Australian Senate Community Affairs Committee

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

Obesity Policy Coalition submission

October 2008

WHO Collaborating Centre for Obesity Prevention

Executive summary

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

The OPC supports the amendments to the *Broadcasting Services Act 1992* proposed in the Protecting Children from Junk Food Advertising (Broadcasting Amendment) Bill 2008, and congratulates Senator Bob Brown for introducing this important Bill to the Senate.

The OPC believes the amendments proposed in the Bill would be an important first step towards dealing comprehensively with all forms of marketing of unhealthy foods to children, and an important component of a multi-strategic approach to dealing with the overweight and obesity epidemic.

However, the OPC believes the effectiveness of the proposed prohibition against food and beverage advertising on television would be significantly improved if it applied during the following time periods:

- Weekdays: 6am–8.30am and 4pm–9.30pm
- Weekends and school holidays: 6am–10am and 5.30pm–9.30pm.

This would mean that the prohibition would apply during the G classification period, when only P, C and G programs may be shown, as well as during children's peak viewing period (which ratings data indicate is from 5.30pm to 9.30pm).

The OPC supports the proposed exemption to the prohibition for food and beverage advertisements that the Minister considers are beneficial to children's health according to nutrient profiling criteria developed by Food Standards Australia New Zealand.

The OPC also supports the proposed amendments to the *Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Act 2004* to deal with food and beverage advertising and sponsorship announcements in schools.

The OPC strongly supports the Bill, and believes it would be an important first step to addressing the advertising and promotion of unhealthy foods to children. There are, however, many more forms of advertising and promotion that also need to be regulated, including advertising to children through pay television and the internet, outdoor media, children's magazines and films, in-store promotions and sponsorship of children's sport. The OPC urges the Australian Senate to also consider further measures to restrict these and other types of advertising in the near future.

Evidence of the effects of food advertising on children

Systematic and comprehensive reviews of empirical evidence of the effects of food advertising on children have concluded that food advertising influences children's food preferences, requests and consumption, and is likely to contribute to poor diets, weight gain and obesity in children.

Most health agencies, researchers and experts agree that the evidence justifies intervention to restrict and/or change the nature of food advertising to children as one component of a multi-strategy approach to improve children's diets and reduce obesity. Modelling undertaken in the 'ACE Obesity' project indicates that restricting children's exposure to TV food advertising is likely to be a particularly effective and cost-effective strategy for preventing obesity in children and adolescents.

Possible harmful effects of food advertising on children's health

There is a substantial body of evidence establishing that advertising of 'unhealthy foods'[1] on television influences children to prefer, request and consume unhealthy foods, and that this influence is potentially harmful to children's health.

Influences on children to consume unhealthy food can affect their immediate and long-term health in a number of ways – consumption of unhealthy foods can lead to poor oral health, poor nutrition, and overweight and obesity, with serious consequences for children's physical, mental and social well-being.

Overweight and obesity in Australian children

The OPC's primary concern is the contribution TV food advertising makes to childhood overweight and obesity. The prevalence of overweight and obesity in Australian children has increased rapidly in recent years, to the point that 23% of Australian children are conservatively estimated to be overweight or obese. Children who are overweight or obese are likely to suffer from a range of serious health and psychosocial problems, and obese children are likely to become obese adults. The economic costs of childhood overweight and obesity are also likely to be significant, due to health-care costs and future productivity losses.

Ethics of advertising unhealthy foods to children

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.

Parental concern about TV advertising of unhealthy food to children

There is a high level of concern among Australian parents about advertising of unhealthy foods at times children are likely to watch television, and very strong support for government regulation of this advertising.

International action to prevent advertising of unhealthy foods to children

Internationally, countries and health agencies are recognising the need to restrict children's exposure to advertising for unhealthy foods on television. Recently, restrictions on television advertising of high fat, sugar and/or salt foods to children under 16 have been introduced in the United Kingdom, and draft regulations to prevent all forms of advertising for unhealthy foods directed to children have been released in the Republic of South Africa.

Inadequacy of current regulations to protect children from food advertising

The current regulatory system is ineffective for protecting children from the harmful effects of food advertising on television. Existing regulations, including the Children's Television Standards, do not apply during the programs and time-periods when children are most likely to watch television, and are substantively ineffective for protecting children.

[1] In this submission, the word 'food' refers to food and/or beverages, and the phrase 'unhealthy food' refers to a food or beverage that would fail to meet the Food Standards Australia New Zealand nutrient profile criteria (for eligibility to make a health claim) – in general, foods that are high in fat, sugar and/or salt, and/or that have low fibre, protein, fruit, vegetable, legume or nut content.

1 Obesity Policy Coalition

The Obesity Policy Coalition (OPC) is a coalition between the Cancer Council Victoria, Diabetes Australia – Victoria and the WHO Collaborating Centre on Obesity Prevention at Deakin University, with support from VicHealth. The OPC is concerned about the escalating rates of overweight and obesity in Australia, particularly in children.

The OPC is pleased to have the opportunity to comment on the Protecting Children from Junk Food Advertising (Broadcasting Amendment) Bill 2008. The OPC is concerned about the amount, timing and content of advertising for 'unhealthy foods'[2] on television when children are in the audience, and about the proliferation of other forms of advertising and promotion of unhealthy foods to children, including in schools.

2 Introduction

The prevalence of overweight and obesity in Australian children and adolescents has reached alarming levels and continues to escalate. This is a serious public health problem that requires urgent attention from all Australian governments and regulators. If appropriate action is not taken to reduce rates of overweight and obesity in children, Australia will face significant public health and economic consequences.

There is substantial evidence that food advertising influences children's food preferences, requests and consumption, and is a probable causal factor in weight gain and obesity in children.

Children are exposed to a huge volume of food advertising on television, and the preponderance of this advertising is for unhealthy food. Children are also exposed to many other forms of advertising and promotion of unhealthy food, including on subscription television, the internet, films and computer games, and through outdoor advertising, sports sponsorship and in schools.

It is widely agreed by experts and health organisations that effective government regulation of this advertising is one of a range of measures required to curtail the rising levels of overweight and obesity in Australian children.

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. However, advertising of unhealthy food to children undermines initiatives by government and health agencies, and the efforts of parents, to encourage children to eat healthily. Effective regulation of this advertising is therefore widely regarded as an essential component of any obesity prevention strategy.

ACMA's decision not to recommend inclusion of further food advertising restrictions in the draft Children's Television Standards 2008 is contrary to the views of most experts and health groups in Australia and internationally, including the World Health Organization and the US Institute of Medicine, that current evidence establishes that food advertising contributes to overweight and obesity in children, and is a harmful influence on children's health, and that regulation is needed to moderate this influence. It is also contrary to overwhelming public opinion in Australia that stronger regulation of food advertising is required.

[2] [2] In this submission, the word 'food' refers to food and/or beverages, and the phrase 'unhealthy food' refers to a food or beverage that would fail to meet the Food Standards Australia New Zealand nutrient profile criteria (for eligibility to make a health claim) – in general, foods that are high in fat, sugar and/or salt, and/or that have low fibre, protein, fruit, vegetable, legume or nut content.

ACMA's decision is, therefore, also contrary to the objectives of the Broadcasting Services Act 1992 and the Children Television Standards of ensuring children are protected from possible harmful effects of advertising material on television, and ensuring broadcasters respect community standards.

3 Protecting Children from Junk Food Advertising Bill 2008

The OPC strongly supports the Protecting Children from Junk Food Advertising (Broadcasting Amendment) Bill 2008, and congratulates Senator Bob Brown for introducing this important Bill to the Senate.

The OPC believes enactment of this Bill would be an important and significant first step in addressing the wide range of forms of promotion of unhealthy foods and beverages to children, and a critical component of a multi-strategic approach to dealing with the overweight and obesity epidemic.

However, the OPC has some concerns in relation to the application of the proposed prohibition against television advertising of foods and beverages during 'C periods', for reasons set out below, and makes the following suggestions for improving the effectiveness of the proposed amendments.
We also emphasise that children are exposed to a wide range of promotions for unhealthy food and beverages that are not covered by this Bill. We are particularly concerned about the extent of unhealthy food and beverage advertising and promotion to children through channels such as subscription television, the internet, outdoor media, children's magazines and films, in-store promotions and sponsorship of children's sport. We urge the Australia Senate to consider introducing legislation to address these and other forms of promotion in the near future.

3.1 Amendments to the Broadcasting Services Act 1992

OPC recommendation:

The proposed proscriptions against food and beverage advertising (except for foods and beverages the Minister considers beneficial for children's health and well-being) should apply during the following time periods:

a) Weekdays: 6am–8.30am and 4pm–9.30pm

b) Weekends and school holidays: 6am–10am and 5.30pm–9.30pm.

The Protecting Children from Junk Food Advertising (Broadcasting Amendment) Bill 2008 proposes amending the Broadcasting Services Act 1992 to require the Children's Television Standards to proscribe advertisements for food or a beverage, or advertisements or sponsorship announcements identifying or referring to a company, person or organisation whose principle activity is the manufacture, distribution or sale of food or beverages, from being broadcast during a C period, or during a C or P program broadcast outside a C period.

The Bill would allow the Minister to exempt from the proscription advertisements for foods or beverages that the Minister considers beneficial to children's health and well being, according to nutrient profile criteria developed by Food Standards Australia New Zealand.

The OPC is strongly in favour of requiring the Children's Television Standards to include a prohibition against the broadcast of food and beverage advertisements during children's viewing classification periods.

The OPC supports the proposed exemption to such a prohibition for advertisements for foods and beverages that the Minister considers to be beneficial to children's health and wellbeing, as it believes allowing advertising of healthy foods may help improve children's diets by encouraging them to prefer and consume healthy foods, and may encourage the food industry to develop healthier products for children. The OPC supports use of the nutrient profiling tool developed by Food Standards Australia New Zealand for identifying healthy foods and beverages that should be exempt from the prohibition.

However, the OPC does not believe the proposed food advertising prohibition would be effective to protect children if it applied only during 'C periods' and 'C programs'.

Under the current and draft Children's Television Standards, 'C periods' are periods nominated by broadcasters during which they will broadcast 'C programs'. (Broadcasters may nominate any period to broadcast C programs within the 'C band', which under the draft Children's Television Standards 2008 will run from 7.00am to 8.30am and 4.00pm to 8.30pm on weekdays, and 7.00am to 8.30pm on weekends.) As discussed in section 13 of the submission, broadcasters must *only* broadcast C programs during C periods, and C programs only count towards broadcasters' quota requirements if broadcast during C periods. In practice, this means C programs are almost never broadcast outside C periods, and for the purposes of the application of the Children's Television Standards, C periods and C programs are essentially the same thing.

ACMA's *Children's Viewing Patterns on Commercial, Free-to-air and Subscription Television* report indicates that P and C programs are watched by only very small numbers of children. As discussed above, P and C programs are programs which have been classified by ACMA as meeting the P and C criteria (specifically for children, entertaining for children, well produced, appropriate for Australian children, enhance a child's understanding and experience). Most programs that are popular with children do not meet these criteria, or have not been submitted for classification by ACMA. Consequently, these programs are not P or C programs, not shown during P or C periods, and not subject to the CTS advertising restrictions.

As discussed in section 13 of the submission, to meet their quota requirements, broadcasters need only broadcast P and C programs for an average of about 64 minutes per day, and broadcasters rarely broadcast more than the required minimum of P or C programs (because they rate poorly). This means that the proposed prohibition against food and beverage advertising would only run for about an hour per day, when ratings data indicate that children (aged 0-14) watch television for an average of about two hours per day. Children are unlikely to devote any of their viewing time to watching P or C programs, which means the food advertising prohibition is unlikely to be in effect at times when children watch television.

The OPC believes that for a prohibition against television advertising of food and beverages (other than exempt food and beverages) to be effective to protect children, it would need to apply during the following time periods:

a) Weekdays: 6am–8.30am and 4pm–9.30pm

b) Weekends and school holidays: 6am–10am and 5.30pm–9.30pm.

