Submission by
Free TV Australia Limited

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

Senate Community Affairs Committee

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18 November 2008

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1 Executive Summary

- Free TV does not support advertising bans as an appropriate regulatory response to concerns around childhood obesity.

- The current food advertising regulatory system for commercial free to air television is extensive and more restrictive than for other media which attract children, such as Pay TV and the internet.

- Commercial free to air television is legislated for under the Commonwealth Broadcasting Services Act (BSA) and is regulated by the Australian Communications and Media Authority (ACMA).

- The BSA sets up a system of Standards and Codes to regulate industry and to ensure community safeguards are adhered to. Extensive public consultation, regulatory oversight and comprehensive complaints processes underpin the system.

- ACMA's current review of The Children's Television Standards (CTS) found that there was no clear evidence of a causal link between advertising and obesity. As a result ACMA has determined that ad bans are not warranted. The review is ongoing and is the appropriate forum for addressing these issues.

- ACMA's review was extensive and based on agreed measures of audience adhesion. This is in contrast to oft quoted studies which use simplistic methods of "counting" advertisements usually resulting in overly inflated figures.

- Advertising bans will have a major impact on broadcaster revenues without any demonstrable benefit to viewers.

- Detrimental impacts on programming, which are provided free of charge to all Australians, are inevitable.

2 Introduction

Free TV Australia is the peak industry body representing all of Australia's commercial free to air television licensees.

Free TV welcomes the opportunity to comment on the Senate Community Affairs Committee Inquiry Into Protecting Children from Junk Food Advertising (Broadcasting Amendment) Bill 2008 (Fed).

Free TV does not support further restrictions on food and beverage advertising.

Content of advertisements and programs on commercial free to air television is regulated by the Commercial Television Industry Code of Practice (Code) and in the case of programs for children, the Children's Television Standard (CTS). In addition advertising is regulated by various codes developed by the Australian Association of National Advertisers (the "AANA Codes").

The existing regulatory framework is accountable to the community through in-built mechanisms for review and community consultation, and a legislative requirement that the Codes of Practice must always provide adequate community safeguards.

The appropriate mechanism through which to consider any concerns regarding the adequacy of the existing regulatory framework is through the comprehensive review, complaint and investigation mechanisms built-in to the broadcasting regulatory framework.

Such a review is already underway through the ACMA review of the CTS. Free TV strongly endorses the current ACMA review as the appropriate means through which to ensure the ongoing adequacy of the existing regulatory framework.

There is no evidence that ACMA's review has failed to take into account any relevant considerations, evidence or community feedback.

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

Calls to introduce blanket advertising bans on all food advertisements directed to children fail to take into account well-documented, multi-factorial contributors to obesity including hereditary, environmental, social and cultural factors.

All advertising restrictions in children's programming must be weighed against the objective of delivering children's programming through an advertising-funded model. This model is already being affected by the fragmentation of audiences.

Commercial free to air television is now one of many screen time choices available to Australian viewers. Viewers have access to over 100 pay TV channels, a vast array of information and entertainment sources available on the internet, as well as DVDs, digital media players, computer games and increasingly video service through mobile phones.

None of the emerging platforms described above are subject to any of the advertising restrictions of the CTS or the Code. Any review of advertising directed to children must apply across different platforms to ensure regulations remain relevant and do not disadvantage free to air broadcasters.

It is already clear from experience in the United Kingdom that food and beverage advertising restrictions will have severe adverse effects on commercial broadcasters and their capacity to provide children's programming.[1]

This submission sets out the existing legislative and regulatory framework for advertising on commercial free to air television, before considering the likely impact of further restrictions on food advertising.

This submission addresses the following topics:

Section 3 examines children's viewing patterns, fragmenting audiences on commercial free to air and reducing numbers of advertisements for foods high in fat, salt or sugar

Section 4 describes in detail the regulation as it applies to advertising across the viewing day

Section 5 sets out our arguments against further regulation of advertising and examines the impact of further restrictions on the provision of programming free to charge to all Australians.

3 Children's viewing patterns

This section provides important information about children's viewing patterns not only in terms of other media activities but also of commercial free to air television. This section shows that audiences across the viewing day are fragmenting and this is particularly in terms of the child audience.

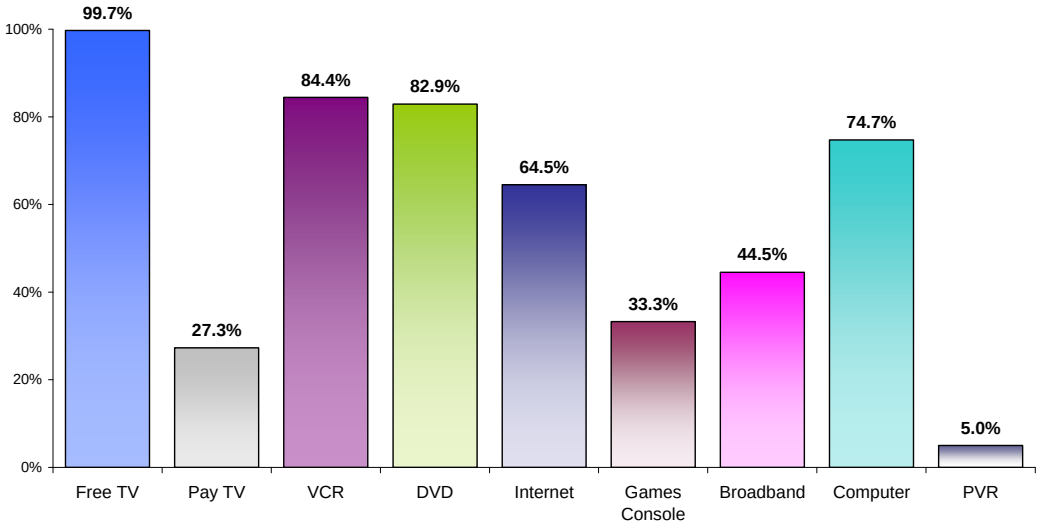
The section also contains information about the frequency of food advertisements and provides an important evidentiary context for arguments about whether the current level of regulation is appropriate.

