

The Senate

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Standing Committee on  
Community Affairs

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Protecting Children from Junk Food  
Advertising (Broadcasting Amendment)  
Bill 2008

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## 42<sup>nd</sup> Parliament

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Senator Bob Brown	AG, Tasmania
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## TABLE OF CONTENTS

MEMBERSHIP OF THE COMMITTEE.....	<i>iii</i>
PROTECTING CHILDREN FROM JUNK FOOD ADVERTISING (BROADCASTING AMENDMENT) BILL 2008 .....	1
THE INQUIRY .....	1
THE BILL .....	1
BACKGROUND.....	2
Review of the standards .....	2
Advertising restrictions .....	3
ISSUES .....	4
Overweight and obesity .....	4
Link between food advertising and childhood obesity .....	5
Self regulation.....	8
Ministerial exemptions and FSANZ nutrient profiles .....	11
Schools assistance.....	12
Timing of restrictions.....	12
Other media and advertising .....	13
Other issues .....	14
A comprehensive approach.....	15
CONCLUSION .....	17
DISSENTING REPORT - Senator Bob Brown and Senator Rachel Siewert Australian Greens.....	19
APPENDIX 1 - Submissions received by the Committee .....	23
APPENDIX 2 - Public hearing .....	25



# PROTECTING CHILDREN FROM JUNK FOOD ADVERTISING (BROADCASTING AMENDMENT) BILL 2008

## THE INQUIRY

1.1 The Protecting Children from Junk Food Advertising (Broadcasting Amendment) Bill 2008 was introduced into the Senate on 4 September 2008. On 4 September 2008, the Senate, on the recommendation of the Selection of Bills Committee (Report No. 10 of 2008), referred the Bill to the Community Affairs Committee (the Committee) for report.

1.2 The Committee received 25 submissions relating to the Bill and these are listed at Appendix 1. The Committee considered the Bill at a public hearing in Canberra on 19 November 2008. Details of the public hearing are referred to in Appendix 2. The submissions and Hansard transcript of evidence may be accessed through the Committee's website at [http://www.aph.gov.au/senate\\_ca](http://www.aph.gov.au/senate_ca).

## THE BILL

1.3 The Bill amends the *Broadcasting Services Act 1992* and the *Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Act 2004* with the aim of encouraging healthier eating habits among children and prohibiting the broadcasting of advertisements for junk food during certain times.

1.4 The proposed amendment to the *Broadcasting Services Act 1992* would proscribe broadcasting of food or beverage advertisements and sponsorship announcements that identify or refer to food and beverage manufacturers, distributors and sellers during certain viewing periods and programs.<sup>1</sup> These periods and programs are defined in standards made under the existing Act and cover programs that are suitable for children and preschool children.<sup>2</sup>

1.5 The proposed amendment allows the Minister to provide exemptions for advertisements if 'the Minister considers that the food or beverage is beneficial to children's health and well-being, based on the Food Standards Australia New Zealand

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1 Protecting Children from Junk Food Advertising (Broadcasting Amendment) Bill 2008, Section 1 (2A).

2 Protecting Children from Junk Food Advertising (Broadcasting Amendment) Bill 2008, Section 1, Note 2; *Children's Television Standards made under subsection 122 (1) of the Broadcasting Services Act 1992*, CTS1, pp 3–4.

nutrient profiles'.<sup>3</sup> The proposed amendment allows for broadcasting of community service announcements concerning food and beverages.<sup>4</sup>

1.6 The proposed amendment to the *Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Act 2004* sets as a condition of financial assistance to schools that they do not display advertisements of sponsorship announcements that relate to food and beverage manufacturers, distributors and sellers. Again the Minister may provide exemptions for advertisements on the basis that the food or beverage is considered beneficial to children's health and well-being based on the Food Standards Australia New Zealand nutrient profiles.<sup>5</sup>

## **BACKGROUND**

### ***Review of the standards***

1.7 On 27 August 2008 the Australian Communications and Media Authority (ACMA) released draft new Children's Television Standards for public and industry comment as part of a review of the Children's Television Standards. The draft standards did not include general restrictions in relation to food and beverage advertising. The reasons for referral of the Bill by the Selection of Bills Committee stated that this highlighted 'the need for a legislative response' in relation to food advertising to children.<sup>6</sup>

1.8 In assessing whether a ban on food and beverage advertising would have an impact on childhood obesity, ACMA commissioned an independent review of research on the issue. The review found that childhood obesity is a highly complex issue and there was not a sufficient consensus on the impact of restricting food and beverage advertising on obesity levels. The research did indicate a relationship between advertising and the food and beverage preferences of children and a relationship between television viewing (as distinct from television advertising) and obesity in children. Mr Chapman, Chairman of ACMA stated that:

ACMA has formed the view that restricting food and beverage advertising, particularly without a tool to identify high fat, salt, sugar (HFSS) products, would be a blunt form of regulatory intervention, with significant cost to the commercial television sector and uncertain national benefits. Such

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3 Protecting Children from Junk Food Advertising (Broadcasting Amendment) Bill 2008, Section 1 (2B).

4 Protecting Children from Junk Food Advertising (Broadcasting Amendment) Bill 2008, Section 1 (2C).

5 Protecting Children from Junk Food Advertising (Broadcasting Amendment) Bill 2008, Section 21A.

6 Senate Selection of Bills Committee, *Report 10 of 2008*, Appendix 2.



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restrictions would also prevent healthy food and beverage products from being advertised<sup>7</sup>

1.9 The ACMA review is ongoing and new Children's Television Standards are expected to be finalised in early 2009.

### *Advertising restrictions*

1.10 The *Broadcasting Services Act 1992* sets out a co-regulatory system for the regulation of broadcasting content, in which commercial free-to-air broadcasters comply with the Commercial Television Code of Practice and the Children's Television Standards. Under the system the viewing day is divided into a series of time zones or bands to ensure appropriate material is broadcast, to assist viewers to make informed choices about the content they access and to provide parents with information regarding the suitability of material for children.