This would mean that the prohibition would apply during:

a) children's peak television viewing periods, which ratings data indicates is 5.30pm – 9.30pm on weekdays and weekends; and

b) the G classification period (under the Commercial Television Industry Code of Practice), which runs from 6.00am to 8.30pm and 4.00pm to 7.00pm on weekdays, and 6.00am to 10.00am on weekends.

a) Children's peak viewing periods

The OPC believes that for a prohibition against food and beverage advertising to be effective to protect children, it must be designed to minimise children's exposure to such advertising to the greatest extent possible. Therefore, it must apply at times when children are most likely to watch television, not merely when television considered suitable for children is shown.

ACMA's *Children's Viewing Patterns on Commercial, Free-to-air and Subscription Television* report indicates that the peak viewing time for children on commercial free-to-air television is between 5.30pm and 9.30pm on weekdays and weekends. During this time period, ACMA's report indicates that the audience size for children aged younger than 15 ranges from about 250,000 to a peak of nearly 500,000 on weekdays, and from about 220,000 to a peak of nearly 450,000 on weekends.

(The OPC believes restrictions on food advertising should be based on times when the highest *numbers* of children are in the audience, rather than times when children are likely to constitute the highest *proportion* of the audience, as restrictions should be designed to minimise children's exposure to unhealthy food advertising to the greatest extent possible. Therefore, the application of restrictions should not depend on the number of people aged 14 or older who are also in the audience.)

b) G classification period

The OPC believes food and beverage advertising (except exempt food and beverage advertising) should also be prohibited during the G classification period, when only viewing material that is suitable for children is supposed to be shown.

A requirement of the Commercial Television Code of Practice is that only P, C and G programs may be shown during the G classification period, which runs from 6.00am to 8.30pm and 4.00pm to 7.00pm on weekdays, and 6.00am to 10.00am on weekends. During this classification period, only viewing material that is classified as, and understood by parents as being, suitable for children may be shown.

The Commercial Television Industry Code of Practice states that 'material classified G is not necessarily intended for children but it must be very mild in impact and must not contain any material likely to be unsuitable for children to watch without supervision.' Under the Code, only advertisements classified as suitable for G viewing may be shown during the G classification period. In addition, advertisements for alcoholic drinks must not be shown during G or PG classification periods.

The OPC believes food and beverage advertisements (except for exempt foods and beverages) should also be prohibited from being shown during G classification periods. As discussed in section 6 of the submission, evidence establishes that food and beverage advertising influences children's food preferences, demands and consumption, and is a harmful influence on children's health. Therefore, the OPC believes such advertising should be considered unsuitable for viewing by children. 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.

3.2 Amendments to the *Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Act 2004*

The OPC strongly supports the proposed amendments to the *Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Act 2004.*

The OPC believes it is important that children are protected from the harmful influence of advertising for unhealthy foods and beverages in Australian schools. Attempts by parents and teachers to encourage children to have a healthy and nutritious diet should not be undermined by commercial influences on children to consume foods and beverages high in fat, sugar or salt. Parents should be able to trust that children are not subject to such commercial influences when outside their supervision and under the care of schools.

4 Children's television viewing

The media environment in Australia is rapidly changing and children are increasingly using different media platforms. However, television remains a central and pervasive part of children's life. Children are exposed to television from birth, and television reaches children at a younger age and for longer than all other socialising institutions except school and the family.[3]

Marketing of unhealthy food to children is becoming increasingly pervasive and sophisticated. It occurs in a range of contexts and through a variety of media, including free-to-air and subscription television, cinema, magazines, the internet, email, SMS, sponsorship of schools and children's sport, product placement, point of sale promotions, and product packaging and labelling. (The OPC believes comprehensive regulation of all modes of food marketing to children is required, but acknowledges this is outside the scope of this review.)

However, television is still the primary vehicle for advertising to children,[4] and an effective medium for reaching large numbers of children. According to ACMA's *Children's Viewing Patterns on Commercial, Free-to-air and Subscription Television* report (undertaken as part of ACMA's Review of the Children's Television Standards), in 2006, children spent an average of two hours and one minute watching commercial free-to-air television per day, and the average size of the audience in this age group was about 161,000. During the peak viewing time-slot of 7pm-8pm, about 480,000 children typically watch free-to-air television.[5]

Television also tends to be the focus of marketing campaigns that integrate a number of different media platforms. A recent example is a marketing campaign promoting Uncle Toby's Roll-Ups (a confectionery product), which involved a television advertisement for Roll-Ups directing children to a Roll-Ups website.

A recent media buyers survey commissioned by Free TV Australia claims that Free-TV reaches 99% of Australian households, and is considered by marketers to be the 'cornerstone of an integrated campaign', a medium that is 'able to target all demographics' and the 'best way to reach grocery buyers with children.'[6]

5 Extent and nature of food advertising to children on television

Children are exposed to an enormous amount of food advertising on Australian free-to-air television. A study comparing international food marketing trends in 1996 showed that Australia had one of the highest levels of television food advertising aimed at children in the

[3] Family and Community Development Committee, Victorian Parliament. Report No. 49, 'Inquiry into the Effects of Television and Multimedia on Children and Families', October 2000, available from: http://www.parliament.vic.gov.au/fcdc/default.htm, accessed 27 August 2007.
[4] Olds et al, 2006, cited in Handsley, E., Nehmy, C., Mehta, C. & Coveney J. 'Media, public health and law: a lawyers primer on the food advertising debate', *Media and Arts Law Review,* 2007, 12, 87-106.
[5] Australian Communications and Media Authority. 'Children's viewing patterns on commercial, free-to-air and subscription television: report analysing audience and ratings data for 2001, 2005 and 2006.' May 2007, Canberra: ACMA.
[6] Free TV Australia 2006 *Media Buyers Survey,* available from http://www.thinktv.com.au, accessed 26 August 2007.

world[7]. Since then, Australian studies have continued to confirm the high volume of food advertising on free-to-air television during children's viewing times.[8] Food and beverage advertising is twice as common during children's viewing hours compared to adult viewing times.[9] Children watching television during the weekday afternoon timeslot are subjected to approximately 14 food ads per hour.[10] For children (aged 5-12 years) watching the average of 2-3 hours of television daily, this means they are subjected to between 28-42 food advertisements every day.

Australian studies of the extent and nature of food advertising on television during children's viewing hours have reported that a range of between 55% and 81% of food advertisements are for unhealthy foods (mainly confectionery or fast foods).[11] A recent study found that 31% of advertisements broadcast on Australian commercial television between 7am and 9pm were food advertisements, and that 81% of these advertisements were for foods high in fat, sugar and/or salt and of low nutritional value – mainly fast food, take away, chocolate and confectionery. On average, advertisements for unhealthy foods were broadcast 4.13 times per hour, and this number increased at times when children were home from school.[12]

Researchers at the University of Sydney recently conducted a study on television food advertising during children's viewing times, and during popular children's and adolescents' programs.[13] The study found that just over a quarter of television advertisements broadcast during C and P bands (as defined in the CTS) were for food, amounting to a rate of 7.2 food advertisements per hour during these periods. Forty-nine per cent of the food advertisements were for high-fat/high-sugar foods. The food groups advertised most frequently were fast-food restaurants (14.5%), confectionery (12.2%), dairy products (9.6%) and bread, cereals, rice and pasta (8.7%).

The study also investigated food advertising during the twenty highest rating commercial television programs in Sydney for children aged 5-12 years, and for adolescents aged 13-17 years. The study found that food advertisements were broadcast at a rate of 14 per hour during programs popular with children, and at a rate of 12 per hour during programs popular with adolescents. Advertisements for high-fat/high-sugar foods constituted 65.9% of all food advertisements shown during children's high rating programs (amounting to 9 advertisements

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[7] Consumers International. *A Spoonful of Sugar: Television food advertising aimed at children: An international comparative survey,* 2001, London: Consumers International.

[8] Zuppa, J., Morton, H., Mehta, K. 'Television food advertising: counterproductive to children's health? A content analysis using the Australian Guide to Healthy Eating.' *Nutrition and Dietetics*, 2003, 60, 78-84; Chapman, K., Nicholas, P., & Supramaniam, R. 'How much food advertising is there on Australian television?' *Health Promotion International, 2006,* 21, 172-180; Hill, J., & Radimer, K. 'A content analysis of food advertisements in television for Australian children.' *Australian Journal of Nutrition & Dietetics*, 1997, 54, 174-181; Kelly, B., Smith, B., & King, L. 'Television food advertising to children: the extent and nature of exposure.' *Public Health Nutrition*, 2007; Neville, L., Thomas, M., & Bauman, A. 'Food advertising on Australian television: the extent of children's exposure.' *Health Promotion International*, 2005, 20, 105-112.

[9] Zuppa, J., Morton, H., Mehta, K. 'Television food advertising: counterproductive to children's health? A content analysis using the Australian Guide to Healthy Eating.' *Nutrition and Dietetics*, 2003, 60, 78-84.

[10] Neville, L., Thomas, M. and Bauman, A. 'Food advertising on Australian television: the extent of children's exposure.' *Health Promotion International*, 2005, 20, 105-112.

[11] Chapman, K., Nicholas, P., & Supramaniam, R. 2006, 'How much food advertising is there on Australian television?' *Health Promotion International,* 2006, 21, 172-180; Neville, L., Thomas, M., & Bauman, A. 'Food advertising on Australian television: the extent of children's exposure.' *Health Promotion International*, 2005, 20, 105-112; Zuppa, J., Morton, H., Mehta, K. 'Television food advertising: counterproductive to children's health? A content analysis using the Australian Guide to Healthy Eating.' *Nutrition and Dietetics*, 2003, 60, 78-84.

[12] Chapman, K., Nicholas, P., & Supramaniam, R. 'How much food advertising is there on Australian television?' *Health Promotion International,* 2006, 21, 172-180. (Available from: http://heapro.oxfordjournals.org/cgi/reprint/dal021?ijkey=4RFwuzVO6M6jdZg&keytype=ref, accessed 2 February 2007.)

[13] Kelly, B., Smith, B., & King, L. 'Television food advertising to children: the extent and nature of exposure.' *Public Health Nutrition*, 2007, available from: http://journals.cambridge.org/ACHP, accessed 26 August 2007.

per hour), and 66.8% of all food advertisements shown during adolescents' high rating programs (amounting to 8 advertisements per hour).

The authors of the study concluded that the under the current system for regulating television advertising, including the CTS, 'children have a high level of exposure to advertising for unhealthy food products'.[14]

6 Evidence of the effects of food advertising on children

There is a substantial body of evidence establishing that food advertising is likely to have harmful effects on Australian children. The evidence clearly establishes that *food advertising influences children's food preferences, purchase requests and consumption*, and has led to a growing consensus among experts that food advertising is harmful to children's health, and contributes to weight gain and obesity in children.

The OPC believes any suggestion that the evidence is still unclear or uncertain is incorrect, and contrary to the conclusions of the four systematic and substantial reviews of the evidence that have been undertaken, and the advice of health groups and experts in this area.

6.1 Reviews of the evidence

Four systematic and comprehensive reviews of the evidence on the effects of food advertising on children have been undertaken since 2003.[15] These four reviews have reached consistent conclusions: that food advertising influences the types of food children prefer and ultimately consume, and that it is likely or probable that food advertising contributes to poor diets, negative health outcomes and/or weight gain and obesity in children.[16] The authors of the reviews all concluded that the evidence is sufficient to confirm that food advertising to children is contributing to the childhood-obesity problem, and recommended implementation of measures to curtail or change the nature of food marketing to children as part of a childhood-obesity prevention strategy.

The two most recent of these systematic reviews are Hasting et al's 2006 review, and the Institute of Medicine's 2005 review. In addition, Ofcom (the UK communications regulator) commissioned a comprehensive review of the evidence in 2006, which led to its decision to impose bans on advertising of high fat, sugar or salt (HFSS) foods during programs of appeal to children.[17] The review, undertaken by Livingstone, did not employ systematic methods, but it was, nevertheless, a comprehensive review of the evidence. The findings of these three reviews are summarised in Table 1 below.