3.1 Changing media landscape

There is an increasing range of entertainment and information technologies competing for viewers' attention. As well as the traditional media of free-to-air television, radio, newspapers and magazines, consumers now have access to the internet, pay TV, DVDs, computer games, digital media players and mobile phones. Australians continue to be early adopters of many of these new technologies.

[1] Following the introductions of ad bans in the UK, the regulator Ofcom has now been forced to undertake a review of children's programming and how it will be funded.

Household Penetration of Technology[2]



Penetration of new technologies is very high among households with children.

Roy Morgan Research reports that as at 2006, 90.4 per cent of households with children under the age of 15 years have a personal computer, 83.3 per cent have a mobile phone, 66 per cent have a games console, 24.6 per cent have a MP3 player and 13.5 per cent have an iPod mobile digital device.[3]

In many cases, children themselves are driving take-up of these devices.

According to ACMA's 2005-06 Communications Report, 74.3 per cent of children aged 14 to 17 own their own mobile phone. Free TV estimates similar penetration rates for digital media players amongst this group.

Children are availing themselves of a wide range of alternative screen time activities increasingly in less regulated environments.

3.2 Children's television viewing habits are changing

While television continues to account for the large proportion of time spent with media, in this highly competitive environment audiences are fragmenting and this is more evident amongst children than any other target or demographic.

These changes in viewing patterns are reflected in the OzTAM data outlined below which shows that the child audience on commercial free-to-air television is already fragmenting with declines in both the size of the audience and the amount of time children are spending watching television.

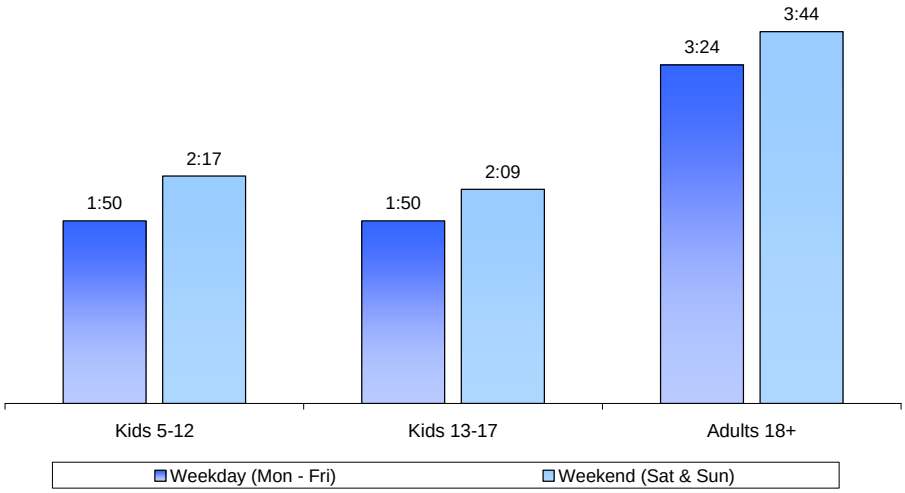
[2] Free TV and PVR penetration is a Free TV estimate; pay TV figure sourced OzTAM universal estimate 31 December 2006 (5 cap cities); VCR, DVD, games consoles and computer penetration figures sourced OzTAM Establishment Survey Q3 2006; Internet and Broadband figures sourced from ABS 2006 Census Cat. No. 2068.0

[3] Inquiry into the Effects of Television and Multimedia on Education in Victoria – Roy Morgan Research Single Source, April 2005 – March 2006

3.2.1 Children are watching an average of around two hours of TV a day

Children watch considerably less television than adults, who watch an average of over three hours of television a day. Children watch slightly more TV on a weekend than they do during the week – about an extra 10 to 20 minutes.

Average Time Viewed - Total TV - Children and Adults [4]



The disparity between the viewing patterns of adult and child viewers is evident across all parts of the viewing day. The percentage of children watching peaks in the early morning, between 7 and 8am at 19.1% (in other words, 19.1% of the audience watching between 7 and 8am are children aged between 0 and 12 years). This is in contrast to audience numbers in other demographics. At this same time, 27.7% of the audience are aged 55 and over and 24.3% of the audience are aged 40-54.

These audience composition percentages are also typical of viewing patterns in prime time. In prime time the highest percentage of children aged 0 – 12 watching is 12.5% between 7 – 8pm. Teenagers aged between13 – 17 make up only 5.2% of the viewing audience. The balance, or 82.3 %, of the audience are adults aged 18 and over. Of that 82.3% the age group watching in the greatest numbers are people 55 years and over (making up 30.0% of the viewing audience).

