 14: maximum advertising time of 5 minutes/half hour during non-Australian C drama, and 13 minutes/hour during an Australian C drama), and repetition of advertisements (CTS 16: an advertisement may not be broadcast more than twice within a 30 minute C period). These provisions do not adequately control the repetition of advertisements over continuous periods of broadcasting during peak children's viewing time, or the sheer volume of unhealthy food advertising. The lack of adequate regulation in this area has helped to shape the current broadcast environment in which there is a disproportionate frequency and repetition of advertisements for HFHS food products.

The CTS do not control the volume, frequency and repetition of unhealthy food advertising

## 4.3 Frequent breaches and circumventions

- In the 2006 ACHP survey, 14 breaches of CTS 16 (*"During any 30 minutes of a C period a licensee may broadcast the same advertisement no more than twice"*) were identified during children's viewing periods in 357 hours of broadcasting (34). Of these infringing advertisements, 80% were for HFHS foods. Further, CTS 16 was found to have been circumvented 26 times during the study period. Advertisers exploited loopholes in this clause, whereby they repeated a food advertisement more than twice in a short time period, without being in direct breach of the code (but certainly in defiance of its purpose). For example, while a chocolate breakfast cereal advertisement was not broadcast more than twice during any 30-minute time period, it was shown 12 times over a period of 3 hours (34).
- In the 2005 Cancer Council NSW study, Chapman and colleagues (7) identified 194 breaches of the CTS during 645 hours of commercial television broadcasting across four different locations in Australia. Most of these were breaches of CTS 20(2) (a) (*"Any reference to (a) premium must be incidental to the main product or service advertised"*)
- In their 2001 survey of food advertisements on Adelaide's commercial television stations, Morton *et al.* found that 31% of food advertisements which were found to be in breach of CTS 20.2(a) during the study period were broadcast during 'C' programming and 12% during 'G' programming (35). In 63 hours of broadcasting, these infringing advertisements were shown a total of 84 times, and in three-quarters of these advertisements, the majority (95% or more) of the advertisement duration was devoted to describing the premium offer. This is hardly 'incidental to the main product or service advertised' (30).

Research has identified frequent breaches and circumventions of the CTS. As a result, children watching television broadcasting that is regulated by the CTS are still being exposed to high volumes of unhealthy food advertising. This is a serious concern because it is at these times that parents should be able to rely on the broadcasting industry to comply with regulations.

## 5. Children's food preferences are being shaped by television food advertising

The Brand *et al.* literature review (36) commissioned by ACMA to inform the CTS review, wrongly concluded that there is a correlational, but not causal relationship, between exposure to food advertising and children's food preferences and requests, and knowledge, attitudes and behaviours relating to diet and lifestyle.

In fact, the best available evidence indicates that television food advertising independently influences children's food preferences and behaviours. This relationship operates via a causal chain, not merely a single step. The two most recent and rigorous international systematic evidence reviews on this issue both concluded unequivocally that advertising independently influences children's preference and purchasing requests for unhealthy foods (11, 12). In a systematic review commissioned by the UK Food Standards Agency, Hastings *et al.* (11) concluded that food promotion has a significant and independent effect on children's food preferences, purchasing behaviour and consumption, and that this effect operates at both the brand and category level. McGinnis *et al.* (12), in their large, systematic evidence review commissioned by the US Institutes of Medicine, found strong evidence that television advertising influences the food and beverage preferences and purchase requests of children aged 2-11 years (12). They also found moderate evidence that television advertising influences the food and beverage beliefs of children aged 2-11 years. In another evidence review, primarily focussed on the Asia-Pacific region, Escalante de Cruz *et al.* (10), concluded that the majority of children find television advertisements informative and respond to them favourably, and that advertising influences children's food preferences and purchasing requests.