It is important to note that Brand's literature review commissioned as part of ACMA's Review of the Children's Television Standards [18] did not refer to the Institute of Medicine

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[14] Ibid.
[15] Hastings, G., McDermott, L., Angus, K., Stead, M., Thomson, S. (2006) *The extent, nature and effects of food promotion to children: a review of the evidence*: World Health Organization; JM McGinnis, JA Gootman, VI Kraak, eds. *Food Marketing to Children and Youth: Threat or Opportunity?* 2005, Washington DC, USA: Institute of Medicine of the National Academies; Hastings, G., Stead, M., McDermott, L., Alasdair, F., MacKintosh, A.M., Rayner, M., Godfrey, C., Caraher, M. and Angus, K. (2003). *Review of the research on the effects of food promotion to children* (Final report): Food Standards Agency; McDermott et al, 2004;
[16] Ibid.
[17] Livingstone, S. 'New Research on Advertising Foods to Children: An Updated Review of the Literature', published as Annex 9 to Ofcom *Television Advertising of Food and Drink Products to Children* consultation, 28 March 2006.
[18] Brand, J.E. *Television Advertising to Children: A review of contemporary research on the influence of television advertising directed to children*, prepared for ACMA, May 2007.

2005 review or Hastings et al's 2006 review – the two most recent and comprehensive reviews that have been undertaken.

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

	Review		
Finding – effect of food promotion on children	**Hastings et al (2006)[19]**	**Livingstone (2006) [20]**	**Institute of Medicine (2005)[21]**
Influences food preferences	Reasonably robust evidence	Modest direct effect on children's food preferences (also likely to have indirect effect).	Strong evidence – influences children to prefer high-calorie and low-nutrient foods and beverages.
Influences purchase requests	Strong evidence	Evidence not reviewed	Strong evidence - influences children to request high-calorie and low-nutrient foods and beverages
Influences consumption	Modest evidence	Modest direct effect on children's food choices/eating habits (also likely to have indirect effect).	Strong evidence that food advertising influences children's short-term consumption
Influences diet and health status	Small but significant associations between television viewing and diet, and television viewing and obesity Direct link between food promotion and weight gain is probable (Hastings, 2003)	Modest but consistent association between overall television exposure and weight/obesity. This applies among children and teenagers.	Moderate evidence that food promotion influences the 'usual dietary intake' of children aged 2-5 years, with weaker evidence for 6-11 year olds. Strong evidence that exposure to television advertising is associated with adiposity in children ages 2-11 years and teens aged 12-18 years. Food promotion is a 'likely contributor' to less healthful diets.

Hastings et al (2006)

Hastings et al's 2006 review of the evidence (Hastings systematic review), which updated Hasting et al's 2003 systematic review[22] and McDermott et al's 2004 systematic review,[23] is

[19] Hastings et al, 2006, above n 15.
[20]Livingstone, S. 'New Research on Advertising Foods to Children: An Updated Review of the Literature', published as Annex 9 to Ofcom *Television Advertising of Food and Drink Products to Children* consultation, 28 March 2006.
[21] JM McGinnis et al, 2005, above n 15.
[22] Hastings et al 2003, above n 15.

the most recent and comprehensive of these reviews. Systematic methods were used to identify and review the evidence, and the findings of the review were peer-reviewed. The review was undertaken on behalf of the World Health Organization and is widely regarded by experts as the leading review in the area.

The authors comprehensively and systematically reviewed the international evidence[24] on the effects of food promotion on children's food knowledge, preferences and behaviour, and reached the following conclusion:

> '…it is clear that food promotion does influence children's food preferences, purchase behaviour and consumption, and that these effects are significant, independent of other influences and operate at both brand and category level.'

The review made the following specific findings:

- There is reasonably robust evidence that food promotion influences children's food preferences;
- There is strong evidence that food promotion influences children's food purchasing and purchase requests;
- There is modest evidence that food promotion influences children's food consumption; and
- There is evidence of small but significant associations between television viewing and diet, and television viewing and obesity.

These findings were based on complex studies capable of establishing causation. The effects were statistically significant, and independent of other influences.

The review also found that food promotion affects both total category sales and brand switching. This finding refutes the common claim made by the food and advertising industries that advertising changes brand preferences within product categories (i.e. persuades consumers to buy one brand rather than another) but does not increase overall consumption within a product category. [25]

The authors noted that the review 'almost certainly understates the problem' as the evidence base focuses on television advertising, and gives less attention to advertising through other media, or to the broader phenomenon of marketing, which includes other forms of promotion (e.g. merchandising and packaging), product development, pricing strategies and distribution.

The review used rigorous systematic procedures to identify and assess the quality of relevant studies.[26] The review procedures were 'borrowed from medical science, where great care is needed to ensure that particular treatments are really safe and effective, and ensure that every possible source of evidence is identified and carefully evaluated.'[27]

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[23] McDermott et al 2004, above n 15.

[24] The evidence was drawn from 70 studies identified using systematic methods and assessed for relevance against pre-defined criteria.

[25] E.g. Ambler, 2004, cited in Hoek, J. & Gendall, P. 'Advertising and obesity: a behavioural perspective', *Journal of Health and Communication*, 2006, 11, 409-423. Although in other contexts the advertising industry claims that advertising is successful for increasing overall consumption in product categories (e.g. Marr and Brownless, 2002 and Aarons and Clerk, 2000, cited in Livingstone, S. & Helsper, E. 'Advertising foods to children: Understanding promotion in the context of children's daily lives', prepared for the Research Department of the Office of Communications (Ofcom), February 2004, published as Appendix 1 to Ofcom. 'Childhood obesity: food advertising in context.' 22 July 2004, <http://www.ofcom.org.uk/research/tv/reports/food_ads/appendix1.pdf>, at 30 August 2007.

[26] A systematic review is 'a review of the evidence on a clearly formulated question that uses systematic and explicit methods to identify, select and critically appraise relevant primary research' (Khan et al, 2001, cited in Hastings et al, 2006).

[27] Hastings, G. 'Food marketing to young children: does the evidence demand action?' Presentation at 10th International Congress on Obesity, Sydney, July 2006.

Livingstone (2006)

Livingstone's (2006) review of the international literature examining the influence of television advertising on children's food preferences and choices was commissioned by Ofcom (the UK communications regulator) to inform Ofcom's consultation on television advertising of food and drink products to children. The review updated the findings of Livingstone and Helsper's (2004) review.[28]

The conclusions of the updated review included the following:

- There is a growing consensus that advertising works in its influence on children's food preferences, diet and health. Given that most advertising to children is for products high in salt, sugar and fat, this influence is harmful to children's health.
- Expert commentators are now convinced that television viewing plays a role in contributing to the problem of children's unhealthy diets.
- The experimental evidence suggests that television advertising has a modest direct effect on children's (aged 2-11) food preferences by demonstrating that those exposed to particular messages are influenced in their food preferences when compared with those who did not see their messages.
- In both experimental and survey studies, the measured effects of advertising/television on food choices are small. Estimates of the effects vary, but some suggest that such exposure accounts for some 2% of the variation in food choice/obesity.
- Cumulatively, this may make an appreciable difference to the number of children who are obese, and this effect may be larger than the measurable effect of exercise and other factors.

Ofcom's decision this year to introduce restrictions on advertising of foods high in fat, salt or sugar to children on television was based on the findings of this review.

Institute of Medicine of the National Academies (2005)

In 2005, the United States Institute of Medicine of the National Academies (IOM) conducted a systematic review of the evidence on the influence of food marketing on the diets and health of children and youth in the United States, at the request of the United States Center for Disease Control and Prevention. As noted above, this review was not referred to in Brand's literature review commissioned by ACMA.

The IOM analysed the results of 123 published, peer-reviewed studies addressing links between food marketing and children's food preferences, requests and consumption, and found that:

- food advertising to children affects their preferences, purchase behaviours, and consumption habits for different food and beverage categories, as well as for different brands; and
- food and beverage advertising on television influences children aged 2-11 years to prefer and purchase high-calorie and low-nutrient foods and beverages.

The key conclusion of the review was that:

> 'Among many other factors, food and beverage marketing influences the preferences and purchase requests of children, influences consumption at least in

[28] Livingstone, S. & Helsper, E. 'Advertising foods to children: Understanding promotion in the context of children's daily lives', prepared for the Research Department of the Office of Communications (Ofcom), February 2004, published as Appendix 1 to Ofcom. 'Childhood obesity: food advertising in context.' 22 July 2004, <http://www.ofcom.org.uk/research/tv/reports/food_ads/appendix1.pdf>, at 30 August 2007.

> the short-term, is a likely contributor to less healthful diets, and may contribute to negative diet-related health outcomes and risks among children and youth'.

The IOM stated that the idea that some forms of marketing increase the risk of obesity 'cannot be rejected.'[29]

After breaking down the results of the reviewed studies by age, dependent measure, and strength of the evidence, the IOM made the following specific findings:

- There is strong evidence that television advertising influences the food and beverage preferences, the purchase requests, and the short-term consumption of children aged 2-11 years.
- There is moderate evidence that television advertising influences the food and beverage beliefs of children aged 2-11, and that it influences the 'usual dietary intake' of children aged 2-5 years, with weaker evidence for 6-11 year olds.
- Television advertising influences children to prefer and request high-calorie and low-nutrient foods and beverages.
- There is strong evidence that exposure to television advertising is associated with adiposity in children ages 2-11 years and teens aged 12-18 years (but the causal relations involved have not been determined).

The IOM used systematic methods to identify and assess relevant studies, and to summarise the evidence. Explicit and systematic criteria were developed for study inclusion and for assessing the level of evidentiary support provided by each study.

6.2 Strength of evidence and size of effect

ACMA appears to have been influenced by the conclusions of Livingstone's 2006 review that food advertising has 'only' a modest direct effect on children's food preferences and choices, and that exposure to food advertising is suggested to account for 'only' 2% of the variance in children's food choice/obesity, in deciding not to include additional food advertising restrictions in the draft Children's Television Standards 2008.

However, Livingstone and other experts have cautioned that research findings of a small effect size in statistical terms should not be interpreted as evidence that food promotion only has a small effect on children, and do not justify inaction on food promotion. Findings of a small effect size are likely to stem from methodological difficulties in isolating and measuring the effect of food promotion on children and do not take into account food promotion's wider indirect effects on children's food preferences and consumption, for example, the interaction of food promotion with other influences on children's food preferences and consumption, the amplification of the effect through interaction with parents and peers who are also exposed to food promotion, and the influence of food promotion in reinforcing the notion that consuming unhealthy food is normal and desirable. Further, commentators stress that since a wide range of factors contribute to children's food choices and obesity, it makes sense that the direct independent contribution of food promotion to children is fairly modest. For example, Livingstone (2006) cites the following comments of one expert:

> 'Given the number of factors involved, the independent contribution of food advertising and more specifically advertising on television must be small. Banning such ads alone as a single strategy to combat excess weight gain in children seems highly unlikely to succeed. However, as part of a broader obesity

[29] Committee on Food Marketing and the Diets of Children and Youth, Institute of Medicine of the National Academies, Overview of the IOM Report on *Food Marketing to Children and Youth: Threat or Opportunity?*, Institute of Medicine, 2005, available at: http://www.iom.edu/CMS/3788/21939/31330/31337.aspx, accessed 19 July 2006.

strategy – or indeed – broader strategy to improve children's diets, it is impossible to argue against.'

Importantly, commentators also note that a small statistical effect on the immediate behaviour of individual children is likely to translate to a much larger effect at the population level and over the period of a child's development. For example, Livingstone (2006) states that a 2% variance 'may make an appreciable difference to the number of children who fall into the "obese category"', that 'this effect may be larger than the measurable effect of exercise and some other factors', and that longitudinal research is beginning to show that the cumulative effects of food promotion throughout a child's development are 'much more sizeable'.