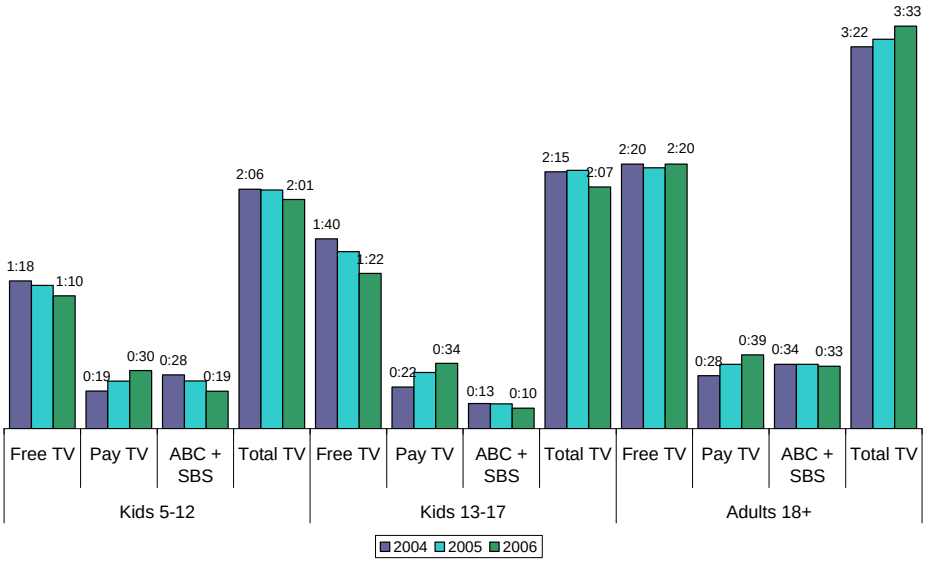
These figures show very clearly that the majority of the viewing audience are adults, with the highest percentages being people aged 40-54 and 55 and over.

[4] Source: OzTAM; 5 cap cities; 01 January - 30 June 2007; 2am - 2am; total daily TV viewing

3.2.2 *Children's are watching less television than they used to*

Younger children and teens are all watching considerably less television than they did several years ago. Even with the advent of dedicated children's channels on pay TV, the average time spent viewing television overall is down among children, while the average time spent viewing among adults has increased.

Average Time Spent Viewing TV – 2004 to 2006 [5]



3.2.3 *Children are viewing with their parents*

Although there are low numbers of children viewing in the evenings, figures show that the majority of these children are watching with an adult.

On weekday evenings (6pm to 9pm), 60 per cent of children are watching Free TV with an adult. This is slightly higher on weekends, where 65 per cent of nightly viewing is with an adult.[6]

4 Current Regulatory Framework

4.1 Overview

In any consideration of television advertising regulation, it must be acknowledged that Australia has chosen to deliver a range of social and cultural objectives through an advertiser funded model for commercial free to air television.

However, there is a need to protect consumers from inaccurate information and, in particular, to ensure that children are generally protected. Accordingly,

[5] Source: OzTAM; 5 cap cities; weeks 1-52 2004, 2006 and Weeks 1-53 2005; Variable - Average Time Viewed
[6] OzTAM; 5 cap cities; Jan to June 2007; children 5-12 years; co-viewing with an adult

there is a comprehensive and sophisticated framework of legislation and regulation governing television content, and in particular advertising, on free to air commercial television.

Advertising across all platforms (pay tv, print, outdoor etc) is regulated primarily through the Commonwealth Trade Practices Act. A number of other regulations also apply, including State Food Acts and the self regulatory codes of the Australian Association of National Advertisers (AANA).

In addition to this regulatory framework, all advertising on commercial free to air television is regulated through the BSA, by the Commercial Television Code of Practice and by the CTS in the case of children's programming.

The regulation of programming and advertising is a carefully constructed system to ensure that children are protected from harmful content while allowing adults the freedom to choose what they want to watch.

The regulation is further described in Appendix 1 to this Submission.

These rules and regulations are presented as a flow chart at Appendix 2. The regulation set out in Part A of the flowchart applies to all advertising. Advertising on commercial free to air television is also subject to the regulation in Part B.

4.2 Regulation across the viewing day

The regulation of commercial free to air television varies across the viewing day and reflects the audience composition at the time. Programs which are specifically designed for children such as C and P programs attract a greater level of regulation than those in prime time which are designed for general viewing. It is important to note that all advertising directed to children is subject to the content restrictions in relation to food advertising and use of premiums and characters.

4.3 Regulatory definitions

Any discussion of the regulation of children's programming on commercial free to air television must start with an understanding the regulatory definitions under the CTS. The term "children's viewing time" does not have a regulatory meaning. The CTS defines the terms C and P bands and C and P periods.

[**C and P Bands**] Under the CTS, ACMA has designated times of the day during which broadcasters may elect to broadcast C (children's) and P (preschool) programs. These are known as the C band and P band respectively. The current C and P bands are:

C band – 6 – 8am and 4 – 8:30pm, Monday to Friday and 7 – 8:30pm Saturday, Sunday and Public Holidays

P band – 7am – 4:40pm Monday to Friday

[**C and P periods**] Broadcasters can nominate times during these bands in which they will broadcast C and P programs. These are called the C period and P period. Broadcasters must only show C and P programs during their nominated C and P periods.

4.4 Restrictions in C Periods and all ads directed to children

The C and P periods are the times during which programs specifically designed for children and regulated under the CTS are shown. Similarly, the advertising during C periods and on either side of a P program (ads are not permitted in P programs at all) must comply with the scheduling and content requirements of the CTS.

Advertising in C programs is limited to 5 minutes per half hour.[7] Advertising in C programs is not only subject to scheduling restrictions, but are also subject to very strict content restrictions. For example, there are restrictions around the advertising of premiums and competitions and the use of popular personalities.

The Code extends the content regulations in the CTS to "all advertising directed to children".

4.5 What are the prohibitions?

The combined effect of the CTS and the Code, then, is that content rules for food advertisements and those using premiums, personalities and undue pressure for example, apply:

- to all ads in C and P periods (as nominated by the broadcasters)
- to all advertisements outside C and P periods if the ad is directed to children (irrespective of when the ad is broadcast).

These content rules are more fully described in Appendix 1.