## 6. Effect of food advertising on children's diet-related health outcomes

The Brand *et al.* review concluded that there is a small-to-modest relationship between television viewing (as distinct from television advertising specifically) and child obesity (36). However, once again the balance of evidence demonstrates that food advertising is influencing children's diet-related health outcomes, this influence is not due to chance and is independent of other factors (11). All three of the most recent major evidence reviews of this issue found consistent positive correlations between food advertising and child adiposity (10-12). A further rigorous analysis of the issue by Lobstein and Dobb (13) concluded that there is sufficient evidence of a possible link between 'obesogenic food advertising' and children's weight status.

These findings are supported by the World Health Organization, which, in its 2003 'Diet, Nutrition and the Prevention of Chronic Diseases Report', concluded that there is a 'probable' causal link between persistent unhealthy food and beverage marketing and weight gain and obesity (14). The report recommended 'limiting the exposure of young children to heavy marketing practices of energy-dense, micro-nutrient poor foods' (14). In addition, an outcome of the 2006 World Health Organization forum on marketing of food and alcoholic beverages to children was a call for 'swift and aggressive action....to address food marketing if there is to be any hope of curtailing poor nutrition and obesity in children.'(19)

Further, the Australian National Obesity Taskforce, in its 'Healthy Weight 2008' national action agenda, called for "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" (37).

All forms of food marketing are having a cumulative influence on children's food consumption and form part of the current obesogenic environment. However, television's specific role in the issue is

well researched and understood: it has high reach, and it remains the dominant force in food marketing (11). Conclusive evidence for a causal relationship between television food advertising and obesity is unattainable due to the complexities inherent in studying human behaviours (11), however the best evidence available points to a causal pathway, as outlined in Figure 1. Whilst the power of this pathway may be moderate in statistical terms, it equates to an enormous impact in terms of the numbers of children affected on a population basis (12).

## 7. Exploitation of children's vulnerability

It is widely recognized that children up to at least eight years of age lack the cognitive skills to identify an advertiser's intent and purpose, and to discriminate and make informed decisions in their own best interests (10, 12, 22, 36). As such, Article 14 of the International Code of Advertising Practice states that advertisements should not "exploit the inexperience or credulity of children and young people" (6).

The Brand *et al.* review concluded that cognitive development is the most dominant mediator of advertising's influence on children (36). The authors determined that children under six years of age lack the developmental capacity to distinguish advertising from program content (viewing advertisements as part of ongoing program entertainment), and are unable to understand the selling intent of advertisements (36). Children six to eleven years of age gradually develop the ability to understand the purpose of advertising, but may only be able to think critically about advertisements when prompted to do so, and over the age of eleven years children may not always detect persuasive intent in advertising (36). The authors noted that advertisers employ various mechanisms to target and attract children's attention at different ages, and as a result, more developed cognitive defences do not necessarily mitigate the influence of advertising, even in older, more media-savvy children (36).

One such mechanism by which marketers may attract children's attention is advertising repetition. While Brand *et al.* noted that the positive effect of advertisement repetition on children's attitudes and preferences may diminish as children get older and become more sceptical, they noted that brand familiarisation at an early age may enhance the effectiveness of repetition at later stages of development (36).

As a result, it should be recognised that the current volume, repetition and sophistication of HFSS food advertising on television is exploiting children's developing cognitive skills at all ages, and is influencing children's purchasing requests to such an extent that the ability of parents and caregivers to resist their children requests (often referred to as 'pester-power') (19) and protect them from developing unhealthy dietary preferences and behaviours is being undermined (10, 11).

The United Nations Convention on the Rights of the Child, ratified by Australia in 1990, stipulates that governments have an obligation to implement "appropriate guidelines for the protection of the child from information and material injurious to his or her wellbeing" (38). Therefore, ACMA has a responsibility to protect children from pervasive and exploitative advertising that undermines parental control.

## 8. Public support for stronger regulation

In March 2007, the Coalition on Food Advertising to Children (CFAC) conducted a public opinion survey on a random, nationwide representative sample of 400 parents with one or more children aged 0-13 years (15). Almost three quarters (73%) of the parents surveyed disagreed or strongly disagreed that the current regulations are effective, and the vast majority (89%) agreed or strongly agreed that the government should introduce stronger restrictions on food advertising at times when children are watching television. A ban on unhealthy food advertising at times when children are watching television was supported or strongly supported by the vast majority (86%) of parents surveyed, and almost all (92%) supported or strongly supported a change in the system so that action against breaches would be taken at the time they occur, regardless of whether or not a formal complaint is made (15).