It is also important to realise that when an influence is ubiquitous and quite uniform, like exposure to junk foods ads is for children, it can have a big influence on increasing unhealthy weight across the board without it explaining much of the variation between individuals. This is one of the fundamental mistakes ACMA made in its interpretation of the scientific evidence. An analogous example is television viewing which is also high and relatively uniform in children. It explains only a few percent of the variance in body size in children, yet intervention studies which reduce TV viewing have shown quite large impacts on reducing unhealthy weight gain.

5.3 Causal relationship between food advertising and children's food choices/obesity

ACMA also seems to have placed much weight on the finding of the Brand literature review that existing research does not clearly demonstrate a causal relationship between advertising and obesity in children.

This is contrary to the findings of Hastings et al's (2006) review and the IOM's (2005) review, which both concluded that sufficient empirical evidence exists to support direct causal relationships between children's exposure to food promotion and children's food preferences, purchase requests and consumption. Livingston's (2006) review also concluded that sufficient empirical evidence exists to conclude that television advertising has a modest direct effect on children's food preferences and choices. These conclusions were based on high quality empirical studies capable of establishing causation.

The advice of the OPC and other health groups and experts is that a completely clear and definitive causal relationship between food advertising and obesity is methodologically impossible to establish, and it is unreasonable and highly unrealistic to require this level of evidence before considering intervention.

This is supported by the views of leading researchers in the area. Researchers including Livingstone, the author of the Ofcom literature review, have pointed out that, for mainly methodological reasons, it is unlikely to ever be possible to obtain clear proof of causality, and have cautioned policy-makers not to wait for such evidence before acting to restrict food advertising to children.[30] For example, in the Ofcom literature review, Livingstone argued that 'it must be recognised that there can be no definite proof, no ideal experiment to resolve

[30] Livingstone, S. 'New research on advertising foods to children: an updated review of the literature', published as Annex 9 to Ofcom *Television Advertising of Food and Drink Products to Children* consultation, 28 March 2006; Hastings, G., McDermott, L., Angus, K., Stead, M., & Thomson, S. (2006) *The Extent, Nature and Effects of Food Promotion to Children: A Review of the Evidence*: World Health Organization, <http://who.int/dietphyscialactivity/marketing/en/index.html>, at 16 October 2008; Livingstone, S. & Helsper, E. 'Advertising foods to children: understanding promotion in the context of children's daily lives', prepared for the Research Department of Ofcom, February 2004, published as Appendix 1 to Ofcom, 'Childhood obesity: food advertising in context', 22 July 2004 <http://wwww.ofcom.org.uk/research/tv/reports/food_ads/appendix1.pdf>, at 16 October 2008.

matters for once and for all. Hence, policy decisions must be made on the balance of probabilities.'[31]

Hastings (2003) also makes the point that for methodological reasons, incontrovertible proof that food promotion influences children's diets is not attainable, but that nevertheless, many studies have found clear effects and have used sophisticated methodologies to establish that these effects are not just due to chance, and are independent of other factors that may influence diet, such as parents' eating habits or attitudes. He argues that the research is likely to understate the effect food promotion has on children because the research focuses on television advertising and does not take into account the cumulative effect of television advertising combined with other forms of promotion and marketing, and because studies have failed to take into account the indirect influences of food advertising.

Indeed, Livingstone has suggested that the reason relatively few experiments (which permit causal inferences) on the effects of food advertising are now being conducted is that the research community considers the available evidence to be sufficient to conclude that advertising influences food preferences and choices.[32]

Livingstone observed in the Ofcom literature review that '[I]n recent research, few have questioned the claim that marketing/advertising is part of the problem' and that research efforts have started to focus on national surveys rather than experiments because researchers are 'taking the causal hypothesis to have been established and turning to investigate the range of factors influencing children's diet and health.'[33]

6.3 Indirect evidence that food advertising influences children

In addition to the direct evidence described above, a clear indication that food advertising is effective for increasing consumption is the huge amounts of money food companies continue to invest in this advertising. For example, from January to June 2007, food companies spent $1,684,796,000 on food advertising on free-to-air television.[34] A recent media buyers survey commissioned by Free TV Australia reported that marketers consider free-to-air television to be the 'best way to reach grocery buyers with children.'[35]

In 2005, the International Obesity Taskforce (IOTF) developed an 'obesity prevention evidence framework', and using this framework classified the continued high financial investment by food companies in marketing food to children as 'indirect evidence' that this marketing is effective for increasing children's consumption. It can reasonably be assumed that food companies have collected plenty of direct evidence that children are influenced by food marketing (for example, through market research using focus groups of children and through monitoring of the impact of marketing campaigns targeting children on product sales) based on the fact that they continue to invest huge amounts of money in marketing food to children. Therefore, this investment can be regarded as indirect evidence that food marketing influence's children's food consumption for the purposes of policy decision-making.[36]

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[31] Livingstone 2006, above n 17, p 11.
[32] Ibid.
[33] Ibid.
[34] AC Nielsen All Media.
[35] Free TV Australia Media Buyers Survey 2006, available from: http://www.thinktv.com.au, accessed 26 August 2007.
[36] Swinburn, B.A., Gill, T.,& Kumanyika, S. 'Obesity prevention: a proposed framework for translating evidence into action', *Obesity Reviews*, 2005, 6, 23-33.

6.4 Food advertising restrictions recommended by experts

Many experts and health groups (including the World Health Organization and the Institute of Medicine) have concluded that the evidence of food advertising on children's food preferences, demands and consumption warrants action by governments, and have specifically recommended interventions to restrict advertising of unhealthy foods to children as part of multi-strategy approaches to improve children's food choices and diets and prevent obesity. [37] Since foods promoted to children are usually energy-dense and nutrient-poor, experts agree these influences are likely to contribute to unhealthy diets and obesity in children

In the United Kingdom, Ofcom, the UK communications regulator, has decided that the evidence of the detrimental effects of television food advertising on children warrants restricting such advertising. Ofcom relied on the findings of Livingstone's (2006) review in reaching its decision early this year to introduce restrictions on television advertising of high fat, sugar or salt foods during children's programs.

Based on the findings of its review of the evidence, the IOM stressed the importance of changing the approach, content and regulation of food promotion to children as one of several initiatives to improve the diet-related health of children and youth. The IOM concluded that, 'if voluntary efforts related to advertising during children's television programming are unsuccessful in shifting the emphasis away from high-calorie and low-nutrient foods and beverages to the advertising of healthful foods and beverages, Congress should engage legislation mandating the shift on both broadcast and cable television.'

Hastings et al (2003) concluded that on the basis of the evidence '[T]he debate should now shift to what action is needed, and specifically to how the power of commercial marketing can be used to bring about improvements in young people's eating.' Hastings et al (2006) proposed that an international agreement be implemented, similar to the Framework Convention on Tobacco Control, with the aim of making food promotion to children healthier.

In 2003, prior to the reviews described above, a joint World Health Organisation/Food and Agriculture Organization of the United Nations Consultation on Diet, Nutrition and Prevention of Chronic Diseases analysed evidence on the effects of marketing of fast food and energy-dense micronutrient-poor foods to children and concluded that there was sufficient indirect evidence to warrant categorising such marketing as a 'probable' causal factor in child weight gain and obesity, and a target for interventions. The World Health Organisation recommended limiting the exposure of young children to heavy marketing practices of energy-dense, micronutrient-poor foods as a strategy for obesity prevention. [38]

No one involved in the debate suggests that restricting food promotion to children is the solution to the obesity epidemic. Since obesity is a multi-factorial problem, no single intervention can reasonably be expected to have a substantial impact on obesity rates;

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[37] Livingstone, S. 'New Research on Advertising Foods to Children: An Updated Review of the Literature', published as Annex 9 to Ofcom *Television Advertising of Food and Drink Products to Children* consultation, 28 March 2006, available from: ; JM McGinnis, JA Gootman, VI Kraak, eds. *Food Marketing to Children and Youth: Threat or Opportunity?* 2005, Washington DC, USA: Institute of Medicine of the National Academies; Report of a Joint WHO/FAO Consultation. Diet, Nutrition and the Prevention of Chronic Diseases, WHO Technical Report Series 916, World Health Organisation: Geneva, 2003, available at: http://www.who.int/hpr/NPH/docs/who_fao_expert_report.pdf, accessed 19 July 2006; Lobstein, T. & Dibb, S. 'Evidence of a possible link between obesogenic food advertising and child overweight', *Obesity Reviews,*2005, 6, 203-208.

[38] Report of a Joint WHO/FAO Consultation. Diet, Nutrition and the Prevention of Chronic Diseases, WHO Technical Report Series 916, World Health Organisation: Geneva, 2003, available from: http://www.who.int/hpr/NPH/docs/who_fao_expert_report.pdf, accessed 19 July 2006.

clearly, a range of measures is required to address the range of factors contributing to the problem. Experts agree that food promotion is one of many influences on children's food choices, diets and obesity, and that other influences (e.g. exercise levels and meal habits) should also be addressed where possible. However, food promotion is more readily amenable to practical intervention than many other influences (for example, parents' food-related behaviours and attitudes, or social and cultural norms).

7 Possible harmful effects of food advertising on children

The influence of food advertising on children's dietary intake may be detrimental to children's immediate and long-term health in several ways. Obviously, of most concern to the OPC is the contribution this influence can make to weight gain and obesity in children. The problem of overweight and obesity in Australian children is discussed in detail below. However, the influence of food advertising is also likely to contribute to children having poor nutrition and diets, and poor oral health.

Children's nutrition and diets

Nutritious foods are essential for optimal growth, development and health throughout life and contribute to physical vitality, mental health and social wellbeing.[39] People who consume diets high in vegetables, legumes and fruit have a substantially lower risk of many diseases, and it is believed that the protective effect of these foods against disease begins early in life.[40]

However, data indicates that many Australian children and adolescents have unhealthy diets, and consume inadequate amounts of fruit and vegetables. For example, data from the 2004/05 National Health Survey shows that only between 25-30% of young people report consuming adequate serves of fruit and vegetables per day.[41][42]

Victorian data also indicates that the diet of children is of concern, with only around 40% meeting recommendations for vegetable intake.[43] Victorian research has also found that the majority of children eat hot chips one to three times a week, one in ten children eat fries more than three times a week, and more than 10% eat takeaway more than five times a month. In addition, nearly a quarter of children drink more soft drink than water every day.[44]

Children's oral health

Poor diets, which include too many high sugar and refined foods, may lead to poor oral health in children. The most recent data that is available indicates that the incidence of dental caries in Australian children began to increase at the end of the 1990's for the first time in two decades. For example, between 1996 and 1999, there was a 21.7% increase in dental caries in five year-old children. Increases were not as marked in other age groups, but still represented a significant shift in trends for the prevalence of dental caries in Australian children.[45]

The prevalence of dental caries remains a significant public health problem in Australia and has been estimated to be the most expensive diet-related health problem. It is a common

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[39] World Health Organisation. Diet, *Nutrition and the Prevention of Chronic Diseases. Report of a WHO/FAO Expert Consultation*, 2006, Geneva: WHO; Strategic Inter-Governmental Nutrition Alliance. *Eat Well Australia: An Agenda for Action for Public Health Nutrition.* 2000, Melbourne: National Public Health Partnership, p 2-3.
[40] Australian Institute of Health and Welfare 2007. Profile of nutritional stuatus of children and adolescents. Cat no PHE 89. Canberra: AIHW.
[41] As above.
[42] As above.
[43] Victorian Department of Human Services. *The state of Victoria's children report*. 2006, Melbourne: DHS.
[44] As above.
[45] Armfield, J.M., Roberts-Thomson, K.F., & Spencer A.J. The Child Dental Health Survey, Australia 1999: Trends across the 1990s. 2003, AIHW Cat. No. DEN 95. Adelaide: The University of Adelaide (AIHW Dental Statistics and Research Series No. 27).

reason for children to be treated in hospital. In 2004, the average cost per admission for extractions and restorations was estimated to be $2,011 per child.[46]

8 Overweight and obesity in Australian children

The issue which has received most attention in relation to food advertising to children, and about which the OPC is most concerned, is overweight and obesity in Australian children. As discussed, experts and health organisations, including the World Health Organization, agree that there is sufficient evidence to conclude that food advertising is a contributor to overweight and obesity in children.