1.11 The two bands relevant to the Bill are the 'P' and 'C' bands. The 'P' band is the period of time 7.00am to 4.30pm Monday to Friday. The 'C' band is 7.00am to 8.00am and 4.00pm to 8.30pm Monday to Friday and 7.00am to 8.30pm Saturday, Sunday and school holidays. Broadcasters can nominate times during these bands in which they will broadcast 'C' and 'P' programs and these are called the 'C' and 'P' periods.<sup>8</sup>

1.12 Under the current Children's Television Standards no commercials are permitted to be broadcast in 'P' periods and each 30 minutes of 'C' period may contain no more than 5 minutes of commercials (with the exception of some Australian drama programs). The Standards also include strict content rules, which include that an advertisement for a food product may not contain any misleading or incorrect information about the nutritional value of that product.<sup>9</sup>

1.13 The Commercial Television Code of Practice also provides that advertisements to children for food and beverages: (a) should not encourage or promote an inactive lifestyle combined with unhealthy eating or drinking habits; and (b) must not contain any misleading or incorrect information about the nutritional value of the product.<sup>10</sup>

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7 Australian Communications and Media Authority (ACMA), 'New draft Children's Television Standards released for comment', *ACMA Media Release 105/2008*, 27 August 2008, p. 2.

8 Free TV Australia, *Submission 24*, p. 8.

9 *Children's Television Standards*, 2005, CTS 19 (6).

10 *Commercial Television Code of Practice*, July 2004, 2.10 Food and Beverages.

## ISSUES

### *Overweight and obesity*

1.14 There was a broad consensus amongst witnesses and submitters to the inquiry regarding the importance of obesity issues for the health of children and the Australian community. Many submitters noted that Australia's adult obesity rate is now the fifth highest amongst OECD countries. The National Preventative Health Taskforce recently released a discussion paper which dealt with the subject of obesity health issues. It estimated the total financial cost of obesity in Australia in 2008 was \$8.3 billion and suggested that by 2020 the number of obese Australians will have grown to 6 million.<sup>11</sup>

1.15 The negative consequences of being overweight and obese for individuals, their families and the community were emphasised by many submitters and witnesses. For example the Australian Chronic Disease Prevention Alliance noted that increasing rates of obesity will result in 'escalating rates of chronic diseases such as diabetes, cardiovascular disease and some cancers, placing pressure on the sustainability of the health system'.<sup>12</sup> Other submitters noted that the impacts of growing rates of obesity would extend beyond increased health care costs and include shorter life spans, lower productivity and declining work force participation for those affected.

1.16 In 2008, the Commonwealth Scientific and Industrial Research Organisation (CSIRO) published the findings of the Children's Nutrition and Physical Activity Survey which was funded by the Department of Health and Ageing, the Department of Agriculture, Fisheries and Forestry and Australian Food and Grocery Council (AFGC). The survey found that the majority of children aged 2 - 16 (72 percent) were a healthy weight for their height, 5 percent were classified as underweight, 17 percent as overweight and 6 percent as obese.<sup>13</sup>

1.17 There were differing interpretations of these results during the inquiry. The Australian Association of National Advertisers (AANA) argued that the Children's Nutrition and Physical Activity Survey showed 'no significant change in childhood obesity levels since the previous survey in 1995, challenging the notion that there has been any recent increase'.<sup>14</sup> However a number of health groups argued that the results showed that obesity rates have remained at significant levels after rapid increases in past decades. For example the National Heart Foundation stated:

Between 1985 and 1995, obesity prevalence in 7 to 15 year-olds more than tripled for all age groups and both sexes, from 1.4% of boys and 1.2% of

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11 National Preventative Health Taskforce, *Australia: the healthiest country by 2020*, 2008, p. 11.

12 Australian Chronic Disease Prevention Alliance, *Submission 18*, p. 2.

13 Commonwealth Scientific and Industrial Research Organisation, *2007 Australian National Children's Nutrition and Physical Activity Survey*, 2008, p. 35.

14 Australian Association of National Advertisers, *Submission 21*, p. 4.

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girls to 4.7% of boys and 5.5% of girls. Rates of overweight or obesity in 7 to 15 year-olds nearly doubled during this time, rising from 10.7% of boys and 11.8% of girls in 1985 to 20.0% of boys and 21.5% of girls in 1995.<sup>15</sup>

1.18 Several witnesses and submitters made the observation that overweight and obesity in childhood have been shown to be strong predictors of obesity in adulthood. For example the NSW Centre for Overweight and Obesity and the Australian Centre for Health Promotion noted that:

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. Almost 80% (79.7%) of participants who were overweight or obese as children became overweight or obese adults.<sup>16</sup>

### ***Link between food advertising and childhood obesity***

1.19 The nature of the relationship between free-to-air television advertising and childhood obesity was a focus in many submissions.

1.20 The Australian Association of National Advertisers (AANA) highlighted that the research commissioned by ACMA as part of a review of the Children's Television Standards had found no clear causal link between commercial television advertising and obesity. The AANA also noted research which identified other contributing factors to obesity including: genetics, food costs, physical activity costs, and technological advancements.<sup>17</sup> They stated:

Along with the UK regulator, OFCOM, the Australian Communications & Media Authority has estimated the contribution of advertising to children's food consumption at less than 2 percent.<sup>18</sup>

1.21 The AFGC supported ACMA's finding that the 'factors influencing childhood obesity and overweight are complex, with public health literature identifying a range of actors, including the interplay of hereditary, social, cultural and environmental factors' and that it is difficult to determine the relative contribution of advertising amongst these factors.<sup>19</sup> However the AFGC also recognised that primary school children were 'impressionable, and potentially vulnerable to promotions which may

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15 National Heart Foundation, *Submission 19*, p. 7.