4.6 What applies during prime time?

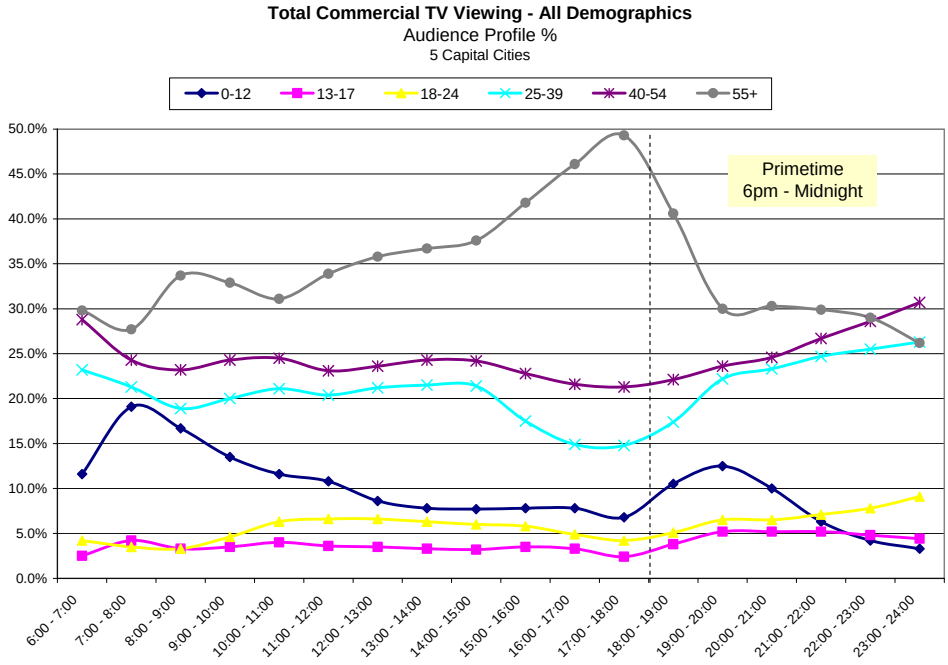
4.6.1 Audience composition in prime time?

Prime time is defined for ratings purposes as 6pm – midnight. The programs which are broadcast at this time are classified under the Code and can be broadcast only in the appropriate time zones. Programs classified M can only be broadcast from 8:30pm and PG programs from 7pm.

The regulation during prime time reflects the audience composition at the time which is primarily adults.

[7] Children's Television Standards, CTS 14.

The following chart shows the audience profile percentages throughout the viewing day. Adults, particularly those in the 55+ age group are the predominant viewing demographic.



Children aged 0 – 12 do not make up a large proportion of the audience during prime time.

In prime time the highest percentage of children aged 0 – 12 watching is 12.5% between 7 – 8pm. Teenagers aged between13 – 17 make up only 5.2% of the viewing audience. The balance or 82.3 % of the audience are adults aged 18 and over. Of that 82.3% the age group watching in the greatest numbers are people 55 years and over (making up 30.0% of the viewing audience).

Although there are low numbers of children viewing in the evenings, figures show that the majority of these children are watching with an adult.

On weekday evenings (6pm to 9pm), 60 per cent of children are watching Free TV with an adult. This is slightly higher on weekends, where 65 per cent of nightly viewing is with an adult.[8]

These figures show very clearly that the majority of the viewing audience in prime time are adults, with the highest percentages being people aged 40-54 and 55 and over.

[8] OzTAM; 5 cap cities; Jan to June 2007; children 5-12 years; co-viewing with an adult

Pay TV is not regulated to the same extent as commercial free to air television. There are no scheduling restrictions and the content restrictions in the CTS and Code do not apply. A child can watch the Simpsons for example in the regulated environment of commercial free to air (where all ads directed to children are regulated), but switch seamlessly to pay TV and watch the same Simpsons episode without these same protections.

4.6.2 Regulations of programs and advertising in prime time

As the programs in this time slot are not designed specifically for the child audience they do not attract the same level of regulation as a C or P program.

The amount of time permitted in any hour for advertising material in prime time is between 13 and 15 minutes.[9]

There is a range of regulation however which does apply to advertising during prime time, as follows:

- Only advertisements suitable in content for the timeslot are permitted. For example, M rated ads are not permitted until 8:30pm.
- All advertising directed to children is subject to the same content restrictions as an advertisement in a C program. This means that all advertisements for food which are directed to children cannot encouraging excessive consumption of food or beverages or an inactive lifestyle;
- Advertisements for alcohol drinks are not permitted before 8:30pm;
- Commercials relating to betting or gambling or condoms are not permitted in the G time zone.

The Code of Practice extends these restrictions to all advertising directed to children (irrespective of the time of the day the advertisements are broadcast).

4.7 Level of advertising is often overstated

Oft quoted research consistently overstates the types of advertisements children see across the viewing day by:

- basing studies on a small sample period, for example, a 2006 Cancer Council sponsored study published in *Health Promotion International* only sampled advertisements on four days of the year.
- This approach means results are distorted by the cyclical and short nature of advertising campaigns i.e. December and January features

[9] Commercial Television Industry Code of Practice, July 2004, clause 5.6.

higher than average amounts of retail sales promotions due to Christmas and January sales

Overestimating the average amount of time children spend watching commercial television, for example, a major 2005 study released by the NSW Health Department assumed children watch 2.5 hours of commercial television per day in 2005, when they actually watched an average of 75 minutes.

5 Key Issues

5.1 Current regulation of television content

As set out above and in Appendices 1 and 2, a sophisticated regulatory framework for television content is already in place through Commonwealth legislation and regulation. This regulatory framework deals specifically with advertising to children and with the advertising of food products to children. These rules have been carefully developed and refined over time through the input of experts, government, the independent regulator, industry and, through regular consultation and feedback, the Australian community.