Overweight and obesity places the health and wellbeing of Australia's children and adolescents under serious threat. Obesity is one of the leading causes of preventable death in Australia, contributing to significant increases in the incidence of chronic disease (including type 2 diabetes, cardiovascular disease and cancer) with serious consequences for the health system and the economy. Rates of overweight and obesity are accelerating, and it has been predicted that life expectancy will fall as result.[47]

8.1 Prevalence of childhood overweight and obesity

The prevalence of overweight and obesity in Australian children and adolescents has reached critical levels and continues to increase rapidly. On conservative estimates, at least 23% of Australian children and adolescents are overweight or obese, and at least 6% of these are obese.[48] Prevalence has increased rapidly in the past decade. According to the most recent national data (from the 1985 Australian Health and Fitness Survey and the 1995 National Nutrition Survey), the prevalence of combined overweight and obesity in Australian children aged 7-15 more than doubled from 1985 to 1995, and the prevalence of obesity tripled.[49] The 1995 National Nutrition Survey found that in 1995, 4.6% of Australian children aged 2-7 years were obese, and a further 15.3% were overweight but not obese. Overall, one in five (19.9%) Australian children aged 2-17 years were either overweight or obese.[50]

More recent regional surveys indicate that overweight and obesity rates in Australian children have increased dramatically since the 1995 National Nutrition Survey was conducted. A study of 1001 Victorian children aged 7-11 years conducted in 2003 found that 26.7% were overweight or obese.[51]A 2000 survey of New South Wales children aged 7-11 years reported that 9.9% of boys and 7.1% of girls were obese, and 26.2% of boys and 28.4% of girls were overweight.[52] In 2004, the NSW Schools Physical Activity and Nutrition Survey reported that 25% of boys and 23.3% of girls from Kindergarten to Year 10 (aged 5-16 years of age) were either overweight or obese.[53]

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[46] Commwealth Department of Health and Ageing. National Hospital Cost Data Collection, Cost Report Round 7 (2002-2003). Canberra: Commonwealth Department of Health and Ageing, 2004.
[47] Olshansky, S.J., Passaro, D.J., Hershow, R.C., Layden, J., Carnes, B.C., Brody, J., Hayflick, L., Butler, R.N., Allison, D.B., & Ludwig, D.S. 'A potential decline in life expectancy in the United States in the 21st century.' *New England Journal of Medicine*, 2006, 352: 11, 1138-1145.
[48] Booth, M.L, Wake, M., & Armstrong. T., et al. 'The epidemiology of overweight and obesity among Australian children and adolescents, 1995-1997'. *Australian New Zealand Journal of Public Health*, 2001, 25, 162-169.
[49] Margarey, A.M., Daniels, L.A., & Boulton, T.J. 'Prevalence of overweight and obesity in Australian children and adolescents: reassessment of 1985 and 1995 data against new standard international definitions'. *Medical Journal of Australia,* 2001, 174, 561-564.
[50] As above.
[51] Swinburn, B. & Bell, C. (2003) Results of a weight survey of primary school children in the Sentinel Site for Obesity Prevention, Victoria, Melbourne: Deakin University.
[52] Goodman, S., Lewis, P.R., Dixon, A.J., & Travers, C.A. 'Childhood obesity: of growing urgency.' *Medical Journal of Australia,* 2002, 176, 400-401.
[53] Booth, M., Okely, T., & Denney-Wilson, E. et al. NSW Schools Physical Activity and Nutrition Survey (SPANS) 2004: Summary report. New South Wales Department of Health, 2006.

Research also indicates that children are becoming obese at a younger age than in the past. A South Australian survey found that the prevalence of obesity in preschool (4-year-old) children increased from 3.5% for girls and 3.2% for boys in 1995 to 5.85 for girls and 4.1% for boys in 2002.[54]

Rates of childhood overweight and obesity are expected to continue to increase rapidly unless comprehensive legislative or regulatory action to address the problem is taken at all levels of Australian government.[55]

8.2 Health consequences of childhood overweight and obesity

Childhood overweight and obesity is associated with a range of very serious health problems and increases the risk of premature illness and death later in life. Children who are overweight or obese are more likely to suffer from a range of medical conditions and health complications, including increased cardiovascular disease risk factors, high blood pressure, type 2 diabetes, inappropriately fast growth and development, hepatic and gastric complications, abnormal glucose metabolism, orthopaedic complications, asthma and sleep apnoea.[56]

Overweight and obese children are also more likely to experience problems which affect their psychological and social wellbeing, including poor self-esteem, negative self-image, social difficulties, bullying, anxiety, sadness, loneliness and depression.[57] Research in the United States has found that more stigma is attached to obesity in children than any physical disability, across all socio-economic and ethnic groups.[58]

It should be noted that children who are overweight, not just children who are obese, may have serious health problems. The 2004 study of overweight and obesity in New South Wales children, referred to above, examined children for the presence of blood biomarkers (i.e. early indicators of disease risk) for diabetes, cardiovascular disease and fatty liver disease.[4] The study found that more than 20% of boys who were overweight or obese had two or more risk factors for serious chronic disease, and that almost 70% of obese boys, and 30% of overweight boys, had elevated insulin levels – an early indicator of diabetes.[59]

A further negative consequence of childhood obesity is that it is likely to persist into adulthood. Obese children have a 25-50% chance of becoming obese adults, and this chance increases to 78% for older obese adolescents.[60] Adult obesity carries an increased risk of type 2 diabetes, gallbladder disease, cardiovascular disease, endocrine and metabolic disturbances, certain cancers, including endometrial, oesophageal, renal, gallbladder, colon and postmenopausal breast cancers, and a range of other health problems, including psychological problems.[61]

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[54] Vaska, V.L., & Volkmer, R. 'Increasing prevalence of obesity in South Australian 4-year-olds: 1995-2002' *Journal of Paediatric Child Health*, 2004, 40, 353-355.
[55] Zimmet, P.Z., & James, P.T. 'The unstoppable Australian obesity and diabetes juggernaut. What should politicians do?' *Medical Journal of Australia*, 2006, 185, 187-188.
[56] World Health Organisation. *Obesity: Preventing and Managing the Global Epidemic. Report of a WHO Consultation*. WHO Technical Report Series no. 894. 2000, WHO: Geneva.
[57] As above.
[58] French, S.A., Story, M., & Perry, C.L. 'Self-esteem and obesity in children and adolescents: a literature review. *Obesity Review*, 1995, 3, 479-490.
[59] Booth, M., Okely, T., & Denney-Wilson, E. et al. 'NSW Schools Physical Activity and Nutrition Survey (SPANS) 2004: Summary report.' 2006, New South Wales Department of Health.
[60] Must, A., & Strauss, R.S. 'Risks and consequences of childhood and adolescent obesity.' *International Journal of Obesity Related Metabolic Disorder*, 1999, 23 Suppl 2, S2-11.
[61] World Health Organisation. *Obesity: Preventing and Managing the Global Epidemic. Report of a WHO Consultation* (2000) WHO Technical Report Series no. 894.

Seven and a half per cent of the total burden of disease and injury in Australia is attributable to overweight and obesity, and this proportion is expected to increase even further as the proportion of Australians who are overweight and obese continues to climb. Currently, only exposure to tobacco (7.8%) and high blood pressure (7.6%) account for higher proportions of the disease burden in Australia.[62]

In 2005, 3.24 million Australians were estimated to be obese, comprising 1.52 million males (15.1% of all males) and 1.72 million females (16.8% of all females), and it has been conservatively estimated that the number of Australians who are obese will grow to 4.2 million (16.7% of the population) by 2025.[63] However, if obesity continues to increase at historical rates, as many as 7.2 million Australians (28.9% of the population) could be obese by 2025.[64]

8.3 Costs of overweight and obesity

The financial costs of overweight and obesity include direct financial costs to the health system, productivity losses and carer costs. Overweight and obesity also have significant non-financial costs, including disability, loss of wellbeing and premature death. A recent report on the economic costs of obesity estimated that the total cost of obesity in Australia in 2005 was $21.0 billion, comprising $3.8 billion in financial costs and $17.2 billion in net costs of lost wellbeing.[65] The estimated $3.8 billion in financial costs included $1.7 billion in lost productivity, $873 million in direct financial costs to the health system and $804 million in costs borne by carers. It should be noted that this report was based on the cost of obesity alone and did not take into account the cost of overweight.

8.4 Causes of childhood overweight and obesity

Obesity and overweight are conditions related to excess body fat, and generally occur when a person's energy intake from food and drink exceeds the energy they expend through physical activity over a period of time. Excess body fat can have a genetic or medical basis, but these factors cannot account for the dramatic increase in overweight and obesity prevalence over the last two decades. This increase can only be due to significant changes to the environment and living conditions of Australians.[66]

Overweight and obesity primarily result from imbalances between energy intake and energy expenditure; however, modelling indicates that energy intake is a more important determinant of body weight than energy expenditure.[67] The key cause of the recent rapid increase in overweight and obesity prevalence is thought to be increased energy intake through increased consumption of energy-dense (high fat and/or sugar) foods.

Recent Australian data indicates that this is the case.[68] A study of 5,500 school children (aged 5-16) in NSW found children's physical activity levels increased between 1985 and 1997, despite a dramatic increase in children's overweight and obesity levels over that time. In contrast, energy consumption increased by 13-15% over the same time period. This

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[62] Begg, S., Vos, T., Barker, B., et al. 'The Burden of Disease and Injury in Australia 2003.' 2007, Canberra: Australian Institute of Health and Welfare.
[63] Access Economics. The Economic Costs of Obesity. 2006. Canberra: Diabetes Australia.
[64] As above.
[65] As above.
[66] Australian Institute of Health and Welfare. 'A rising epidemic: obesity in Australian children and adolescents.' Risk Factors Data Briefing Number 2, October 2004, AIHW, available from: http://www.aihw.gov.au/riskfactors/data_briefing_no_2.pdf, accessed 30 August 2007.
[67] Swinburn, B.A., Jolley, B., Kremer, P.J., Salbe, A.C. , & Ravussin, E. 'Estimating the effects of energy imbalance on changes in body weight in children.' *American Journal of Clinical Nutrition*, 2006, 83, 859-863.
[68] Cook, T. Rutishauser I. & Seelig M. Comparable data on food and nutrient intake and physical measurements from the 1983, 1985 and 1995 national nutrition surveys. 2001. Canberra, National Food and Nutrition Monitoring and Surveillance Project, funded by the Commonwealth Department of Health and Aged Care.

increase in energy consumption was explained by an increase in consumption of energy-dense foods (such as cakes, sweet biscuits, pies, pizza, confectionery and soft drinks) rather than an increase in total food consumption.[69]

It is not surprising that energy intake would be a more important determinant of weight gain in children than energy expenditure; for the average eight-year old, 10% energy intake equates to about 450 ml of soft drink, whereas 10% of energy expenditure equates to about 2.5 hours of extra walking per day.[70]

Data indicates that Australians' consumption of energy-dense foods has increased. For example, the average volume of soft drink consumed annually by children and adults has increased from 47 litres per person in the 1970's to a current average of 113 litres per person per year[71]. In Victoria, almost a quarter of children (aged 2-12) drink more soft drink every day than water and between 40-65% of children (aged 5-16) are consuming more than 250ml of soft drink every day.[72]

Based on modelling done in the US to quantify the energy imbalance responsible for the increase in body weight among US children, it appears that even modest changes in children's diets can have a cumulative weight impact. Even if children were exposed to relatively small amounts of food advertising every day, the impact only needs to equate to a change in food intake of 675KJ daily (roughly equivalent to a can of soft drink or a small packet of crisps) to contribute to weight gain of half a kilogram a year (beyond that associated with healthy growth during that period) for young children aged 2-5. For children aged 12-17, an excess of 2834kJ daily (roughly equivalent to a small McDonalds cheeseburger meal) equates to a weight gain of approximately 2.65kg per year over 10 years (beyond that associated with healthy growth during that period). This would have a significant impact on overweight and obesity at the population level. [73]

The evidence of the effects of food advertising on children indicates that it is an important contributor to children's increased consumption of energy-dense foods, and thus to overweight and obesity in children.

