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SENATE

STANDING COMMITTEE ON COMMUNITY AFFAIRS

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

WEDNESDAY, 19 NOVEMBER 2008

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**SENATE STANDING COMMITTEE ON
COMMUNITY AFFAIRS**

Wednesday, 19 November 2008

Members: Senator Moore (*Chair*), Senator Siewert (*Deputy Chair*), Senators Adams, Bilyk, Boyce, Carol Brown, Furner and Humphries

Participating members: Senators Abetz, Arbib, Barnett, Bernardi, Birmingham, Mark Bishop, Boswell, Brandis, Bob Brown, Bushby, Cameron, Cash, Colbeck, Jacinta Collins, Coonan, Cormann, Crossin, Eggleston, Ellison, Farrell, Feeney, Fielding, Fierravanti-Wells, Fifield, Fisher, Forshaw, Hanson-Young, Hefernan, Hurley, Hutchins, Johnston, Joyce, Kroger, Ludlam, Ian Macdonald, McEwen, McGauran, McLucas, Marshall, Mason, Milne, Minchin, Nash, O'Brien, Parry, Payne, Polley, Pratt, Ronaldson, Ryan, Scullion, Siewert, Stephens, Sterle, Troeth, Trood, Williams, Wortley and Xenophon

Senators in attendance: Senators Bob Brown, Moore and Siewert

Terms of reference for the inquiry:

To inquire into and report on: Protecting Children from Junk Food Advertising (Broadcasting Amendment) Bill 2008

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Committee met at 9.00 am**GENTILE, Mr Tony, Chief Executive, Australian Beverages Council Ltd****CARNELL, Ms Kate, Chief Executive Officer, Australian Food and Grocery Council**

CHAIR—The Senate Standing Committee on Community Affairs is commencing its inquiry into the Protecting Children from Junk Food Advertising (Broadcasting Amendment) Bill 2008. These are public proceedings, although the committee may agree to a request to have evidence heard in camera or may determine that certain evidence should be heard in camera. Would either or both of you like to make an opening statement and then we will go to questions. I believe you provided more information this morning, so thank you very much.

Mr Gentile—Thank you for the opportunity to comment on the proposed bill before the Senate. The products covered by my members are bottled waters, carbonated soft drinks, formulated beverages, fruit juices and fruit drinks, sports and isotonic drinks and iced ready-to-drink teas and coffees. At the outset I wish to state that we reject the description of junk food as applying to any product produced by our members. There is a place and role for non-alcoholic refreshment beverages in the diet, and all products produced by members of the Australian Beverages Council can be a part of a balanced diet. All of our products comply fully with the strict regulations of FSANZ. With the exception of energy drinks—that is, formulated, caffeinated beverages as defined in the standards—all the products covered by the council's members are regarded by FSANZ as suitable and safe to be consumed by children. Energy drinks are recognised by the Beverages Council as not fitting that description because of their higher caffeine content, and we originally recommended that they be labelled as 'not recommended for children'. However, we do accept that while there is no such thing as a junk food there are junk diets, where individual products may be overconsumed. We believe this is where education of our children and parental control comes in.

As the Australian Beverages Council, we have a longstanding record of responsible marketing. In October 2006 we committed ourselves to a wide-ranging policy on marketing and advertising to children as well as to the provision of additional voluntary information on our labels, and that policy was submitted to the government. The policy was welcomed at the time by the government and, may I say, the opposition as well. It was subject to an independent audit. The first year's audit was completed last year and was sent to the government, and we did include it with our submission to the committee. The second year's audit is due to be completed in a week or two's time. I will be happy to provide it to the committee as soon as it is completed. It is being conducted by Food and Nutrition Australia, an independent firm of nutrition consultants.

We would further bring to the notice of the committee that the International Council of Beverages Associations has essentially adopted what we had adopted in October 2006 for marketing and advertising of their products, the sugar-sweetened products, all over the world regardless of the nature of the society or its government. This is a commitment by the major companies in terms of the marketing of their product. I would also like to bring to the notice of the committee that, in response to consumer demand for drinks with lower kilojoules, council members have developed, and are continuing to develop, new products to meet this demand. This has been confirmed and published by respected and independent academics in peer-reviewed research.