In an earlier public opinion poll, conducted in 2006 by CHOICE (formerly the Australian Consumers Association) (20), 86% of the 1200 Australian adults surveyed indicated that they were in favour of stronger government regulation of television food advertising

Based on these findings, failure by the ACMA to take the lead in acting on this issue now would be in disregard of the majority of public opinion.

## 9. International regulatory experiences

Following extensive public consultation, the UK's Office of Communications (OfCom) recently announced new restrictions on television food advertising to children, applying to all UK broadcasting channels (39). In a graduated phase-in period, advertisements for high fat, salt and sugar (HFSS) foods will be banned from being broadcast during or around programmes that are directed at or likely to be of appeal to children 4-15 years of age. This action came in response to widespread public appeal for stricter regulations regarding television food advertising, as well as an evidence review conducted by Ofcom in 2004 which concluded that sufficient evidence exists for 'proportionate and targeted action in terms of rules for broadcast advertising to address the issue of childhood health and obesity' (39).

Television food advertising to children has now been banned for some time in Sweden (since 1990), Norway (1992) and the province of Quebec in Canada (1980). In Quebec, all forms of commercial advertising directed at children under 13 years of age are prohibited under the 1980 Consumer Protection Act. Minimal evaluation of the impact of this legislation on children's food preferences and diet has been conducted; however a survey of families in Montreal found that French-speaking children had fewer sugary cereals in their homes than English-speaking children a decade after the Act was implemented (40). English-speaking children in the province continue to be exposed to high volumes of externally broadcast English-language television advertisements (and therefore higher volumes of junk-food advertising than French-speaking children); therefore it is plausible that children's beliefs and preferences relating to food are being shaped differently between the two language groups, with the ban positively influencing French-speaking Quebecois children's purchasing requests and consumption patterns. Nonetheless, no strong evidence is available, either positive or negative, on the impact of the Quebec regulations.

Likewise, no systematic evaluations of the impact of the Sweden and Norway bans, which both prohibit food advertising to children under 12 years of age, have been conducted (41).

Regardless, the experiences of Sweden, Norway and Quebec are not themselves constructive examples of whether a properly enforced ban can be effective. In Sweden, children continue to be exposed to high volumes of food advertising broadcast from other European countries (under the European Television Without Frontiers Directive); and, as already noted, a similar situation exists in Quebec households, where television broadcasts from other Canadian provinces and

the US are frequent (42). In addition, the regulations in these three jurisdictions are not adequately defined, allowing considerable leeway and room for interpretation. The result has been the continued broadcasting of advertisements in these jurisdictions that appeal to, and impact on children (42).

The experiences of Sweden, Norway and Quebec are poor regulatory examples. The result in these jurisdictions has been continued broadcasting of advertisements reaching and appealing to children. Given its relative geographic and telecommunication isolation from the rest of the world, Australia is in a much stronger position to benefit from strengthened regulations on television advertising, provided they are strictly defined, monitored and enforced.

## 10. Efficacy and cost-effectiveness of stronger regulations

In the 2006 *'Assessing cost-effectiveness of obesity interventions in children and adolescents'* (ACE) report, prepared by the Victorian Government Department of Human Services, thirteen potential obesity interventions were analysed for their efficacy and cost-effectiveness. The analyses found that reducing television advertising of high fat and/or high sugar foods and beverages directed at children would be the most cost-effective potential intervention in terms of its effects on child obesity rates (16). In fact, the intervention was predicted to have a 100% chance of cost-saving (with a predicted net cost-saving of approximately \$300million). The proposed intervention involved expanding current regulations to ban HFSS food advertising during viewing hours when a high proportion of children are in the viewing audience, as well as introducing clearer definitions, and strengthening monitoring and enforcement of the regulations. Of all 13 potential interventions analysed, this intervention was found to have the lowest intervention cost, the greatest potential reduction in disability-adjusted life years (DALYs), and was therefore considered to be extremely cost-effective (\$3.70 gross cost per DALY saved) (16). The ACE report also determined that the intervention would be sustainable provided ongoing political support was garnered, and that there were no known negative side effects.