9 Ethics of advertising unhealthy foods to children

In addition to the harmful effect on children's health, there are ethical concerns about advertising unhealthy foods to children. Psychological research shows that children are particularly vulnerable to advertising because they cannot properly understand or interpret advertising messages.

In order to properly comprehend and interpret advertising messages, children need to be able to distinguish between commercial and non-commercial content, understand that the purpose of advertising is to persuade, and interpret advertising critically with this in mind. These abilities develop over time as functions of cognitive growth and intellectual development. [74]

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[69] As above.
[70] Swinburn, B.A., Jolley, B., Kremer, P.J., Salbe, A.C. , & Ravussin, E. 'Estimating the effects of energy imbalance on changes in body weight in children.' *American Journal of Clinical Nutrition*¸2006, 83, 859-863.
[71] Gill, T., Rangan, A., & Webb, K. 'The weight of evidence suggests that soft drinks are a major issue in childhood and adolescent obesity.' *Medical Journal of Australia*, 2006, 184, 263-264
[72] Victorian Department of Human Services. *The state of Victoria's children report*. 2006, Melbourne: DHS; Booth, M., Oakley, A.D., Denney-Wilson, E., Hardy, L., Yang, B., & Dobbins, T. *NSW Schools Physical Activity and Nutrition Survey (SPANS) 2004: Summary Report.* 2006, Sydney: NSW Department of Health.
[73] Wang, C.Y., Gortmaker, S.L., Sobol, A.M. & Kuntz, K.M. 'Estimating the energy gap among US children: A counterfactual approach' **,** *Pediatrics,* 2006, 118, 1721-1733; abstract available from: http://pediatrics.aappublications.org/cgi/content/abstract/118/6/e1721.
[74] Kunkel, D., Wilcox, B.L., Cantor, J., Palmer, E., Linn, S. & Dowrick, P. 'Report of the APA Task Force on Advertising and Children.' Washington, DC: American Psychological Association, February 20, 2004. (Available from: http://www.apa.org/releases/childrenads.pdf, accessed July 12 2006.)

In 2004, an American Psychological Association taskforce on advertising and children reviewed a substantial body of empirical research on the psychological effects of advertising on children, and concluded that children younger than 8 years of age are particularly vulnerable to advertising because they cannot understand that its purpose is to persuade. The taskforce found that most children younger than 4-5 years cannot distinguish between advertisements and programs on television – they regard advertising simply as information or entertainment. By about 4-5 years of age, most children develop the ability to make this distinction using perceptual cues (e.g. advertisements are short and programs are long), but most children do not understand the persuasive intent of advertising until at least the age of 8. This means that they do not have the ability to effectively evaluate advertising claims and appeals, and consequently tend to accept advertising as truthful, accurate and unbiased. Even by this age, children's ability to understand advertising's purpose tends to be only rudimentary – they may understand that advertisements are intended to sell products, but this does not necessarily mean that they will recognise the bias inherent in persuasive messages and therefore interpret such messages with scepticism.[75] The taskforce found that children's understanding of advertising's intent is positively correlated with age, and is linked to their development of cognitive capabilities.

This suggests that advertising to children who are too young to understand the persuasive intent of advertising is unfair and unethical, particularly if the advertised products may be detrimental to children's health. Children cannot be expected to make informed choices based on advertising if they cannot properly understand or interpret it, and regard it simply as information or entertainment.

Accordingly, the OPC believes children have a right to be protected from commercial influence to consume unhealthy foods. Since children are particularly vulnerable to this influence, and it is potentially harmful, the OPC believes it can be regarded as a form of exploitation. Under the United Nations *Convention on the Rights of Children* (to which Australia is a signatory), countries have a responsibility to protect children from all forms of exploitation prejudicial to any aspects of their welfare (article 36), and to encourage guidelines to be developed to ensure children are protected from information that may be injurious to their wellbeing (article 17).

10 Effectiveness and cost-effectiveness of food advertising restrictions

Recognising the need for evidence-based policies for obesity prevention, the Victorian Department of Human Services commissioned the Assessing Cost Effectiveness in obesity project ('ACE Obesity') in 2004. The aim of the project was to provide evidence of the effectiveness and cost-effectiveness of various obesity prevention interventions in Australian children and adolescents. A new modelling approach was developed to report on 13 potential obesity prevention interventions, in terms of the strength of evidence to support the interventions, their likely population health benefit, and their cost-effectiveness for government.[76]

Thirteen interventions to prevent obesity in children and adolescents were selected (by a working group consisting of representatives of state and federal health departments, other government agencies and departments, key non-government organisations and academics)

[75] As above.
[76] Haby, M.M., Vos, T., Carter, R., Moodie, M., Markwick, A., Magnus, A., Tay-Teo, K-S., & Swinburn, B. 'A new approach to assessing the health benefit from obesity interventions in children and adolescents: the assessing cost-effectiveness in obesity project.' *Pediatric New Perspective*, 2006, 30, 1463-1475; Victorian Government Department of Human Services. 'ACE-Obesity: Assessing cost-effectiveness of obesity interventions in children and adolescents – summary of results.', 2006, available at http://www.health.vic.gov.au/healthpromotion/downloads/ace_obesity.pdf, accessed 22 August 2007.

based on pre-determined selection criteria, including relevance to current policy decision-making and availability of evidence of effectiveness. The interventions included: an 'active after schools' community-based program; school-based education programs – to improve nutrition and increase physical activity, to reduce consumption of fizzy soft drinks, and to reduce TV viewing; interventions to encourage travelling to school using 'active transport'; a GP program targeting overweight and moderately obese children; a family-based program for obese children; gastric banding for morbidly obese adolescents; and reduction of TV advertising of high fat and/or sugar food and drinks to children up to 14 years (through a ban on such advertising applying 7-8am and 3-9pm on weekdays, 6am – 1pm on weekends, and during C, P and G programs).

The project used scientific modelling techniques to assess the health gain of each of the interventions. The modelling calculated age-specific BMI (body mass index) units that each intervention could save for an individual and the population, and converted this to DALYs (disability adjusted life years – a measure of the number of life years lost due to premature death or premature mortality) that would be saved over each child's lifetime, based on changes in expected disease-risk with BMI reduction.

Economic analyses of the interventions were conducted according to the estimated costs for government of each of the interventions, and the savings in health care costs from reduction in obesity-related diseases each intervention would produce. Based on these analyses, a 'net cost per DALY saved' ratio was calculated for each intervention.

The study found that the 'gastric banding for morbidly obese adolescents' intervention would have the largest impact on an individual's BMI, but would affect relatively few individuals.

On the other hand, the 'reduction in TV advertising of high fat and/or sugar foods to children' intervention would have a small individual impact but would affect a very large number of children, and would therefore have the largest benefit of all the interventions for the health of the population, resulting in savings of about 400,000 BMI units and 37,000 DALYs.[77]

The study found that the reduction in TV food advertising intervention would also represent the best value for money for government, costing just $3.70 per DALY saved.[78] (It is acknowledged, however, that the study only calculated the cost for government of implementing the intervention, and did not take into account the financial impact on broadcasters or the food industry.)

11 Parental concern about food advertising to children

There is a high level of concern among Australian parents about children's exposure to advertising of unhealthy food at times children watch television. A national survey of parents conducted in May this year found that 79.7% of parents were somewhat or very concerned about the amount of advertising of unhealthy food at times children are likely to watch television. Parents were also concerned about methods of advertising used to market food products to children, in particular offers of free toys or gifts (76%).[79]

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[77] Haby, M.M., Vos, T., Carter, R., Moodie, M., Markwick, A., Magnus, A., Tay-Teo, K-S., & Swinburn, B. 'A new approach to assessing the health benefit from obesity interventions in children and adolescents: the assessing cost-effectiveness in obesity project.' *Pediatric New Perspective*, 2006, 30, 1463-1475.

[78] Victorian Government Department of Human Services. 'ACE-Obesity: Assessing cost-effectiveness of obesity interventions in children and adolescents – summary of results.', 2006, available at http://www.health.vic.gov.au/healthpromotion/downloads/ace_obesity.pdf, accessed 22 August 2007.

[79] Morley, B.C. *National community survey of TV food advertising to children*, prepared by the Cancer Council Victoria for the Coalition on Food Advertising to Children (funded by Queensland Health), May 2007, available from: http://www.health.qld.gov.au/phs/documents/shpu/survey_tvfoodadvchild.pdf, accessed 24 August 2007.

Surveys also show that parents strongly support stronger government regulation of food advertising to children. In the national survey referred to above, almost three quarters of parents surveyed (73.4%) disagreed or strongly disagreed that current regulation of television advertising to children is effective, and the vast majority of parents (88.7%) agreed or strongly agreed that the government should introduce stronger restrictions on food advertising at times when children watch television. Eighty-six per cent of parents thought this regulation should take the form of a ban on unhealthy food advertising at times children watch TV.[80]

A recent survey of 1200 Australians undertaken by Choice in 2006 also found high public approval for restrictions on the advertising of unhealthy food to children.[81] Specifically, the survey found that 82% of respondents believed the government should restrict or totally prevent TV advertising of unhealthy foods and drinks to children.

12 International advertising regulations

A number of sources of international law recognise the need for special protection for children from advertising, due to their vulnerability and credulity.

The United Nations *Convention on the Rights of the Child* requires signatories (including Australia) to take appropriate measures to protect the rights of children. Two articles of the Convention support the need for countries to introduce effective regulation of food advertising to children: article 17, which directs countries to develop appropriate guidelines for the protection of children from information which may be 'injurious to [their] well-being'; and article 36, which directs countries to 'protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.'

In some international jurisdictions, broad prohibitions against *all* advertising to children exist, in recognition of the principle that advertising to children is unethical since they cannot understand its persuasive intent. The jurisdictions with the most extensive legislative prohibitions on advertising to children are Sweden and Norway, and the Canadian province of Quebec. In Sweden and Norway, commercial advertising directed to children on television is prohibited, while in Quebec, commercial advertising directed to children through any medium is prohibited.[82] The restrictions apply to commercial advertising of all products and services to children, not just food advertising.

Internationally, countries and health agencies are beginning to recognise the need to act on food advertising to children as part of comprehensive approaches to curb the obesity epidemic.