16 NSW Centre for Overweight and Obesity and the Australian Centre for Health Promotion, *Submission 10*, p. 6.

17 Australian Association of National Advertisers, *Submission 21*, p. 4.

18 Australian Association of National Advertisers, *Submission 21*, p. 4.

19 Australian Food and Grocery Council, *Submission 6*, p. 3.

inappropriately influence their (or their parents) purchase and use of products (including foods)'.<sup>20</sup>

1.22 Free TV Australia also endorsed the ACMA review as the appropriate means through which to ensure the ongoing adequacy of the existing regulatory framework. They stated:

As noted in the draft findings of ACMA's review, there is no evidence that further advertising restrictions will have any impact on issues such as childhood obesity. The regulatory measures in place are working well and there is no evidence of a regulatory failure in relation to food advertising to children.<sup>21</sup>

1.23 The Free TV Australia provided evidence which showed that the free-to-air television audience is fragmenting and that the number of children watching free-to-air television is falling.<sup>22</sup> They noted the existing restrictions on 'P' period advertising and estimated that the percentage of food advertising in 'C' periods is around 10 percent.<sup>23</sup>

1.24 However, a number of other submissions, while acknowledging there are multifaceted causes for overweight and obesity, highlighted the negative effects of unhealthy food advertising to children. For example the Australian Chronic Disease Prevention Alliance noted that most food advertisements on television are for foods and beverages high in fat, salt and sugar, particularly confectionery and fast foods, and that studies had shown that between 48 percent and 81 percent of all foods advertisements are for unhealthy foods.<sup>24</sup> They stated:

Food advertising to children, which is predominantly for unhealthy foods, contributes to our obesogenic environment by negatively influencing children's food preferences, food purchasing and food consumption, as well as their diet and health status. Consequently restrictions on food advertising to children are an important component of a comprehensive obesity strategy.<sup>25</sup>

1.25 The Australian Psychological Society stated that young children are vulnerable to being deceived and manipulated by advertising 'because they lack the cognitive skills to defend themselves against persuasive advertisements'. They stated:

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20 Australian Food and Grocery Council, *Submission 6*, p. 4.

21 Free TV Australia, *Submission 24*, p. 2.

22 Free TV Australia, *Submission 24*, p. 6.

23 Ms Bain, Free TV Australia, *Proof Committee Hansard*, 19 November 2008, p. 24.

24 Australian Chronic Disease Prevention Alliance, *Submission 18*, p. 6.

25 Australian Chronic Disease Prevention Alliance, *Submission 18*, p. 2.

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Healthy eating habits can be disrupted by food and drink advertising that encourages children to desire particular types of products and brands, and that creates norms for foods high in sugar, fat and salt.<sup>26</sup>

1.26 However Professor Rickwood of the Australian Psychological Society also noted that it was very difficult to directly link advertising to children and obesity because of the range of factors influencing childhood obesity.<sup>27</sup>

1.27 A number of submitters and witnesses argued that if there was no link between food advertising and increased consumption, manufacturers and retailers would not spend significant funds marketing products. Ms Hughes of CHOICE stated that in 2006 nearly \$400 million was spent on food marketing in Australia, the majority for products such as confectionary, breakfast cereals and fast foods.<sup>28</sup> However Mr Segelov of the AANA argued that while advertising increases awareness '...it does not automatically increase consumption'. He stated:

What advertising does as far as the advertisers are concerned is allow them to compete for market share. Competition is generally regarded as positive to consumers because it helps keep prices down.<sup>29</sup>

1.28 The Obesity Policy Coalition questioned the ethics of advertising unhealthy foods to children. They stated:

Children are a vulnerable audience, and have the right to be protected from the harmful influence of advertising for unhealthy food. There is substantial evidence that children are particularly vulnerable to advertising because they lack the mature cognitive ability necessary to comprehend advertising messages and assess them critically.<sup>30</sup>

1.29 A number of submitters noted that healthy eating habits are established in early childhood and can affect people throughout their lives by influencing health, well-being and the risk of developing illnesses and serious diseases. The Public Health Association of Australia noted that children and adolescents are important target groups for preventative strategies to deal with growing levels of obesity in the general population.<sup>31</sup>

1.30 The Coalition on Food Advertising argued the current food advertising messages directed to children undermine government guidelines for healthy eating and policies to prevent childhood obesity. Similarly Healthy Kids SCA stated:

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26 Australian Psychological Society, *Submission 5*, p. 4.

27 Professor Rickwood, *Proof Committee Hansard*, 19 November 2008, pp. 11 - 12.

28 Ms Hughes, CHOICE, *Proof Committee Hansard*, 19 November 2008, p. 33.

29 Mr Segelov, Australian Association of National Advertisers, *Proof Committee Hansard*, 19 November 2008, p. 54.

30 Obesity Policy Coalition, *Submission 16*, p. 3.

31 Public Health Association of Australia, *Submission 22*, p. 5.

The fact that advertisements for high fat, salt and sugar foods and beverages are much more prevalent in children's viewing times than advertisements for core foods is not consistent with government guidelines for healthy eating. This increased exposure to foods from the non-core food groups skews ideas about what types of foods make up a normal diet.<sup>32</sup>

1.31 The National Heart Foundation believed that restrictions on advertising for unhealthy foods was an important starting point to address the imbalance between core and non-core foods and beverages advertised on television and to reinforce healthy eating and lifestyle messages. They noted:

The World Health Organization has concluded that heavy marketing of fast-food outlets and energy-dense micronutrient poor foods and beverages is a 'probable' cause of childhood weight gain or obesity. While a definitive causal relationship between television advertising and adiposity cannot be drawn based on existing evidence, even a small association would have substantial impact across the entire population of children.<sup>33</sup>

### *Self regulation*

1.32 During the inquiry there was discussion regarding the merits of industry self-regulation in relation to food and beverage advertising to children. The AFGC's submission outlined the development of *The Responsible Children's Marketing Initiative of the Australian Food and Beverage Industry*. The initiative has the goal to ensure that a high level of social responsibility in the marketing of food and beverage products in Australia.<sup>34</sup>

1.33 Companies participating in the initiative will publicly commit to marketing communications to children under 12 'only when it will further the goal of promoting healthy dietary choices and healthy lifestyles'. The core principles of the initiative cover the areas of advertising messaging, the use of popular personalities and licensed characters, product placement, the use of products in interactive games, advertising in schools and the use of premium offers. Signatories to the initiative must also abide by:

- the AANA Code for Advertising & Marketing Communications to Children;
- the AANA Food & Beverages Advertising & Marketing Communications Code; and
- the AANA Code of Ethics.