In an ACHP study modelling children's potential exposure to television food advertisements under different regulatory scenarios, data from the 2006 ACHP study (8) was extrapolated under four hypothetical regulatory scenarios restricting the content, timing and volume of advertisements (43). While each of the scenarios resulted in a reduction in total and non-core food advertisements, the scenario in which non-core food advertisements were restricted (according to the AGHE) during the peak viewing period (07:00-20:30) led to the greatest reduction in non-core food advertisements (79%), with no change to the frequency of core food advertisements. While this modelling study did not attempt to predict to outcomes of regulatory change, it demonstrated the potential for reducing children's exposure to unhealthy food advertising and maximising public health gain, through simple regulatory restrictions.

In the UK, the Office of Communications (Ofcom) conducted a health impact and economics assessment prior to implementing its new regulatory package on television food advertising (17). This assessment determined that under the new regulations, children aged 4-9 years in the UK will be exposed to 51% fewer HFSS advertisements, and children aged 4-15 will be exposed to 41% fewer HFSS advertisements under the new regulations. An annual revenue loss of for broadcasters of 22.6million Pounds (central estimate) is estimated, amounting to approximately 0.4% of overall revenue. Ofcom subsequently concluded that the benefits of the regulatory package will exceed the costs.

## 11. Lessons from tobacco control

Past experience in tobacco control indicates that two main catalysts are required for effective government regulation of public health issues: a robust scientific evidence base and strong public support for regulation (44). A strong evidence base now exists pointing to television food advertising's role in children's diet-related health outcomes, and public concern for the issue is at an all time high. Therefore, a critical point in time has been reached for decisive action to be taken. In the early days of tobacco control, the tobacco industry and rights-based groups argued that regulatory laws were paternalistic, and breached individual civil liberties and freedom of choice (44). However intense public backing for tobacco control supported the implementation of strong regulatory measures, including a ban on television advertising for tobacco. These measures worked cumulatively to result in a reduction in population smoking rates.

While nobody expects that stronger regulation of television food advertising will singularly address the child obesity problem, it will make a critical contribution within a multi-faceted intervention approach, which, as seen in the tobacco control field, can be extremely effective. Television food advertising is one of many influences on child obesity, and its role must be addressed in order for any achievements to be made.

## 12. CTS Review: Discussions and Recommendations

This section comprises our direct responses to key questions identified in the issues paper for this review. The focus is on responding to those questions where our research provides direction; additional issues inherent in the existing CTS that have been identified by our research are also discussed.

### 12.1 Timing

*Q9. Are the current C and P time bands prescribed in CTS 3 appropriate for Australian children today? If not, what amendments should be made to them?*

Our research has focused on food advertising rather than programming material, however, under the current CTS, advertising restrictions are linked directly to the timing of children's programming. Therefore, our recommendation is based on audience data indicating that large numbers of children are viewing non-children's programming, and, as a result, are being exposed to high volumes of advertising within, as well as outside of current C bands.

Current timing of C and P programming does not adequately reflect children's actual viewing patterns, as indicated by OzTAM television audience data obtained by ACMA for this review. Child audience numbers (0-14 years) are relatively low during C and P programming (usually broadcast between 16:00-16:30 on weekdays, and on weekend mornings), and are highest between 19:00-21:00 (32). Therefore, the current C and P time bands, which end at 20:30 and 16:30 respectively, do not sufficiently cover peak children's viewing times. Further, advertisements broadcast within a C time band, but not immediately before, during, or immediately after a C program are not currently regulated by the CTS.