At the World Health Assembly in May last year, health ministers mandated the World Health Organisation to develop a set of recommendations on food marketing to children.[83]

Last year, following global consultation, the International Obesity Taskforce (the policy and advocacy arm of the International Association for the Study of Obesity) released a set of

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[80] As above.
[81] Choice, Newspoll survey, available from: http://www.choice.com.au/viewArticle.aspx?id=105438&catId=100512&tid=100008&p=1&title=Childhood+obesity, accessed 19 March 2007.
[82] Sweden: commercial advertising in a television broadcast may not be designed to attract the attention of children under 12 years of age (s 4 of the Radio and Television Act (1996: 844)); Norway: advertisements may not be broadcast on television in connection with children's programs, nor may advertisements be specifically directed to children (s 3-1 of the Broadcasting Act (1992)); Quebec: commercial advertising may not be directed at persons under thirteen years of age (s 248 of the Consumer Protection Act 1980).
[83] World Health Organisation. Prevention and Control of non-communicable diseases: implementation of the global strategy. Sixtieth World Health Assembly, Resolution WHA 60.23, Geneva, May 23, 2007. Geneva: World Health Organisation. Available from: http://www.who.int/gb/ebwha/pdf_files/WHA60/A60_R23-en.pdf.

guiding principles ('Sydney Principles') to guide regulatory action by countries in changing food and beverage marketing practices that target children. In summary, the Sydney Principles assert that regulations to reduce commercial promotions to children should:

- support the rights of children (by aligning with CROC and the Rome Declaration on World Food Security);
- afford substantial protection to children from commercial exploitation;
- be statutory in nature;
- take a wide definition of commercial promotions (including all forms/methods of commercial marketing to children);
- guarantee commercial-free childhood settings (schools, child care facilities, etc);
- include cross-border media; and
- be evaluated, monitored and enforced.[84]

During consultation, stakeholders from 18 countries (including government agencies, health agencies and industry associations) expressed strong support for the need for guiding principles on food marketing to children.[85]

Recently, in the Republic of South Africa the Minister for Health has introduced draft regulations to (among other things) prohibit advertising of any kind (including on product labelling) of specified foods 'not regarded essential as part of a healthy diet and healthy lifestyle' to children younger than 16.[86] The draft regulations also specifically prohibit use of a child actor younger than 16, use of any cartoon-type character or puppet, computer animation or any similar strategy, token or gift, in order to encourage use of a food, and advertising or promotion of any of the relevant foods in any school tuck shop or on any school or pre-school premises. The aim of the draft regulations is to implement the Food and Agriculture Organisation and World Health Organisation's Global Strategy on Diet, Physical Activity and Health. Consultation on the draft regulations is occurring until 20 October 2007.[87]

As ACMA would know, earlier this year, Ofcom, the United Kingdom communications regulator, decided to introduce restrictions on food advertising to children (in the UK BCAP Television Advertising Standards Code).

These restrictions apply to advertising of foods that are assessed as being high fat, sugar or salt (HFSS), according to 'nutrient profile criteria' developed by the UK Food Standards Agency (discussed in section 16.2 and the attachment to this submission).

The restrictions include:

- a scheduling restriction – preventing the advertising (including program sponsorship) of HFSS foods in or adjacent to 'children's programs' or programs principally directed, or of particular appeal, to children younger than 16 (the effect of this restriction is also to prevent any HFSS food advertising on dedicated children's channels); and

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[84] Available from: www.iotf.org/sydneyprinciples, accessed 23 August 2007.

[85] International Obesity Taskforce. 'Sydney Principles – summary of responses from the global consultation', 27 July 2007, available from: http://www.iotf.org/sydneyprinciples/documents/SydneyPrinciplesSummaryofResponsesFinal_000.pdf, accessed 23 August 2007.

[86] South African Government Gazette No 30075, Clause 52(2)(e) of Draft Regulations Relating to the Labelling and Advertising of Foodstuffs, to be introduced under section 15(1) of the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act 54 of 1972), released 20 July 2007, available at http://www.doh.gov.za/docs/regulations/2007/reg0642.pdf, accessed 23 August 2007.

[87] See the Minister for Health's Media Release announcing the release of the draft regulations, available at http://www.doh.gov.za/docs/pr/pr0726a-f.html, accessed 23 August 2007.

- content restrictions on HFSS food advertising, including prohibitions against use of licensed characters, celebrities, promotional offers and health claims directed to pre-school or primary school children.

13 Current regulation of food advertising to children on television

The OPC believes the existing regulatory system is inadequate to protect children from the harmful effects of food advertising on free-to-air television.

Advertising on free-to-air television is currently co-regulated by ACMA under the CTS and by the free-to-air commercial television broadcasting industry under the Commercial Television Industry Code of Practice (CTICP). Advertising, including advertising on free-to-air television, is also self-regulated by the advertising industry under the Australian Association of National Advertisers' codes of practice.[88] The CTS, CTICP and the AANA codes contain some specific provisions on the content of food advertising to children. In addition, the *Trade Practices Act 1974* (Cth), and State and Territory fair trading acts, contain provisions on misleading and deceptive conduct and false representations, which apply to food advertising on television.

13.1 Children's Television Standards

Compliance with the CTS is a licence condition for all free-to-air commercial television broadcasters.

The CTS contains provisions on the amount and content of advertising that may be shown on free-to-air television during certain types of children's programs or program periods, including one provision on the content of food advertising that may be shown during children's programs.

The CTS apply during two types of children's programs – 'P programs' (pre-school children's programs) and 'C programs' (children other than pre-school children's programs), which are programs that meet criteria set out in the CTS for suitability for pre-school children or children other than pre-school children, and that have been pre-classified by ACMA as P programs or C programs. The suitability criteria in the CTS require P and C programs to be made specifically for children, to be entertaining for children, to be well produced, to enhance a child's understanding and experience, and to be appropriate for Australian children.

The CTS provide minimum quota requirements for the broadcast of P and C programs: broadcasters must broadcast a combined total of at least 390 hours of P and C programs, which must include at least 130 hours of P programs and 260 hours of C programs (CTS 3(1)(a) and (b)). At least 130 hours of the quota requirement for C programs must be met through the broadcast at least 30 minutes of C programs (continuously) every weekday between 7am and 8am or 4pm and 8.30pm, and the remaining 130 hours of C programs must be broadcast during the 'C band' (which under the draft CTS 2008, will be 7am-8.30am and 4pm-8.30pm on weekdays, and 7am-8.30pm on weekends and school holidays). Broadcasters must broadcast P programs for at least 30 minutes every weekday in the 'P band' (7am-4.30pm on weekdays).

The CTS also define 'P periods' and 'C periods' as the periods nominated by broadcasters (through written notice to ACMA) during which they will broadcast P programs or C programs (respectively). Broadcasters must *only* broadcast P programs or C programs (as appropriate) during these periods (CTS 3(1)(g)), and P and C programs only count towards

[88] AANA Advertiser Code of Ethics, AANA Code of Advertising to Children, AANA Food and Beverages Advertising and Marketing Communications Code, available from the AANA website at http://www.aana.com.au/, accessed 18 July 2007.

the quota requirements if broadcast during the nominated P and C periods (CTS 3(1)(f)). In practice, this means that P programs and C programs are almost never broadcast outside P periods or C periods.

The advertising restrictions in the CTS are contained in CTS 13-23.

CTS 13(2) provides that no advertisement may be shown during P periods, and CTS 14 restricts the amount of advertising that may be shown during C periods to five minutes per thirty minutes, and to 13 minutes per hour during 'Australian C Drama' shown during C periods. As P and C programs are only shown in P or C periods, in practice this means that no advertising is shown during P programs, and the timing and frequency restrictions described operate during all C programs. However, if a P or C program were broadcast outside a P or C period, these restrictions would not apply during the P or C program.

CTS 13(1), and CTS 17-23 provide for restrictions on the type, presentation or content of advertising that may be shown during C programs or C periods. These restrictions relate to matters such as classification of advertisements, use of undue pressure, clear presentation, premium offers, and promotions by P or C program characters and personalities. The only provision of the CTS dealing specifically with food advertising is CTS 19(6), which provides that advertisements must not contain any misleading or incorrect information about the nutritional value of food products.

13.2 Problems with the Children's Television Standards

CTS advertising restrictions do not apply when most children watch television

The major problem with the advertising restrictions in the CTS is their limited application. The restrictions only apply during P or C periods, and P or C programs. This means that the CTS advertising restrictions do not apply when children are most likely to watch television.

As discussed above, P and C programs are programs which meet the P and C criteria set out in the CTS, that is, programs that are made specifically for children, entertaining for children, well produced, appropriate for Australian children, and that enhance a child's understanding and experience. Many programs that are very popular with children do not meet these criteria and are consequently not subject to the CTS advertising restrictions, for example, programs not specifically designed for children such as game shows, reality television programs, soaps, sport, family programs, and some cartoons, and programs specifically designed for children that are not of sufficient quality to meet the P and C criteria. In addition, P or C programs must be pre-classified as such by ACMA. This means that even if programs would meet the P and C criteria, if broadcasters choose not to submit the programs for P or C classification, they will not be subject to the CTS advertising restrictions. If a broadcaster believes a program is likely to attract high ratings, it may decide not to seek classification of the program as P or C and broadcast it towards the quota requirements because this would restrict the advertising that could be shown during the program.

Broadcasters are only required to broadcast P and C programs on weekdays for a combined minimum of an hour per weekday, and to meet their overall quota requirement of 390 hours of P and C programs per year, they need only broadcast P and C programs for an average of 64 minutes per day. Broadcasters rarely ever broadcast more than the minimum requirement of 30 minutes of P programs on weekdays (amounting to 130 hours per year).[89] Broadcasters also tend to broadcast no more than the minimum requirement of 30 minutes of C programs on weekdays, and to broadcast the additional C programs necessary to meet the remaining 130 hours of the C quota requirement on weekends, amounting to an average of one hour and

[89] The Issues Paper states (on page 13) that in the past six years, no more than 131 hours per year of P programs has been broadcast on a commercial station.

15 minutes of C programs each Saturday and Sunday. This means that in practice the CTS prohibition against advertising during P periods only applies for 30 minutes each weekday, and not at all on weekends. The additional restrictions on advertising during C programs or C periods only apply for another 30 minutes each weekday, and for an average of an hour and a quarter each Saturday and Sunday. Clearly, this does not reflect the amount of time children spend watching commercial free-to-air television. According to ACMA's *Children's Viewing Patterns on Commercial, Free-to-air and Subscription Television* report, 0-14-year-old children watched an average of two hours and one minute of commercial free-to-air television per day in 2006.[90]

In addition, broadcasters may choose when to broadcast P and C programs within the P and C bands provided they satisfy the quota requirements, and can therefore choose the time periods (as well as the programs) during which the advertising restrictions in the CTS apply. Unsurprisingly, broadcasters tend to choose to broadcast P and C programs outside peak children's viewing times. As noted in the Issues Paper, ratings data for 2006 shows that at the times C and P programs are usually broadcast on weekdays, the numbers of children (aged 0-14) watching television are relatively low.[91] P programs are usually broadcast between 9am and 9.30am on weekday mornings by Channel Nine and Channel Seven, and between 3.30 pm and 4 pm by Network Ten, and C programs are usually broadcast by all networks between 4pm and 4.30pm on weekday afternoons. However, the peak children's viewing time on weekdays is between 7pm and 8pm, when the average size of the child audience for commercial free-to-air television is close to 500,000 (compared to about 80,000 between 4pm and 5pm).

The ratings data reported in ACMA's *Children's Viewing Patterns on Commercial, Free-to-air and Subscription Television* report also shows that P and C programs attract low ratings among child viewers compared with non-P or -C children's programs. For example, in 2005, no P or C programs were among the 50 highest rating programs for children aged 0-14, or the 50 highest rating programs for children aged 0-4.

Examples of children's programs currently broadcast on commercial free-to-air television that are not classified as P or C programs, and consequently not subject to the advertising restrictions in the CTS include: *Pokemon* (G), *Toasted TV* (G), *Spiderman* (G), *Teenage Mutant Ninja Turtles: Fast Forwards* (G), *The Simpsons* (G or PG) and *Futurama* (PG). Of these, *Futurama* and *The Simpsons* were among the ten top-rating programs for children aged 0-14 in 2005. In addition, programs that are not specifically designed for children and not subject to the CTS advertising restrictions, are some of the highest rating programs for children, for example, *The Biggest Loser, Big Brother*, *Australian Idol, Lost*, *Thank God You're Here*, *The Wedge*, *My Name is Earl*, *Everybody Hates Chris*, *Australia's Funniest Home Video Show*, and sporting events such as the AFL Grand Final, the Australian Open Men's Tennis Final and the Melbourne 2006 Commonwealth Games Opening Ceremony.[92]

Food advertising restriction is ineffective for protecting children

In addition to the problems with the limited application of the CTS, the CTS only contains one provision that deals specifically with food advertising – CTS 19(6) – which states that '[A]n advertisement for a food product may not contain any misleading or incorrect information about the nutritional value of that product.'