1.34 The AFGC indicated that it was appropriate to have a mix of regulation and self-regulation for food advertising and argued that industry 'has a strong record in

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32 Healthy Kids SCA, *Submission 3*, p. 2.

33 National Heart Foundation, *Submission 19*, p. 10.

34 Australian Food and Grocery Council, *Submission 6*, p. 5.

applying self-regulatory measures in the advertising space'.<sup>35</sup> The AFGC indicated while the initiative was still being developed it would become effective by 1 January 2009. They noted that the advantage of this self-regulatory system was that it applied to all types of media, it was funded by industry and that it could be implemented quickly. They stated:

These provisions will apply where the audience is predominantly children under 12 and/or the program or media, having regard to the theme, visuals, and language used, are directed primarily to children... To advertise food and beverage products within this programming, participants will need to demonstrate that those products represent healthy dietary choices and the advertising must be presented in the context of a healthy lifestyle.<sup>36</sup>

1.35 Similarly the Australian Beverages Council noted its members had committed to the International Council of Beverage Associations Guidelines on Marketing to Children 2008 and the AANA voluntary code for advertising directed to children. They also highlighted that since 2006 their member companies have been committed to not market sugar sweetened carbonated soft drinks to children under 12 years of age.<sup>37</sup> Both the AFGC and the Australian Beverages Council highlighted that they covered the majority of advertisers in their sector.

1.36 Free TV Australia stated there was already a 'comprehensive and sophisticated framework of legislation and regulation governing television content, and in particular advertising'.<sup>38</sup> This included: the *Trade Practices Act 1974*; state-based food legislation enforced by Food Standards Australia and New Zealand; the AANA codes including the Advertising to Children Code; the *Broadcasting Services Act 1992* and the Commercial Television Industry Code of Practice and the Children's Television Standards.

1.37 The merits of self-regulatory systems were highlighted by the AANA, which argued the complaint mechanisms could quickly and transparently respond to complaints and were capable of adjustment in response to prevailing community standards. They also noted they applied equally across advertising media channels (including internet and emergent media).<sup>39</sup> The AANA also suggested that the introduction of advertising restrictions would weaken existing self-regulation systems by undermining the confidence of consumers and the goodwill of advertisers.<sup>40</sup>

1.38 However there were also significant criticism of industry self-regulation in relation to food and beverage advertising during the inquiry. The Coalition on Food

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35 Australian Food and Grocery Council, *Submission 6*, p. 4.

36 Australian Food and Grocery Council, *Submission 6*, p. 6.

37 Australian Beverages Council, *Submission 17*, p. 3.

38 Free TV Australia, *Submission 24*, p. 7.

39 Australian Association of National Advertisers, *Submission 21*, p. 6.

40 Australian Association of National Advertisers, *Submission 21*, p. 6.

Advertising to Children described industry self-regulation as inadequate and noted it had been likened to 'foxes guarding the hen-house'.<sup>41</sup> They also argued that food advertising was not an appropriate area for self-regulation according to the criteria set out by the Commonwealth Interdepartmental Committee on Quasi-Regulation. This report recommended that industry self-regulation should be considered where, for example, there is no strong public interest concern, and in particular no major public health and safety concern.<sup>42</sup>

1.39 The limitations of self-regulation and the proposed industry marketing initiative were emphasised by the Public Health Association of Australia, who stated:

...the code that was suggested by the Food and Grocery Council (AFGC) would not cover key elements of the junk food industry – significantly, outlets like McDonalds and KFC would be outside of the scope. While recognising the positive strides of the AFGC the PHAA is strongly of the view that this issue is much too serious to be left to self-regulation and that the legislation is needed as a matter of urgency.<sup>43</sup>

1.40 The Australian Chronic Disease Prevention Alliance had similar concerns regarding the *Responsible Children's Marketing Initiative*. Professor Olver stated:

It is voluntary, so the level of uptake cannot be guaranteed. It does not address the peak children's viewing times and it talks about children 12 and under, but some of the major problems are in that early teenage group, particularly 14- to 16-year-olds. It does not include the retailers like fast food chains and it does not address the criteria that will be used to define what is an unhealthy food or beverage.<sup>44</sup>

1.41 The Tasmanian Department of Health and Human Services listed a number of positive aspects to industry initiatives in relation to responsible advertising but argued that restrictions on food advertising would create a conflict of interest for industry meaning that a legislative approach was appropriate. They stated:

...strengthening existing self-regulation mechanisms will not affect the quantity, location or emotional power of food promotions targeted at children or the full spectrum of promotional techniques. The aim of current self-regulation is to prevent direct harm and promote trust in advertising. This is a fundamentally different aim to addressing a public policy concern, which is needed to address obesity.<sup>45</sup>

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41 Coalition on Food Advertising to Children, *Submission 8*, p. 11.

42 Coalition on Food Advertising to Children, *Submission 8*, p. 12.

43 Public Health Association of Australia, *Submission 22*, p. 6.

44 Professor Olver, Australian Chronic Disease Prevention Alliance, *Proof Committee Hansard*, 19 November 2008, p. 42.

45 Tasmanian Department of Health and Human Services, *Submission 15*, p. 6.



1.42 Other submitters and witnesses emphasised the success of advertising regulation in other health areas.<sup>46</sup> Professor Rickwood of the Australian Psychological Society argued that legislative restrictions could send a broader message to the community. She stated:

The legislative change and regulatory change we have seen in many health promotion areas has been the catalyst to some wider changes. It changes the sort of mentality in a whole range of areas, including industry's, parents', peers' and community expectations. Legislation is one avenue that we have for setting what the community says, 'These are the standards', and making them very clear to people.<sup>47</sup>

### ***Ministerial exemptions and FSANZ nutrient profiles***

1.43 CHOICE, while noting that the FSANZ nutrient profiling system was intended to assess the health claims of foods, believed the system could be used to classify foods as unhealthy for the purpose of regulating food advertising to children.<sup>48</sup> However others such as the Dietitians Association of Australia argued that the use of the '...FSANZ tool to distinguish between food and beverages for advertisement on television is unlikely to be satisfactory'. They stated:

The tool was not designed by FSANZ for regulating television advertising...It was designed by FSANZ in this way for use in part of an assessment process of foods and beverages regarding labelling in relation to health claims. It may well be adapted for the purpose of assessing foods and beverages for television advertising, however DAA believes a group of professionals with expertise in nutrition, eg. Accredited Practising Dietitians (APDs), would be well placed to provide input into an assessment process in addition to a nutrient profile calculator tool.<sup>49</sup>

1.44 Similarly Dr Stanton suggested that any refinement of the FSANZ nutrient profile tool should involve public health nutritionists who are free from commercial influence.<sup>50</sup>

1.45 The Public Health Association of Australia suggested that the FSANZ profiles are nutrient focussed and are likely to be confusing and to facilitate loopholes. They proposed an amendment whereby the Minister could grant exemption where he or she considers that a food or beverage is beneficial to children's health and well-being based on 'foods and beverages that are considered to be basic core foods and part of core food groups', rather than based on the FSANZ nutrient profiles.<sup>51</sup>

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46 For example Dr Stanton, *Proof Committee Hansard*, 19 November 2008, p. 17.

47 Professor Rickwood, *Proof Committee Hansard*, 19 November 2008, p. 12.

48 CHOICE, *Submission 9*, p. 11.

49 Dietitians Association of Australia, *Submission 12*, pp. 2 -3.

50 Dr Stanton, *Submission 20*, p. 4.

51 Public Health Association of Australia, *Submission 22*, p. 7.

1.46 Youth Media Australia was concerned regarding the provision which allowed the Minister discretion to exempt advertisements from the restriction. They believed that any exemptions should be allowable only on transparent criteria, and should be applied by ACMA, rather than the Minister.<sup>52</sup>

### ***Schools assistance***

1.47 There was broad support for the proposed amendments in relation to School Assistance legislation from health groups. However the National Association of Retail Grocers of Australia (NARGA) expressed concerns regarding the prohibition of food or beverage advertising in schools as a condition for the receipt of financial assistance. They suggested that some schools would be adversely affected by the proposed ban, in situations where 'a number of commercial entities may have provided schools with canteen equipment branded with their product name - for example pie warmers, refrigerators for milk and juice products etc'. They noted that schools may need additional funding to replace such equipment or to employ additional staff where equipment provided automatic vending facilities.<sup>53</sup>

### ***Timing of restrictions***

1.48 There was significant discussion regarding the scope of the advertising restrictions that should be implemented. A number of witnesses and submitters urged that the Bill be extended to cover television broadcast periods when high numbers of children are watching television rather than just the 'C' viewing periods.<sup>54</sup> For example the Coalition on Food Advertising to Children stated:

Australian television audience measurement data shows that the highest numbers of children are watching television between 7am to 9am and 4pm to 9pm weekdays and 7am to 9pm on weekends, with peaks in viewing between 7.00 pm and 8.00 pm on weekdays and 8.00 am and 10.00 am, and 7.00 pm to 8.00 pm on weekend days.<sup>55</sup>

1.49 Similarly the Dietitians Association of Australia believed that 'restrictions on food advertising to children should be put in place when children are actually watching television' and supported an amendment which included restriction during the time slot 5.30 pm – 8.00 pm in addition to 'C' periods.<sup>56</sup> They also suggested that OzTAM ratings be used to identify programs of particular interest to children, where

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52 Youth Media Australia, *Submission* 13, p. 7.

53 National Association of Retail Grocers of Australia, *Submission* 4, p. 2.

54 For example CHOICE, *Submission* 9, p. 11; Tasmanian Department of Health and Human Services, *Submission* 15, p. 1; Obesity Policy Coalition, *Submission* 16, p. 2; Australian Chronic Disease Prevention Alliance, *Submission* 18, p. 3; Dr Stanton, *Submission* 20, p. 4.

55 Coalition on Food Advertising to Children, *Submission* 8, p. 19.

56 Dietitians Association of Australia, *Submission* 12, p. 2.

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only approved products should be advertised and that regulations cover the portion and serve size of foods and beverages advertised.<sup>57</sup>

1.50 The Obesity Policy Coalition believed that food and beverage advertisements (except for those foods and beverages exempted under the Bill) should also be prohibited from being shown during G classification periods, which runs from 6.00am to 8.30am and 4.00pm to 7.00pm on weekdays, and 6.00am to 10.00am on weekends. They commented:

Parents should be able to let children watch television unsupervised during the G classification period in the knowledge that they will not be exposed to potentially harmful material, including advertising for unhealthy foods.<sup>58</sup>

### ***Other media and advertising***

1.51 Submitters also suggested the Bill be extended to cover the range of media that food marketers use to promote products to children. These included other broadcast media, internet and mobile phones, print media, promotions and premium offers, venue and outdoor advertising, the use of promotional characters and celebrities, packaging and sponsorships.<sup>59</sup> For example Dr Stanton recommended all media be included in advertising restrictions and noted the increasing time which children spend on the internet.<sup>60</sup> Similarly the Coalition on Food Advertising to Children supported a obesity prevention strategy '...which includes the restriction of unhealthy food marketing to children through all media channels'.<sup>61</sup>

1.52 Free TV Australia argued there needed to be a media neutral approach to food advertising to children and that 'any review of advertising directed to children must apply across different platforms to ensure regulations remain relevant and do not disadvantage free-to-air broadcasters'. They stated:

All advertising restrictions in children's programming must be weighed against the objective of delivering children's programming through an advertising-funded model. This model is already being affected by the fragmentation of audiences. Commercial free to air television is now one of many screen time choices available to Australian viewers. Viewers have access to over 100 pay TV channels, a vast array of information and entertainment sources available on the internet, as well as DVDs, digital

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57 Dietitians Association of Australia, *Submission 12*, pp. 4-5.

58 Obesity Policy Coalition, *Submission 16*, p. 7.

59 For example The Parents Jury, *Submission 11*, p. 2; Dietitians Association of Australia, *Submission 12*, p. 5; Tasmanian Department of Health and Human Services, *Submission 15*, p. 1; Australian Chronic Disease Prevention Alliance, *Submission 18*, p. 3.