Recommendation:

We recommend that all CTS provisions relating to advertising be amended to apply throughout peak children's viewing times rather than scheduled children's programming. These peak children's viewing times should be determined using current and independently-gathered data on children's **actual** viewing habits. Advertising throughout these time periods, regardless of programming material, should be subject to the revised CTS.

Based on OzTAM audience viewing data obtained by ACMA for this review (32), we recommend that advertising restrictions under the CTS be in place during the following time periods:

**7-9am and 4-9pm weekdays; 7am-9pm weekends**

## 12.2 Food and Beverage Advertising to Children

*Q15. Should the CTS be amended to specifically address the issue of food advertising independently of advertising more generally? If so, what form should these amendments take?*

While children's exposure to all forms of advertising should be of concern, the child obesity problem has now become such a major public health concern in Australia that specifically restricting food advertising to children is warranted. The current obesogenic environment is multi-faceted and therefore requires a multi-faceted response; however, with available evidence indicating a causal pathway between television food advertising and children's diet-related health outcomes, targeted statutory regulation through the CTS is required. Without ACMA taking the lead, it is unlikely that this issue will be adequately addressed.

Containing only one clause specific to food advertising (CTS 19 (6)) the current CTS are inadequate to control the volume, frequency and repetition of unhealthy food advertisements being viewed by children, and the imbalance of advertising for unhealthy over healthy (core) foods.

Recommendation:

We recommend that the CTS be amended to specifically encompass a ban on advertising of HFHS foods during peak children's viewing times (see section 10.1 above). Based on currently available audience data, we recommend that the ban be enforced during the following time periods: 7-9am and 4-9pm weekdays; and 7am-9pm weekends.

With a new nutrient profiling scheme currently under consideration by the Food Standards Australia New Zealand Agency (FSANZ), there is the potential for food advertisements to be classified based on a nutrient profiling model (similar to that adopted by OfCom in the UK). Pre-testing of the FSANZ model once it became available would be required to determine suitability. Health and nutrition related claims made in food advertisements could also be regulated by the new FSANZ health claims model. A long-term option could be to regulate television food advertising based on traffic-light food labels that are also applied to commercially packaged food products.

*Q16. 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 are considered? Why or why not?*

It is widely recognised that industry self-regulation, regardless of monitoring and reporting requirements, is inadequate to control food advertising. The outcome report from the 2006 World Health Organization forum on Marketing of Food and Non-Alcoholic Beverages to Children stated that “Industry activities such as...marketing self-regulation do not adequately address the problem and can be a diversion, possibly doing more harm than good by forestalling legislation and litigation” (19). The International Obesity Taskforce’s Sydney Principles, an outcome of the International Congress on Obesity held in Sydney in September 2006, assert that an underlying principle of any action to protect children from harmful impacts of commercial marketing should be statutory regulation. The international expert working group emphasize that industry self-regulation is ‘not designed to achieve this goal’ (45).

As such, the 2006 launch of the Food and Beverages Advertising and Marketing Communications Code appears to have been a pre-emptive move to strengthen industry self-regulation as a means of avoiding stronger regulatory action. As such, the AANA states that the Code was developed - “[I]n preference to advertising bans and other restrictions on commercial communications which the international agency has identified as acting to distort free trade” (46).

Section 2.2 of the new AANA code states that “Advertising and/or Marketing Communications for Food and/or Beverage Products shall not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets, or encourage what would reasonably be considered as excess consumption through the representation of product/s or portion sizes disproportionate to the setting/s portrayed or by means otherwise regarded as contrary to Prevailing Community Standards.” However, regardless of individual advertisements, the current broadcast diet, dominated by advertising for HFSS foods, undermines the promotion of a healthy balanced diet among children and is in direct discrepancy with the AGHE.

With little improvement in clarity and no recognition of the issues inherent in the current co-regulatory system’s monitoring and enforcement procedures, the Food and Beverages Advertising and Marketing Communications Code is unlikely to have an impact on the dominance of advertising for HFSS foods. In fact, as indicated in the 2006 and 2007 ACHP studies (8, 9), HFSS food advertising to children has increased in the one year period since the AANA Code was implemented.