[90] Australian Communications and Media Authority. 'Children's viewing patterns on commercial, free-to-air and subscription television: report analysing audience and ratings data for 2001, 2005 and 2006.' May 2007, Canberra: ACMA.
[91] As above.
[92] Australian Communications and Media Authority. 'Children's viewing patterns on commercial, free-to-air and subscription television: report analysing audience and ratings data for 2001, 2005 and 2006.' May 2007, Canberra: ACMA.

Clearly, this standard alone is insufficient to address the possible harmful effects of food advertising on children (discussed above in section 4 of the submission). The OPC is certainly concerned about food advertising that contains misleading or incorrect nutritional information. This type of advertising may lead parents to purchase, and children to consume, unhealthy foods in the mistaken belief that they are good for children, displacing children's consumption of other healthier foods. However, exposure to food advertising affects children's food preferences, demands and consumptions, irrespective of whether it contains misleading or incorrect nutritional information. The problem that needs to be addressed by the CTS is the extent of children's exposure to advertising of unhealthy food.

13.3 Commercial Television Industry Code of Practice

The Commercial Television Industry Code of Practice (CTICP) is an industry code of practice, developed and administered by the free-to-air commercial television industry (represented by Free TV Australia), pursuant to the requirement in section 123 of the Broadcasting Services Act. The CTICP operates alongside the CTS, but applies more broadly to all commercial free-to-air television, rather than just to children's programs.

Section 6 of the CTICP includes provisions dealing with advertising directed to children. The provisions particularly relevant to food and beverage advertising to children are discussed below.

Clause 6.23

Clause 6.23 is the only provision of the CTICP that deals specifically with food advertising directed to children.

Clause 6.23 states that 'advertisements directed to children for food and/or beverages should not encourage or promote an inactive lifestyle or unhealthy eating or drinking habits'.

However, clause 6.23 defines 'inactive lifestyle' as 'not engaging in any or much physical activity as a way of life', and 'unhealthy eating or drinking habits' as 'excessive or compulsive consumption of food and/or beverages'. This means that clause 6.23 has very little, if any, practical effect as it only applies to advertisements that encourage or promote not engaging in any or much physical activity as a way of life, or excessive or compulsive consumption of food and/or beverages. It is difficult to think of or imagine any individual advertisements that would directly encourage or promote either of these things. What would be the point of an advertisement that encouraged or promoted physical inactivity as a way of life? It is common for advertisements to associate unhealthy foods with physical activity to create the impression that products boost energy levels or that they should be consumed as part of a healthy lifestyle, but such advertisements would not breach clause 6.23.

Presumably, to breach the 'unhealthy eating habits' limb of clause 6.23, an advertisement would have to show children consuming a product continuously or consuming a huge amount of a product in a single sitting, or suggest that children should do this. Even if such advertisements did exist or were ever likely to be created, it is the cumulative effect of children's exposure to the huge volume of advertisements for unhealthy foods on television that is likely to lead them to consume unhealthy foods excessively or compulsively, not exposure to individual advertisements that encourage excessive consumption.

13.4 AANA Food and Beverages Code

The AANA Food and Beverages Advertising and Marketing Communications Code (AANA Food and Beverages Code) is a self-regulatory code administered by the Australian Association of National Advertisers (AANA). The Code contains general provisions on food

and beverage advertising, and specific provisions on food and beverage advertising to children.[93]

The OPC believes the AANA Food and Beverages Code is inadequate for dealing with advertising of unhealthy food to children for a number of reasons.

First, the AANA Food and Beverages Code does not, and cannot, restrict the volume, frequency or timing of advertising of unhealthy food to children. Collin Segelov, the Executive Director of AANA, said in evidence to the Parliament of South Australia Fast Foods and Obesity Inquiry in March last year that the Code 'does not and cannot attend to the frequency and placement of advertisements.' Rather, he said, the Code helps to ensure the content of advertisements 'is kept within reasonable bounds.'[94]

The OPC believes it is the volume and frequency of advertising of unhealthy foods at times and during programs when large numbers of children watch television, more than individual instances of inappropriate or misleading marketing, that influences children to prefer, demand and consume unhealthy food.

Second, the AANA Food and Beverages Code applies only to advertisements 'directed to children'. The Code adopts the definition of 'advertising to children' used in the AANA Code for Advertising to Children – 'Advertisements which, having regard to the theme, visuals and language used, are directed primarily to Children…' The OPC believes this definition is unduly narrow as it would exclude advertisements intended for or directed to both children and adults, or advertisements not designed primarily for children, but likely to be seen or heard by a significant number of children. The OPC has the same concerns about use of this test as discussed above in relation to the 'directed to children' test in the CTICP.

Third, the provisions of the AANA Food and Beverages Code are highly ambiguous and ineffective. They are vague, susceptible to different interpretations, and contain many loopholes and exceptions, allowing easy circumvention by advertisers.

Consequently, the AANA Food and Beverages Code does not prevent most inappropriate techniques and practices used to advertise unhealthy food to children. For example, it does not prevent the following practices.

- Typical techniques used by advertisers to create pester power (i.e. techniques to make children want products so they will pester parents to buy them).

  Clause 3.5 of the Code states that advertisements directed to children for food or beverage products 'shall not include any appeal to children to urge parents and/or other adults responsible for a child's welfare to buy particular products for them.'

  Clause3.5 only applies to advertisements that directly ask or appeal to a child to urge parents to buy products for them, or that imply that children should do this by portraying children engaging in this behaviour.[95]

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[93] The AANA Food and Beverages Code has effect by virtue of clause 2.8 of the AANA Advertiser Code of Ethics, which requires advertisements for food and beverage products to comply with the AANA Food and Beverages Code. The AANA Advertiser Code of Ethics and the AANA Code for Advertising to Children each contain a single, highly ineffective provision for dealing with food and beverage advertising, but these provisions have been superseded by the AANA Food and Beverages Code, which contains general provisions on food and beverage advertising, and specific provisions on food and beverage advertising to children.

[94] Collin Segelov, oral evidence to the Parliament of South Australia's 'Fast Foods and Obesity Inquiry', cited in the Twenty-Fifth Report of the Social Development Committee.

[95] Clause 3.5 only applies to advertisements that include an express or implied appeal to children to urge parents to buy products for them (see clause 3.5 of the Food and Beverages Code and the Food and Beverage Code Practice Note, available from: http://www.aana.com.au/food_beverages_code.html). The Practice Note accompanying the

The Parents Jury[96] recently made a series of complaints under clause 3.5 of the AANA Food and Beverages Code about various promotions featuring characters and images from children's film *Shrek the Third* on the grounds that they encouraged children to urge parents to buy products for them.[97] The Advertising Standards Board rejected each complaint because the promotions in question did not 'contain any direct appeal to a child to ask a parent to buy the product … ' and ' … did not amount to "an appeal to children to urge parents to buy particular products for them".'[98]

As discussed above (in section 14.2) in relation to CTS 18(1), advertisers do not create pester power by telling or asking children to urge parents to buy products for them; they create pester power by using techniques such as premium offers, characters or personalities popular with children, movie tie-ins, or association of products with fun and adventure.

- Use of popular characters and personalities to promote or endorse products (unless the use of a character or personality blurs the distinction between commercial promotion and program content).

  Clause 3.6 of the Code states that advertisements for food or beverage products directed to children 'shall not use popular personalities or celebrities (live or animated) to advertise or market products, premiums or services *in a manner that obscures the distinction between commercial products and program or editorial content*.' (Emphasis added.)

  Clause 3.6 does not prevent use of popular children's personalities or characters to promote unhealthy foods to children, provided this occurs in what is clearly an advertisement and not part of program or editorial content. In practice, the only application of this clause is likely to be to prevent a character or personality from a particular program being used to promote a product within the program, or in an advertisement shown in a break during the program.

  As discussed above, the problem with use of popular children's characters or personalities to promote unhealthy products to children is not just that they make it difficult for children to distinguish between program and commercial content; it is also the fact that children cannot understand the purpose of advertising or interpret it with scepticism, and are therefore likely to take personalities' or characters' endorsements of products at face value. Personalities and characters are also likely to be trusted and admired by children, and therefore to be highly influential.

- Promotion of premiums that are 'integral elements' of products (i.e. that are regularly included in or with products).

Food and Beverage Code states that an example of an implied appeal to children to urge parents to buy products would be an advertisement that portrays a child in a supermarket asking for a particular product or putting it into a shopping trolley without asking.

[96] The Parents Jury is a web-based forum for parents to express their views and collectively advocate for the improvement of children's food and physical activity environments. See the Parents Jury website at www.parentsjury.org.au.

[97] Letter from the Parents Jury to the Advertising Standards Board, 'Use of Shrek to promote unhealthy food products to children', 10 July 2007.

[98] Advertising Standards Board, Case Reports issued in response to complaint no 248/07, 14 August 2007, available from: http://www.adstandards.com.au/pages/casestudy_search.asp, accessed 29 August 2007.

Clause 3.7 of the Code states that advertisements for food or beverage products directed to children 'shall not feature ingredients or premiums that are not an integral element of the product/s or service/s being offered.'

However, clause 3.7 is ineffective for preventing promotion of premiums, as the Advertising Standards Board has decided that non-food or beverage products included with or as part of a food or beverage product (in this case, toys included with McDonalds Happy Meals), are 'integral' elements of products and therefore not premiums.[99]

- Use of peer pressure to encourage children to desire products

  Clause 3.3 of the Code states that advertisements for food and beverage products directed to children 'shall not state or imply that possession or use of a particular product will afford *physical, social or psychological advantage* over other Children, or that non-possession of the product would have the opposite effect.' (Emphasis added.)

  Clause 3.3 would not prevent the usual techniques advertisers use to manipulate peer pressure, for example, implying that having a product will impress children's peers or make children liked or admired by their peers, or making children believe a product is 'cool' or socially desirable. It only applies to ads that imply that a product will give children *an advantage* over other children.

Finally, compliance with AANA's self-regulatory system is not monitored, and cannot be enforced. The AANA system relies on public complaints about advertising to the Advertising Standards Bureau. However, complaints are not dealt with until after relevant advertisements have been broadcast, when children would already have been exposed to their harmful effects.

Complaints about advertisements in breach of the AANA Food and Beverages Code are determined by the Advertising Standards Board (the board of the Advertising Standards Bureau), which is administered by AANA and funded by the advertising industry. If the Advertising Standards Board upholds a complaint under the Code, it may request the advertiser to modify or withdraw the offending advertisement but it has no power to force advertisers to comply with its requests; the system relies entirely on voluntary compliance by advertisers.[100]

14 Conclusion

The OPC thanks the Australian Senate Community Affairs Committee for the opportunity to comment on the Protecting Children from Junk Food Advertising (Broadcasting Amendment) Bill 2008.

The OPC strongly supports the Bill, and believes that, if enacted, it would be a significant and important first step to dealing comprehensively with the enormous range and extent of promotions for unhealthy foods and beverages to children. Advertising and promotion of unhealthy foods and beverages affects children's food preferences and consumption, contributes to poor diets, weight gain and obesity, and is a harmful influence on Australian children's health. The OPC believes regulation to limit children's exposure to such promotion is urgently required to protect children's health, and as part of a comprehensive, multi-strategic approach to addressing the overweight and obesity epidemic.

[99] Advertising Standards Bureau Case Report number 197/06, complaint about McDonald's Australia Ltd's Happy Meals – Kitty and Spy Gear advertisement, 13 July 2006.
[100] 'In the Public Interest: Monitoring Australia's Media', report by Senate Select Committee on Information Technology, April 2002, p 81.

The OPC asks the Australian Senate to consider the changes it has recommended to the Bill to enhance the effectives of the proposed amendments to the *Broadcasting Services Act 1992*, and urges the Senate to enact the Bill with these changes. The OPC also urges the Australian Senate to consider introducing further legislation to deal comprehensively with all forms of advertising and promotion of unhealthy foods and beverages to Australian children.