The protection of children from inappropriate content is a high priority in broadcasting regulation and forms one of the objects of the BSA (paragraph 3(j)). In addition to the broad level protections of the BSA, the CTS provides a discrete regulatory framework recognising the special interests of the child viewing audience.

Advertising to children is addressed through the BSA, the Code of Practice and the CTS. Additional self-regulatory measures have been enacted through the AANA Code of Practice for Advertising to Children.

The regulatory framework is accountable to the community through in-built mechanisms for review and community consultation, and a legislative requirement that the Codes of Practice must always provide adequate community safeguards.

The appropriate mechanism through which to consider any concerns regarding the adequacy of the existing regulatory framework is through the comprehensive review, complaint and investigation mechanisms built-in to the broadcasting regulatory framework.

Such a review is already underway through the ACMA's review of the CTS.

5.2 No evidence of a link between advertising and obesity

Free TV strongly supports the current ACMA review as the most appropriate means through which to ensure the ongoing adequacy of the regulatory arrangements for food advertising to children.

ACMA has conducted an exhaustive, evidence-based consideration of the full range of issues surrounding children's television, including a focus on food

advertising to children. ACMA's review has considered a significant body of research, including:

- A major study into the influence of media and communications on children, comprised of a literature review and community survey of 751 families.
- An independent literature review on television advertising to children, including the relationship between children's television advertising exposure and their food and beverage preferences.
- An analysis of OzTAM ratings data to assess children's viewing trends, including the times when children watch television and the type of programs they watch.
- Qualitative research into the funding structure of children's television production in Australia.
- Economic modelling of the likely impact of various restrictions on food advertising.

This research is available from the ACMA website.

ACMA has specific expertise in this area and there has been ample opportunity for public feedback on the CTS. ACMA is consulting further on the findings of its Review and its proposed CTS amendments.

ACMA is able to take a holistic approach to the issue, considering all relevant factors in the broadcasting regulatory and business environment. There is no evidence that ACMA's review has failed to take into account any relevant considerations, evidence or community feedback.

The ACMA review should be allowed to continue through to its conclusion. It should also be noted that ACMA has a sufficiently broad range of regulatory tools to enable it to respond to any findings of regulatory failure.

The outcomes of the ACMA review make sense when looking at child audience figures. There are less children watching television and those who are watching are watching less per day. These trends are not consistent with the argument that the increasing rates of childhood obesity are due to advertising on commercial free to air television.

5.2.1 ACMA Review

It is pertinent to note the draft findings of ACMA's independent, evidence-based review of the CTS, which included a particular focus on food advertising to children.

It is vital that any proposed further regulatory restriction on advertising is the most effective means of addressing a clearly identified problem. Free TV therefore endorses the approach taken by ACMA, which was to carefully consider relevant research and available evidence before conducting a cost-benefit analysis of various options for further advertising restrictions.

Based on the findings of an independent literature review (which looked at 200 sources), ACMA found no clear demonstration of a causal relationship between food advertising to children and obesity in children. On this basis, ACMA found that it is "difficult to define with any clarity what the benefit of banning food advertising to children would be in the Australian context."[10] Without evidence of a causal link between television food advertising and obesity, it was not possible for ACMA to conclude that further advertising restrictions would have any net benefit.

The ACMA report noted a report by its UK equivalent, OFCOM, which concluded that food advertising account for just 2% of preference in children's food choices.

ACMA then considered the potential economic impact of further advertising restrictions on the profitability of commercial free to air broadcasters and the potential impact on audiences. ACMA found that there would be a significant impact on broadcaster revenue and profitability, even from minimal further restrictions. More extreme regulatory proposals, such as banning food and beverage advertising from popular viewing times would reduce profitability, dampen future industry investment and impact on programming quality.

ACMA found that a reduction in obesity-related costs of between 4 and 12 per cent across the economy would be required to offset the likely impact of such proposals on commercial free to air broadcasters and their audiences.

Having already found that a reduction in obesity costs through the banning of advertising of food to children is not assured,[11] ACMA went on to conclude that there was insufficient evidence to conclude that the reduction in obesity-related costs would offset the negative financial impact to broadcasters of such bans.

ACMA's draft findings do recommend some modification of existing regulations regarding food advertising to children. These include further clarification of CTS 20 regarding premium offers and bans on the endorsement of commercial products by program characters, celebrities and licensed characters. ACMA is currently consulting on these proposed changes.

[10] ACMA *Review of the Children's Television Standards 2005 – Report of the Review* (Draft August 2008) p 11
[11] Ibid., p 12

APPENDIX 1
REGULATION OF ADVERTISING

1. Current Regulatory Framework – All Advertising

Trade Practices Act Cth 1974

The *Trade Practices Act (Cth) 1974* (TPA) protects consumers by prohibiting misleading and deceptive conduct in trade or commerce. Misleading consumers about the nutritional value of a food product for example, is prohibited by the TPA. The impression left in the mind of the viewer and in particular the child viewer is important in determining whether an advertisement is misleading or deceptive.

Complaints about misleading and deceptive conduct are investigated by the Australian Competition and Consumer Commission (ACCC) and the complaint process is described clearly on the ACCC's website.[12] The ACCC has a range of penalties available to it including fines, injunctions (to require withdrawal of the advertisement), corrective advertising and compliance programs.

State food legislation

Making health claims and nutrient content claims in food advertising is regulated by the State food legislation. This legislation is enforced by state and territory health departments and Food Standards Australia New Zealand (FSANZ), the Australian and New Zealand regulatory body.[13]

Under the current system, health claims are generally prohibited. The Food Standards Health Code regulates nutrient content claims. These claims are subject to thresholds that must be met before a nutrient content claim can be made. For example, the claim "low sodium" can only be made if the food contains no more than 120 milligrams of sodium per 100 grams.