Recommendation:

The AANA Food and Beverages Marketing and Communications Code should not be considered an appropriate means of regulating food advertising to children. Statutory regulation through the CTS is required in order to address the pervasiveness of the current broadcast diet and its influence on child health and obesity rates.

*Q17. Should advertising provisions to children (currently in both the CTS and the Commercial Television Industry Code of Practice) be consolidated under the CTS? Why or why not?*

The current system of co-regulation in Australia is confusing, inefficient and ineffective. With television advertising regulations encompassing the CTS, Commercial Television Industry Code

of Practice (CTICP), and the Australian Association of National Advertisers' (AANA) Code for Advertising to Children and now the Food and Beverages Marketing Communications Code, the current regulatory system is bloated by differing definitions, interpretations and agendas. This system is susceptible to inefficiencies, responsibility-shifting (evidenced by the current system of relying on public complaints to monitor compliance) and ineffective enforcement. Further, while the public are currently relied on to recognise and lodge complaints regarding breaches in order for the regulations to be enforced, the complexities and ambiguities of the current co-regulatory system are not conducive to giving the public the capacity to do this. Existing industry's regulatory codes are narrow in scope and open to interpretation, and have extremely limited enforcement authority.

Recommendation:

All advertising provisions to children should be consolidated under statutory regulation through the CTS. This will streamline regulatory, complaints and enforcement processes, improving clarity and transparency, and ensuring greater accountability to the public.

*Q18. Should the amount of food advertising allowed during C programs be limited? Why or why not?*  
*Q19. Should food advertising be banned during C programs? Why or why not?*

Limiting or banning the amount or volume of food advertising only during C programs would be inadequate. As already discussed, children are watching television in large numbers outside of children's programming and time bands. Therefore restrictions on food advertising need to extend beyond children's programming and time bands.

*Q20. Should all food advertising directed to children be banned? Why or why not?*

While a ban on all food advertising directed at children would avoid the need for classification of food advertisements and would simplify monitoring procedures, it would not address the current dominance of advertising for HFHS foods and would needlessly impact on advertising for core foods and non-commercial food advertisements. In addition, determining when and how an advertisement is 'directed to children' would be complicated, making the standards difficult to monitor. Finally a blanket ban on food advertising to children would likely be met with strong opposition from both the food and advertising industries, and is counter to the public's position.

Restricting only HFHS food advertising would address the imbalance in the current broadcast diet, and may provide an incentive for the food industry to develop and produce healthy alternatives to HFHS food products.

Recommendation:

We recommend a ban on advertising for HFHS foods at times when children are watching television in large numbers. Surprisingly, the Issues Paper for this review did not propose this regulatory approach as an option, despite it being a more targeted approach, and more likely to hold greater public appeal, than a blanket ban on food advertising directed to children. We recommend that the nutrient profiling scheme currently under development by FSANZ be

considered and tested for appropriateness as a means of classifying food advertisements. The timing of restrictions should be based on peak children's viewing times (see section 10.1 above).

### **12.3 Premium Offers**

*Q21. Should the CTS provisions (CTS 20) in relation to premium offers be maintained? If not, why?*

The NSW Centre for Overweight and Obesity are in the process of conducting research into the use of premium offers, including competitions and giveaways, in television food advertising. While we are not currently in a position to make specific recommendations to ACMA on provisions relating to premium offers and competitions, the available evidence base indicates that children respond favourably to premium offers and are more likely to request food products advertised using a premium offer. This marketing strategy is exploitative of young children's inability to distinguish between a premium offer and the food product, identify an advertiser's intent and purpose, and make an informed decision in their own best interests (10, 12, 36). Based on our research findings in other areas of television food advertising, it would seem appropriate to extend the CTS provisions relating to premium offers beyond children's programming to cover peak children's viewing times (see section 10.1)

### **12.4 Additional issues inherent in the current CTS**

A number of additional issues with the current CTS and identified in our research, but not specifically addressed in the Issues Paper, are outlined and discussed below.