60 Dr Stanton, *Submission 20*, p. 5.

61 Coalition on Food Advertising to Children, *Submission 8*, p. 2.

media players, computer games and increasingly video service through mobile phones.<sup>62</sup>

1.53 However others such as the Obesity Policy Coalition argued that, while a comprehensive regulation of all modes of food marketing to children was required, free-to-air television advertising was still a priority area for regulation. They suggested television was still the primary vehicle for advertising to children, an effective medium for reaching large numbers of children and that television is often the focus of marketing campaigns which may integrate different media platforms.<sup>63</sup>

### *Other issues*

1.54 Industry submissions and witnesses questioned the use of the term 'junk food' in the title of the Bill, noting that there was no clear definition of which foods and beverages could be classified as 'junk food'.<sup>64</sup> They highlighted that all food and beverages sold in Australia are regulated by Food Standards Australia New Zealand as safe to consume and can be part of a balanced diet for children and adults.<sup>65</sup>

1.55 The NARGA argued that the proposed broadcasting restrictions made no distinction between 'good food' and 'junk food'. They argued it was inappropriate to restrict all food and beverage advertising and noted there was a wide range of foods advertised in children's viewing times that nutritionists would consider healthy including milk, high fibre bread and fruit juice. They stated:

We are...concerned about any unintended consequences. These include the impact on our member companies who, through grocery stores and supermarkets sell a wide range of good food products that would also be affected by the proposed advertising prohibition.<sup>66</sup>

1.56 NARGA also noted that any restrictions would cause advertising expenditure would be diverted into non 'C' classified time slots and into other advertising media which are also available to children.<sup>67</sup>

1.57 Free TV Australia also noted that restrictions on advertising foods and beverages in free-to-air television would likely cause advertisers to move marketing funding to other less regulated media, such as the internet. They argued advertising restrictions would have a 'major impact on broadcaster revenues without any

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62 Free TV Australia, *Submission 24*, p. 2.

63 Obesity Policy Coalition, *Submission 16*, p. 5.

64 National Association of Retail Grocers of Australia, *Submission 4*, p. 2.

65 Australian Beverages Council, *Submission 17*, p. 3.

66 National Association of Retail Grocers of Australia, *Submission 4*, p. 3.

67 National Association of Retail Grocers of Australia, *Submission 4*, p. 2.

demonstrable benefit to viewers' and that this would have detrimental impacts on programming.<sup>68</sup> Ms Flynn of Free TV Australia stated:

Banning food advertising is not a cost-free solution to the obesity problem. Australia has chosen to deliver a range of social and cultural objectives through an advertiser funded model. A ban on food advertising during C periods will undermine funding for these programs and will jeopardise the ability of commercial free-to-air networks to continue to provide these programs free of charge to all Australians.<sup>69</sup>

1.58 The AANA expressed the view that the proposed legislation 'could significantly reduce business efficiency, while increasing marketing costs to companies and retail prices to consumers without demonstrating any improvement in the health of Australian children'.<sup>70</sup>

1.59 The Coalition on Food Advertising to Children questioned how compliance with the Bill would be monitored and recommended that standards be monitored by an independent statutory body, with a clear and transparent monitoring and enforcement processes.<sup>71</sup> Similarly the ACDPA argued that to be successful restrictions on television food advertising to children 'an effective compliance and monitoring procedure needs to be implemented'. They stated the current system which relied on complaints from the public to identify breaches was slow, 'hampered by ambiguous terminology and can result in arbitrary interpretations'.<sup>72</sup>

### ***A comprehensive approach***

1.60 While supporting the proposed legislation several submitters and witnesses highlighted the need for a comprehensive multifaceted policy approach to addressing childhood obesity. For example Ms Hughes of CHOICE noted that restricting food advertising would not by itself produce a rapid decline in obesity rates. She noted:

There are many things that need to be done to reverse the trend towards overweight and obesity in children in Australia. These include better education of parents and children about healthy eating and how to prepare healthy meals; increased opportunities for children to participate in physical activity, both organised and incidental; changes to urban planning laws that reduce the density of fast food outlets in lower socioeconomic areas; better public transport to enable Australians to participate in active transport rather than relying on their cars, and improvements to public transport

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68 Free TV Australia, *Submission 24*, p. 1.

69 Ms Flynn, Free TV Australia, *Proof Committee Hansard*, 19 November 2008, p. 22.

70 Australian Association of National Advertisers, *Submission 21*, p. 6.

71 Coalition on Food Advertising to Children, *Submission 8*, p. 22.

72 Australian Chronic Disease Prevention Alliance, *Submission 18*, p. 12.

would also ensure that consumers have access to supermarkets and grocery stores where they can purchase healthy foods.<sup>73</sup>

1.61 The Australian Psychological Society noted that that 'lessons from other public health campaigns suggest that single measures are likely to have minimal impact in the absence of related comprehensive strategies' and that 'achieving real results will only result from a commitment to an integrated approach'.<sup>74</sup> Nonetheless the Society recommended that advertising to children should not promote content that is detrimental to the health and wellbeing of children, including the promotion of foods high in sugar, fat and salt during children's and pre-school programming times.<sup>75</sup>

1.62 The Dietitians Association of Australia supported a collaborative approach 'working with all stakeholder groups is essential to bring about sustainable changes that really make a difference'. While they believed changes to food and beverage advertising was part of the solution to the obesity crisis in children they stated that this 'strategy should be part of a bigger plan that requires equal focus and investment'.<sup>76</sup> Similarly the Obesity Policy Coalition stated:

No one involved in the debate suggests that food advertising is the sole cause of the overweight and obesity epidemic, or that regulation of food advertising alone is the solution. It is well understood that combating childhood overweight and obesity requires a long term, multi-strategic approach... Effective regulation of this advertising is therefore widely regarded as an essential component of any obesity prevention strategy.<sup>77</sup>

1.63 Industry groups also supported a broader policy approach to childhood obesity but did not consider the Bill contributed to such an approach. Ms Carnell of the AFGC stated:

We think that the bill that has been put on the table is just heavy-handed, does not address the issue, does not produce a partnership between industry and government and the community and also does not encourage industry to be advertising healthy eating and healthy activity and to be reformulating product to make it more in line with established scientific guidelines.<sup>78</sup>

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73 Ms Hughes, CHOICE, *Proof Committee Hansard*, 19 November 2008, p. 32.