Misleading and deceptive conduct is also prohibited under the state food legislation. The state food legislation establishes the Food Standards Health Code and the Code of Practice on Nutrient Claims; these Codes provide more detail in relation to misleading and deceptive practices in food advertising.

Complaints under the State food legislation can be made to FSANZ and the State/Territory Health Departments. Penalties include fines, withdrawal of the advertisement and corrective advertising.

The food industry has also adopted, through a self regulatory system, a Code of Practice on Nutrient Content Claims which follows the Food Standards Health Code but provides more detail and guidance for manufacturers and consumers. This code sets thresholds that must be met before a nutrient content claim can be made. For example, there are prescribed thresholds before claims of "light", "lite" and "diet" can be made. The code is administered by the Food Industry Code Management Committee following complaint to the food manufacturer. The Food Industry Management Committee can require an undertaking to cease advertising or corrective advertising.

[12] http://www.accc.gov.au/content/index.phtml/itemId/815327
[13] http://www.foodstandards.gov.au/

AANA Codes

The Australian Association of National Advertisers (AANA), the peak advertising industry body, has developed a number of codes (the AANA Codes) which provide a broad range of community safeguards for advertising[14].

The AANA Codes include:

- AANA Code of Ethics
- Advertising to Children Code
- Alcohol Beverages Advertising Code
- Motor Vehicle Advertising Code
- Therapeutics Goods Code
- Weight Management Code of Practice
- ICC Framework for responsible food and beverage communications

The advertising industry-regulation system is managed through the Advertising Standards Bureau and funded through a voluntary levy administered by the Australian Advertising Standards Council Ltd. Complaints about advertising are determined by the Advertising Standards Board and the Advertising Claims Board. The Advertising Standards Board (ASB) is made up of a representative cross-section of the community and provides complaints resolution service free to the public.

The ASB considers complaints about any form of published or broadcast advertising. The ASB will consider complaints regarding any of the matters covered in the AANA Codes including:

- the use of language
- the discriminatory portrayal of people
- concern for children
- portrayal of sex, sexuality and nudity, and
- health and safety.

The Advertising Claims Board provides a competitive claims resolution service on a user-pays cost recovery basis, adjudicating on issues of:

- truth
- accuracy; and
- legality of advertising.

The AANA Advertiser Code of Ethics and the AANA Code for Advertising to Children provide that advertisements shall not be misleading or deceptive.[15]

The AANA Code for Advertising to Children provides that advertisements to children which include to or refer to a premium should not create a false or misleading

[14] http://www.aana.com.au/3_self_regulation/3_1_self_reg.html
[15] Clause 1.2 AANA Advertiser Code of Ethics and clause 2.1.1 of the AANA Code for Advertising to Children

impression in the minds of children about the nature or content of the advertised product.[16]

Although the AANA Codes are voluntary and form part of a self regulatory system, there is complete compliance by advertisers with ASB decisions.

2. Current Regulatory Framework – regulation specific to commercial free to air television

Children's Television Standards and the Commercial Television Industry Code of Practice

Section 122 of the BSA requires ACMA to develop standards for children on commercial free to air television.

The Children's Television Standards (the CTS), made under section 122, are intended to:

1. Provide for children to be specifically catered for in programming, including Australian programming; and
2. Provide for the protection of children from possible harmful effects of television.

The CTS operates alongside the Code. The BSA sets down a co-regulatory system for the regulation of broadcasting content, in which broadcasters comply with codes of practice that are developed by the broadcasting industry in consultation with the public. ACMA is responsible for registering the codes, for monitoring compliance and for investigating unresolved complaints.

The BSA provides guidance on matters to be covered in Codes of Practice including the broadcasting time devoted to advertising, methods of complaint handling and reporting to ACMA on complaints[17]. The Code is required by the BSA to take into account community attitudes in relation to a range of matters including any matters which are of concern to the community. [18] The role of assessing community standards in relation to broadcasting content is assigned to ACMA, based on relevant research.[19]

The CTS requires broadcasters to provide a minimum number of hours of programming specifically catering for preschoolers and school-aged children. Importantly the CTS also impose restrictions on the scheduling and content of advertising in children's programming.

The Code provides a regulatory framework for television viewing more broadly and regulates both programming and advertising. Importantly the Code places hourly restrictions on the amount of advertising and other non-program matter which may be broadcast.

[16] Clause 2.8 AANA Code for Advertising to Children
[17] Section 123(2) BSA
[18] Section 123(3) BSA
[19] Section 123(1) BSA

The Code specifically provides that all advertising directed to children (irrespective of the time of the day it is broadcast) is subject to the content restrictions in the CTS.

The regulatory framework for television content set down in the Code provides a comprehensive suite of viewer protections, including requirements for content pre-assessment, display of classification symbols, provision of consumer advice, scheduling restrictions, complaints-handling procedures and strong regulatory enforcement mechanisms.

3. Content and scheduling restrictions for advertisements on commercial free to air television

There are a range of scheduling and content restrictions which apply to advertising on television and in particular to advertising directed to children.

Consistent with the underlying principle that adult viewers should be able to read, hear and see what they want, the Code and CTS provisions are focused on protecting the child viewer and providing guidance to parents rather than overly restricting the material an adult viewer may choose to see.

4. Classification System

The classification system in the Code divides the viewing day into a series of timezones which has been carefully constructed to make sure that appropriate material is broadcast throughout the day.

The classification system enables viewers to make informed choices about the content they access and to limit the risk of exposure to inappropriate content by children. The classification system provides parents with information regarding the suitability of material for children.