In our submission to the Senate Standing Committee on Consumer Affairs we have detailed our advertising and marketing policies, and this specifies that members should not advertise or market to children in any program or setting where the program is specifically targeted to children or where the majority of the audience consists of children. We support the voluntary advertising standards of the Australian Association of National Advertisers and do not believe that there is any evidence that any further restriction on advertising would result in the prevention of or reduction in the level of obesity in the community. I would be happy to answer any questions from the committee, and any that I cannot answer I will be happy to take on notice and provide you with an answer.

Ms Carnell—It is a real pleasure to be here today. The Australian Food and Grocery Council represents food and grocery manufacturers in Australia. Our members employ 200,000 Australians, \$100,000 of those in rural and regional areas, and turn over in the vicinity of \$70 billion a year. The majority of food and grocery manufacturers are members of our organisation, and I would have to say the absolute majority of those that advertise on television and other media are our members. The industry takes very seriously the issue of nutrition, overweight children and childhood obesity, and for that matter the health of the community quite broadly. This is something that over the last 10 years everyone would agree has become very much front and centre whether we are debating health, the community generally, the difference between social determinants in our community; these issues are very real. The government has taken that seriously by setting up such entities

as the Preventative Health Taskforce and other approaches. The industry does not in any way underestimate the issues surrounding advertising of food and beverages generally and to kids in particular.

With that in mind, there have been a number of initiatives across the industry. Mr Gentile has already spoken about the beverage industry, but we believe we needed to take another step and that other step was released a couple of weeks ago with the responsible children's marketing initiative from the Australian food and beverage industry. That was done in cooperation right across industry and with AANA as well. Members have a copy of that approach. What we are saying and what we are committing to in that document is that food and grocery and beverage manufacturers in Australia will not advertise products that are not deemed to be healthy under appropriate government standards and guidelines during children's television timeframes. You could ask: why only children? And that is a fair comment. The truth is that we live in a free society and people can make decisions on a whole range of things they do in their own lives, such as what they eat, what they drink, what they do, where they work—all sorts of things. But it is true that younger children, particularly primary school-age children, are probably not yet old enough to have the maturity to be able to make decisions for themselves. On television programs where they are often watching on their own without a parent, or the family, watching the program together there is a good argument to suggest that you have to take special care in advertising in those programs, the programs that are aimed very definitely at primary school-age children.

As I have said, the industry has undertaken to advertise only food that is deemed healthy under the standards of, for instance, FSANZ, NH&MRC or the World Health Organisation. They have to be deemed as appropriate and scientifically valid standards. We believe that the approach that we have taken is worth a go. We fully accept the comments that some people have made about industry self-regulation and we believe it is up to us to prove them wrong. We will have this particular industry code up and running in January this year.

In fact, it was good to see—sometimes timing can work—the first major company, and that was Nestle, the world's biggest food manufacturer, put their plan for how they plan to comply with the responsible children's marketing initiative on the table today. Nestle has chosen to do that internationally and has put on the table a Nestle nutritional profiling system and the approach it plans to use as the basis for its compliance with the initiative in Australia. That particular profiling system is based upon World Health Organisation standards. It is published across about 27 different food and beverage product categories. It covers all consumer age groups, children and adults, and so on. It is very broad in its approach. To give you some examples of what that will mean, Nestle accepts that a well-known product it produces, Roll-Ups, do not meet nutritional criteria, and on that basis the product will not be advertised unless and until it is reformulated to meet guidelines. It goes through a range of other products that are in the process of being reformulated to come in under those guidelines, to bring the sugar, fat and salt levels down to a level that is accepted for the particular product category. As we all know, this is an incredibly complicated area because what is an appropriate level of sugar and fat in some products is not appropriate in others. You really have to do this, as FSANZ has, in a product category sort of approach. We believe that the approach we have put on the table is broader than the bill currently before the parliament. The industry does distinguish between healthy and unhealthy products. We do not believe in blanket bans, and I will tell you why.