74 Australian Psychological Society, *Submission 5*, pp. 4-5.

75 Australian Psychological Society, *Submission 5*, p. 5.

76 Dietitians Association of Australia, *Submission 12*, p. 2.

77 Obesity Policy Coalition, *Submission 16*, p. 4.

78 Ms Carnell, Australian Food and Grocery Council, *Proof Committee Hansard*, 19 November 2008, pp. 5-6.

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## CONCLUSION

1.64 Childhood obesity is clearly an important public health issue of concern to the Australian community. The evidence which the Committee received during the inquiry highlights that childhood obesity is a complex multifaceted problem which requires a complex multifaceted solution, yet the proposed amendments in the Bill related only to advertising of certain foods.

1.65 The Committee supports a comprehensive evidence-based approach to addressing the problem of childhood obesity, noting that the ACMA's recent review of the Children's Television Standards found no causal link between the advertising of junk food and childhood obesity. The Committee notes that Australian Health Ministers have recently agreed to make obesity a National Health Priority Area and have announced one of the first tasks of the National Preventative Health Taskforce will be to develop a National Obesity Strategy.<sup>79</sup> The National Preventative Health Taskforce recently listed a number of major imperatives in halting and reversing the rise in the prevalence of overweight and obesity. One of these priorities was:

Protect children and others from inappropriate marketing of unhealthy foods and beverages, and improve public education and information.<sup>80</sup>

1.66 The Committee also notes the recent development of the *Responsible Children's Marketing Initiative* by industry groups. While the Committee recognises the reservations of some witnesses and submitters regarding the appropriateness of industry self-regulation in relation to responsible food and beverage advertising to children, the Committee believes this is a positive development. The Committee acknowledges the AFGC's commitment to quickly developing and implementing an effective self-regulatory approach and notes its statement that industry should be judged on its progress in this area.<sup>81</sup>

1.67 The Committee notes that the ACMA review of the Children's Television Standards is continuing. ACMA has indicated it would consider reviewing its position on food and beverage advertising should '...the body of research find a stronger association between food advertising and obesity or when there is a more established body of research illustrating the benefits of banning food and beverage advertising...'.<sup>82</sup>

1.68 The Committee believes it is premature to bring forward legislative changes to food and beverage advertising while the National Obesity Strategy is developed by

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79 Australian Health Ministers' Conference, *Communiqué*, 18 April 2008, p. 1.

80 National Preventative Health Taskforce, *Australia: the healthiest country by 2020*, 2008, p. 14.

81 Ms Carnell, Australian Food and Grocery Council, *Proof Committee Hansard*, 19 November 2008, p. 9.

82 Australian Communications and Media Authority, *Review of the Children's Television Standards 2005*, August 2008, p. 9.

the National Preventative Health Taskforce and before the industry's initiatives in relation to responsible advertising can be properly assessed.

**Recommendation 1**

**1.69 The Committee recommends that the Bill not be passed and that the information received by the Committee be considered by the National Preventative Health Taskforce in their ongoing work.**

Senator Claire Moore  
Chair



# DISSENTING REPORT

SENATOR BOB BROWN and SENATOR RACHEL SIEWERT, AUSTRALIAN GREENS

## Protecting Children from Junk Food Advertising (Broadcasting Amendment) Bill 2008

The overwhelming weight of evidence presented to this Committee confirms the urgent need to address the growing problem of childhood obesity in Australia and the benefits of restricting advertising junk food to children. The Australian Greens are grateful for the thoroughly researched and extensive submissions of many of the contributors and witnesses to this inquiry and will take on their advice in further improving the bill.

There is no dispute that obesity in Australia is a serious problem. The Committee majority report notes the following facts: Australia now has the fifth highest rate of adult obesity amongst OECD countries; that 17 percent of children aged between 2 -16 are overweight and 6 percent are obese; there is a demonstrated link between childhood and adult obesity; the cost of adult obesity in Australian in 2008 is estimated at \$8.3 billion; and there are 'negative effects of unhealthy food advertising to children'.

So the conclusions and recommendation of the majority report that the Bill not be passed ignore the evidence, the urgency of the problem, and the evidence and recommendations of the majority of submissions to the inquiry.

### The National Preventative Health Taskforce and advertising junk food to children

The recommendation to refer the information gathered by the Committee to the National Preventative Health Taskforce ignores the very title of the discussion paper released by this group: *"Technical Report No 1: Obesity in Australia: a need for urgent action"*.

The Committee report ignores action by concluding that it would be 'premature to bring forward legislative changes'. Nevertheless, the Taskforce report identified the need to *"Protect children and others from inappropriate marketing of unhealthy foods and beverages"* as a priority. Citing evidence from Australia, the United Kingdom, United States and other international examples, that report stated that the research "suggests that simple regulatory restrictions such as restricting content and timing of advertisements would reduce children's exposure to advertising of non-core foods".<sup>i</sup>

Importantly, the Taskforce report makes the specific recommendation to:

Curb inappropriate advertising and promotion including consideration of banning the advertising of energy-dense, nutrient-poor foods and beverages on free-to-air television during children's viewing hours (i.e. between the hours of 6.00am and 9.00pm), and reducing or removing

such advertising in other media such as print, internet, radio, in-store and via mobile telephone. <sup>ii</sup>

The Taskforce was fully apprised of the extensive information on this subject and presented a position that is entirely consistent with the objectives of this Bill. This is reason to proceed with this Bill with resolution, rather than dismiss it with a recommendation for further information.