As noted above, in recognition of the high numbers of adults watching, the early evening hours contain material which is suitable for general family viewing. The classification of material in the early evening hours ranges from G (suitable for family viewing) to PG (suitable for family viewing with parental guidance). These programs are not specifically designed for children. As such they do not attract the same level of regulation as a C program, an advertisement in a C program, or an advertisement directed to children. This is consistent with the principle that adults should be able to watch what they want to. Nevertheless, such material is still subject to significant regulation in order to balance with the need to protect children from unsuitable material.

ACMA research indicates a high level of familiarity with the classification system.[20]

5. Limits on advertising

The Code imposes restrictions on the amount of advertising scheduled in all programs across the viewing day. The Code aims to balance the interests of viewers in uncluttered program presentation and the commercial interests of advertisers and

[20] ACMA report Reality Television Review p 66 - 67

broadcasters in setting these limits.[21] The average amount of non program matter permitted in each hour schedule ranges from 13 minutes to 15 minutes.

In P and C periods[22], the limits imposed by the CTS apply as follows:

- no commercials are permitted to be broadcast in any P period; and
- each 30 minutes of a C period may contain no more than 5 minutes of commercials.[23]

6. Content Restrictions – Advertisements directed to children

In addition to scheduling restrictions, the CTS and the Code contain a range of content restrictions on advertisements in C periods. The Code extends the CTS provisions to all advertisements directed to children.[24] This means that any advertisement which is directed to children irrespective of the time of the day it is broadcast is subject to the content restrictions in the CTS.

The Code provides guidance in the form of an Advisory Note on when an advertisement is directed to children.[25] This Advisory Note was included in the 2004 review of the Code and is based on a previous ABA decision.[26] Advertisements which have child appeal, which include child themes, music, characters, and which use child language will be regarded as directed to children. These ads must comply with the CTS no matter what time of the day they are shown.

7. Content Restrictions - special care and judgment

All advertisements directed to children must exercise special care and judgment.[27] Only advertisements which satisfy the G classification requirements and comply with the CTS can be broadcast during a C period or in breaks immediately before or after a C or P program.

8. Content Restrictions – undue pressure

The CTS and Code prohibit advertisements directed to children which are designed to put undue pressure on children to ask their parents or other people to purchase an advertised product or service.[28] An advertisement which merely encourages a child to request that their parent purchase the product will not, of itself, constitute undue pressure. Tone, placement, frequency or content of the pressure are all relevant. For example an advertisement which suggested that parents who buy the advertised product love their children more, would not be permitted by the CTS.

9. Content Restrictions – truth and accuracy

The concepts of misleading and deceptive conduct in the TPA have been incorporated in various forms in the CTS. The CTS provide that:

[21] Clause 5.1.1 Commercial Television Industry Code of Practice
[22] P and C periods as defined in the Children's Television Standards are those periods nominated by a network during which they will broadcast P and C programs respectively.
[23] Clause 5.8 Commercial Television Code of Practice; CTS 13 and CTS 14.
[24] Clause 6.20 Commercial Television Industry Code of Practice.
[25] Advisory Note "Commercials or Community Service Announcements Directed to Children" Commercial Television Industry Code of Practice.
[26] ABA investigation "Agro's Cartoon Connection", November 1996
[27] Clause 6.2 Commercial Television Code of Practice.
[28] CTS 18 and CTS 19 Children's Television Standards

- no advertisement may mislead or deceive children[29];
- advertisements must accurately represent the advertised product or service[30];
- claims in advertisements must not be ambiguous[31];
- advertisements directed to children for food products must not contain any misleading or incorrect information about the nutritional value of that product[32]

10. Content Restrictions – premium offers

The CTS prohibits advertisements for products with premium offers from stimulating any unreasonable expectation of the product or service offered. Any reference to the premium must be incidental to the main product and any conditions which must be met before obtaining the premium must be clearly presented.[33]

11. Content Restrictions – product placement in programs mainly directed to children

The CTS provides that hosts or other regular presenters or characters in a C or P program must not sell or promote products or services.[34]

12. Content Restrictions – endorsements by personalities or characters from C or P programs

Material within a C or P program and in breaks before and after such programs cannot contain an endorsement of a product by a principal personality or character from a C or P program which features the personality of character (a) not being currently broadcast in the service area, and (b) has not been broadcast within the preceding 12 months.[35]

13. Content Restrictions – food and beverage advertising

During the last Code review, in response to community concerns Free TV included a food and beverage clause in the Code. The clause provides that:

"6.23 Advertisements directed to children for food and/or beverages:

6.23.1 Should not encourage or promote an inactive lifestyle;

6.23.2 Should not encourage or promote unhealthy eating or drinking habits;

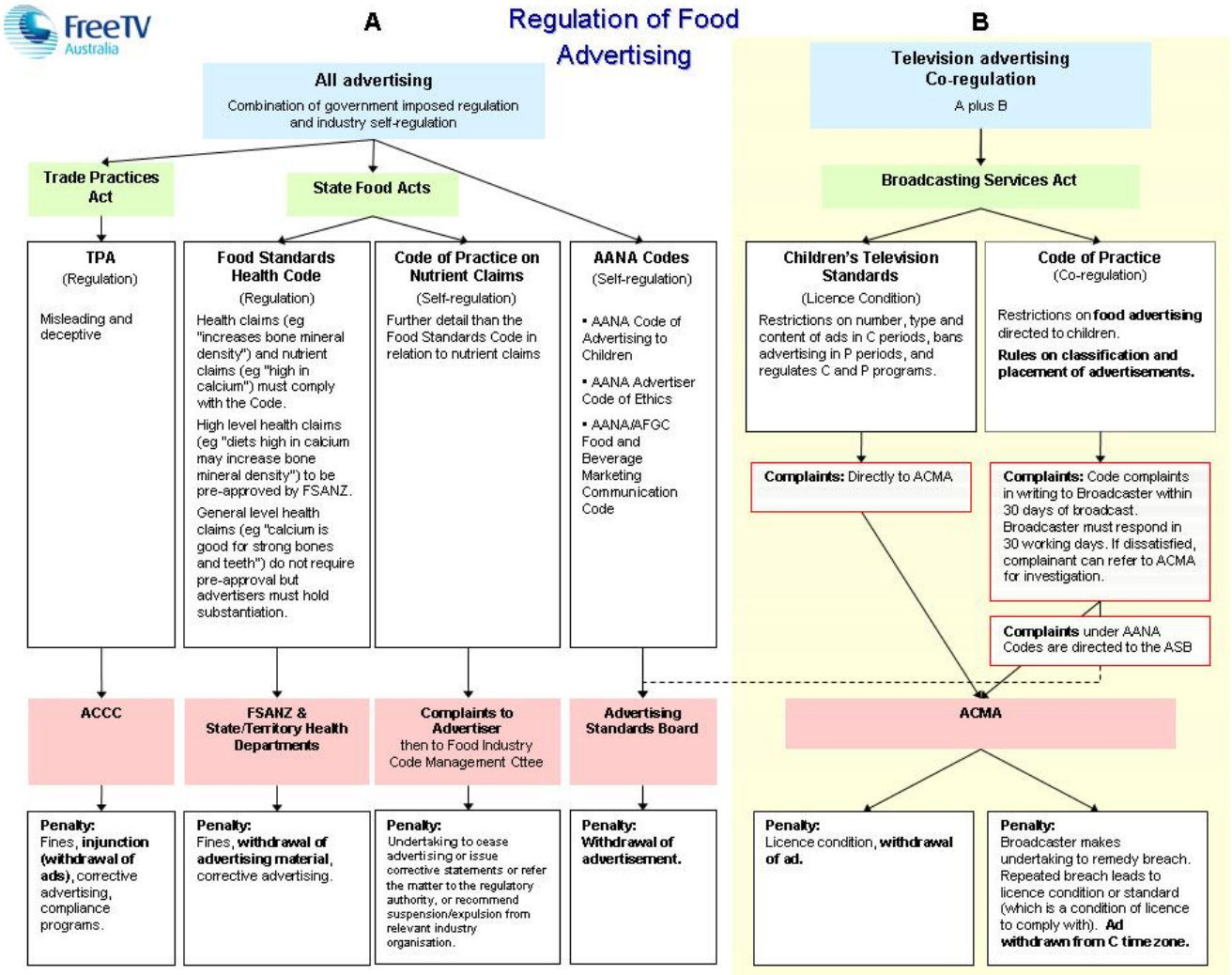
6.23.3 Must not contain any misleading or incorrect information about the nutritional value of the product."

[29] CTS 17 Children's Television Standards
[30] CTS 19(1) Children's Television Standards
[31] CTS 19(2) Children's Television Standards
[32] CTS 19(6) Children's Television Standards, Clause 6.23 Code of Practice and AANA Code Clause 2.10.1
[33] CTS 20(2) Children's Television Standards. The AANA Code contains a similar provision,
[34] Clause 6.24 Commercial Television Code of Practice
[35] CTS 22 Children's Television Standards

Inactive lifestyle means not engaging in any or much physical activity as a way of life and unhealthy eating or drinking habits means excessive or compulsive consumption of food and/or beverages.

The clause was amended to be more restrictive following submissions from the Queensland and New South Wales Departments of Health.

APPENDIX 2


FreeTV Australia
A
Regulation of Food Advertising
B
All advertising
Combination of government imposed regulation and industry self-regulation
Trade Practices Act
State Food Acts
TPA
(Regulation)
Misleading and deceptive
Food Standards Health Code
(Regulation)
Health claims (eg "increases bone mineral density") and nutrient claims (eg "high in calcium") must comply with the Code.
High level health claims (eg "diets high in calcium may increase bone mineral density") to be pre-approved by FSANZ.
General level health claims (eg "calcium is good for strong bones and teeth") do not require pre-approval but advertisers must hold substantiation.
Code of Practice on Nutrient Claims
(Self-regulation)
Further detail than the Food Standards Code in relation to nutrient claims
AANA Codes
(Self-regulation)
▪ AANA Code of Advertising to Children
▪ AANA Advertiser Code of Ethics
▪ AANA/AFGC Food and Beverage Marketing Communication Code
ACCC
FSANZ & State/Territory Health Departments
Complaints to Advertiser
then to Food Industry Code Management Cttee
Advertising Standards Board
Penalty: Fines, injunction (withdrawal of ads), corrective advertising, compliance programs.
Penalty: Fines, withdrawal of advertising material, corrective advertising.
Penalty: Undertaking to cease advertising or issue corrective statements or refer the matter to the regulatory authority, or recommend suspension/expulsion from relevant industry organisation.
Penalty: Withdrawal of advertisement.
Television advertising Co-regulation
A plus B
Broadcasting Services Act
Children's Television Standards
(Licence Condition)
Restrictions on number, type and content of ads in C periods, bans advertising in P periods, and regulates C and P programs.
Code of Practice
(Co-regulation)
Restrictions on food advertising directed to children.
Rules on classification and placement of advertisements.
Complaints: Directly to ACMA
Complaints: Code complaints in writing to Broadcaster within 30 days of broadcast. Broadcaster must respond in 30 working days. If dissatisfied, complainant can refer to ACMA for investigation.
Complaints under AANA Codes are directed to the ASB
ACMA
Penalty: Licence condition, withdrawal of ad.
Penalty: Broadcaster makes undertaking to remedy breach. Repeated breach leads to licence condition or standard (which is a condition of licence to comply with). Ad withdrawn from C time zone.