#### **12.4.1 Repetition of advertisements**

Unhealthy food advertisements are being broadcast in Australia at volumes higher than almost any other country in the world (13), and there is limited scope in the current CTS to restrict this. Our research to-date has identified excessive volume and repetition of advertisements for specific brands and/or product categories within short time periods. These strategies are in themselves highly persuasive marketing techniques, evidenced by the fact that children's purchasing requests strongly reflect heavily broadcast advertisements at both the brand and category level.(11)

#### **12.4.2 Promotion by celebrities/spokespersons/cartoon characters**

The current CTS contain only limited provisions relating to C and P program personalities and characters. However, in its Issues Paper, ACMA acknowledges that the use of animated and real-life characters in advertisements is positively associated with children's attitudes and preferences towards products to an extent that undermines children's ability to recognise an advertisement's persuasive intent. Despite this, ACMA does not acknowledge that this persuasive marketing technique will be considered in the present review.

We are in the process of conducting research into the use of celebrities, spokespersons and cartoon characters in television food advertising. While we are not currently in a position to make specific recommendations to ACMA on provisions relating to these marketing techniques, it would seem appropriate based on the available evidence to expand CTS provisions relating to program personalities and characters to include popular celebrities, product spokespersons and cartoon

characters, and to extend these provisions beyond children's programming to cover peak children's viewing times (see section 10.1).

#### **12.4.3 The current CTS are ambiguous and open to interpretation**

Our research has identified loopholes in specific provisions within the CTS that are easily manipulated and/or circumvented due to excessively broad restrictions and/or ambiguous terminology. As an example, CTS 16 specifies that an advertisement may be broadcast no more than twice within a 30-minute children's viewing period. This provision does not limit repeated advertising of multiple product/brand variations, and advertisements can be broadcast continuously over multiple 30-minute periods during peak children's viewing times. As a result, our researchers identified 26 circumventions of CTS 16 over 357 hours of broadcasting on Sydney commercial television channels in 2006. (34)

#### Recommendation:

We strongly recommend that the CTS be revised to ensure greater clarity to promote consumer awareness and support parents, as well as more efficient and effective monitoring and enforcement.

#### **12.4.4 Current monitoring and enforcement systems are inadequate**

Despite the ACMA having statutory authority to regulate television advertising through the CTS, it has to this point not ensured compliance. Research has now shown that, in the absence of proactive enforcement, public notification of breaches, and sufficient penalties, the rate of breaches and circumventions of the CTS is high and breaches are going unrecognised and unpenalised (7, 35).

As such, the current system of relying on the public to lodge a complaint before a breach of the standards is addressed is inappropriate, reactive and complex. Members of the public have not been provided with sufficient information to have an adequate understanding of the CTS and the complaints process (including the fact that they need to lodge a complaint for food advertising to be controlled) and do not necessarily have the time to lodge complaints. In addition, with no published information available on successful complaints regarding breaches of the CTS since their inception in 1990 (34), the public is unlikely to feel empowered by their ability to be involved in the enforcement process. The Issues Paper gives no indication of how ACMA intends to improve monitoring and compliance.

#### Recommendations:

We recommend that the CTS be monitored by an independent statutory body, which has the ability to act as a consumer watchdog with the full law enforcement powers of a government body, but acting independently of both government and industry. An example is the Australian Competition and Consumer Commission (ACCC). The monitoring body should enforce clear and transparent monitoring and enforcement systems, and information regarding this and recognized breaches should be made readily available to the public, both directly and through annual reporting to Parliament.

Clear, easy-to-understand information regarding the CTS and opportunities for lodging complaints should be made readily available to the public. Possible dissemination tools include public service broadcast announcements, information sheets, posters, and fridge magnets displaying website and contact information.

Breaches of the CTS should be investigated immediately following identification by the monitoring body and appropriate strict penalties implemented. Information on breaches of the CTS should be made readily available to the public immediately following decision.

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