### **Inadequacy of self regulation by industry**

The Committee majority concluded that the recent development of a self-regulatory initiative by industry is a positive step and notes industry's request that it be judged on its future progress in this area. Nonetheless, the Committee recognises the 'reservations' of witnesses and submitters which argue that self-regulation is inadequate, inappropriate and simply does not work. As Professor Rickwood, from the Australian Psychological Society told the Committee:

There appears to be a conflict of interest. If you are advertising products, the whole aim of advertising is to increase the use of that product. If they are advertising products that are high in fat, sugar and salt, their aim is to increase the uptake of those products. We know that those products are contributing to obesity, so there is a conflict. How can they self-regulate really when there is a direct conflict there?<sup>iii</sup>

We disagree with the Committee's rose-tinted view that self-regulation will do for now. In the face of a national obesity epidemic, described by the National Preventative Health Taskforce as one of the greatest public health challenges facing Australia, it is wrong to suggest the food and advertising industries should be given responsibility for regulating junk food advertising to children. This is the role of government and, as so many submitters and witnesses have argued, should be regulated through legislation.

### **Extending the advertising restriction times**

Numerous submissions and witnesses to the inquiry identified that the current timing of restrictions does not capture the broadcast periods when high numbers of children are viewing. The preponderant evidence is for extending the restricted times to 6.00am – 9.00pm, as proposed by the National Preventative Health Taskforce. We will be amending the Bill to incorporate this position.

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## Conclusion

The evidence presented by submission and witnesses on the link between advertising junk food to children and childhood obesity is compelling. A prohibition on junk food advertising during children's peak television viewing times, as this Bill will achieve, is one strong and effective measure in what must be a multi-faceted and comprehensive approach to addressing the enormous challenge of obesity in Australia. We welcome the input for all contributors to the inquiry to strengthen and improve this Bill.



Senator Bob Brown



Senator Rachel Siewert

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<sup>i</sup> National Preventative Health Taskforce, 2008 Technical Report No 1: Obesity in Australia: a need for urgent action pp 27

<sup>ii</sup> National Preventative Health Taskforce, 2008 Technical Report No 1: Obesity in Australia: a need for urgent action pp30

<sup>iii</sup> Professor Richwood Proof Committee Hansard, 19 November 2008 pp 20



# APPENDIX 1

## Submissions received by the Committee

- 1 Chau, Ms Chris
- 2 Such, The Hon Dr Bob (SA)
- 3 Healthy Kids SCA (NSW)
- 4 National Association of Retail Grocers of Australia Pty Ltd (NSW)
- 5 Australian Psychological Society (APS) (VIC)
- 6 Australian Food and Grocery Council (ACT)
- 7 South Australian Government (SA)
- 8 Coalition on Food Advertising to Children (NSW)
- 9 CHOICE (NSW)
- Supplementary information*
  - Additional information provided following hearing 19.11.08, received 28.11.08
- 10 NSW Centre for Overweight and Obesity and the Australian Centre for Health Promotion (NSW)
- 11 The Parent Jury (VIC)
- 12 Dietitians Association of Australia (ACT)
- 13 Young Media Australia (SA)
- 14 Diabetes Australia (ACT)
- 15 Department of Health and Human Services Tasmania (TAS)
- 16 Obesity Policy Coalition (VIC)
- 17 Australian Beverages Council Ltd (NSW)
- Supplementary information*
  - Table and graph relating to childhood obesity and food advertising in the United Kingdom tabled at hearing 19.11.08
- 18 Australian Chronic Disease Prevention Alliance (NSW)
- Supplementary information*
  - Additional information provided following hearing, received 20.11.08
- 19 National Heart Foundation (ACT)
- 20 Stanton, Dr Rosemary (NSW)
- Supplementary information*
  - Additional information following hearing 19.11.08, received 23.11.08

- 21 Australian Association of National Advertisers (AANA) (NSW)  
*Supplementary information*
- Additional information following hearing 19.11.08, received 23.11.08
- 22 Public Health Association of Australia (ACT)  
*Supplementary information*
- Additional information following hearing 19.11.08 concerning socio economic status and obesity, received 21.11.08
- 23 Hungry Jack's (VIC)
- 24 Free TV Australia (NSW)  
*Supplementary information*  
Tabled at hearing 19.11.08
- Report by M. Shields, 'Measured Obesity: Overweight Canadian children and adolescents', Nutrition: Findings from the Canadian Community Health Survey Issue No.1
  - Report by Free TV Australia on 'Comparative Review of the Regulation of Television Food Advertising to Children, 21 March 2007
- 25 Knott, Ms Chris (WA)

**Additional information**

Australian Communications and Media Authority - letter dated 1.12.08 clarifying comment made at public hearing.

## **APPENDIX 2**

### **Public Hearing**

*Wednesday, 19 November 2008*

*Parliament House, Canberra*

#### **Committee Members in attendance**

Senator Claire Moore (Chair)

Senator Rachel Siewert (Deputy Chair)

Senator Bob Brown

#### **Witnesses**

##### **Australian Food and Grocery Council**

Ms Kate Carnell, Chief Executive Officer

##### **Australian Beverages Council**

Mr Tony Gentile, Chief Executive Officer

##### **Australian Psychological Society**

Professor Debra Rickwood

##### **Coalition on Food Advertising to Children**

Ms Kathy Chapman, Chair

##### **Dr Rosemary Stanton**

##### **Free TV Australia**

Ms Julie Flynn, Chief Executive Officer

Ms Alina Bain, Director, Legal and Broadcast Policy

##### **CHOICE**

Ms Clare Hughes, Senior Food Policy Officer

##### **Australian Chronic Disease Prevention Alliance**

Professor Ian Olver, Chair

Ms Franca Marine, Executive Officer

##### **National Heart Foundation**

Mr Rohan Greenland, Government Relations Manager

##### **Diabetes Australia**

Dr Ian White, National Policy Manager

Ms Taryn Black, Chief Operating Officer

**Public Health Association of Australia**

Mr Michael Moore, Chief Executive Officer

**Australian Association of National Advertisers**

Mr Colin Segelov, Executive Director

**Clarification of comment made at the hearing**

The Australian Communications and Media Authority (ACMA) provided additional information, dated 1.12.08, to clarify a comment made at the public hearing by Senator Bob Brown. ACMA indicated that it did not receive an invitation to attend the hearing.