This morning I distributed the Australian National Children's Nutrition and Physical Activity Survey, which was released about a month ago. I am sure that members have already seen it. It was jointly funded by the Australian Food and Grocery Council, the Department of Health and Ageing and the Department of Agriculture, Fisheries and Forestry. They each contributed \$1 million. It was conducted by CSIRO at arm's length from all of us. This is the most in-depth survey we have seen in Australia since 1995 and the first time we have looked at children's nutrition and physical activity together. Interestingly, it shows the level of overweight and obesity for children has not increased significantly—one per cent or two per cent—over the last 10 years. But—and a big 'but' comes up here—even for the young people who are not overweight or obese their diets are not what they should be. Levels of calcium in pubescent females, 14- to 16-year-olds, are too low, and so on. When you look at this you will see that generally the diets of our young people are not as good as they could be. They do not comply with NH&MRC guidelines. What we really need, as many people say, is better education in our community. To suggest that there should be no food advertising probably negates an opportunity to ensure that the advertising that young people see is for healthy products. I am fully appreciative that under these bills there is a capacity for exemptions. The minister can exempt advertising for food and beverage products if they are deemed to be beneficial to children's health, and I am assuming using the FSANZ nutrient profiling approaches, which of course are not yet quite in place. I will just make that comment; they were put there for the health claims legislation, which of course is very heavily tied up in the FSANZ process at this stage. That creates a level of complexity, and I would have to say cost to the taxpayer

that is unnecessary at this stage. Our approach does deem a difference between healthy and unhealthy products.

There is the science base that we are talking about. It does not only talk about free-to-air TV. Society understands now that free-to-air TV is only a bit of what our children see. Increasingly it is internet, pay TV, 3G and all sorts of other things. We believe any approach really does need to be significantly broader. The amendment covers only C and P programs. We believe there is a whole range of other programs, particularly in the G category, that are really obviously aimed at children, determined by theme, visual, language use and so on. Examples of those are programs like the *Rugrats*. It is obviously a kids' program. *Cat in the Hat*, *Ben 10* and those sorts of programs would be covered by our code and not necessarily covered by the proposed legislation. We believe that you need a really transparent approach and we, as industry, have attempted to put on the table a very transparent approach. The costs will be borne by industry, not by government or the taxpayer. We perceive that to be an appropriate approach. We have taken into account in the code issues such as advertising in schools and the use of cartoon or popular characters in the space. We think it would be very sad to ban cartoons or popular characters totally. It would be really useful for them to be promoting healthy food, whereas the current legislation makes that at least non-specific or possibly bans it totally. As to the complaints mechanism under our code, which I have to say is probably not clear in the current guidelines because we were working it up, the Advertising Standards Bureau will run the complaints process at arm's length from industry. The Advertising Standards Board will adjudicate on all complaints relating to advertising and marketing, including placement and whether the message is appropriate. The ASB will refer complaints about whether a product is healthy to the University of Wollongong. We are in the process of finalising arrangements with it. All of these complaints will be done at arm's length from AANA or AFTC. The turnaround time for complaints will be 14 days, because we believe that if there is a complaint you really need to get the ad off, allow the ad in if it is before it is actually viewed in a really short turnaround time. The outcomes of all complaints will be published by the Australian Standards Bureau.

Generally we are asking the committee to say, 'Look, we can get this up quickly.' We have already got companies putting their plans transparently on the table for how they will implement this. We plan to do a 12-month review and industry expects to be held accountable.

Senator BOB BROWN—Firstly, you pointed out that obesity and overweightness in children has increased just by one per cent or two per cent in the last decade, but we know that in the previous two decades it doubled or tripled.

Ms Carnell—Yes.

Senator BOB BROWN—Why hasn't the industry responded to that?

Mr Gentile—Our response has been to meet consumer demand for products with fewer kilojoules in them. The University of Wollongong's Professor Linda Tapsell and Dr Gina Levy published original research peer-reviewed in the *Journal of Nutrition and Dietetics* last December that showed clearly a considerable decline in the number of sugared products being consumed and an increase in non-sugared products. The replacement rate was 50 per cent by diet-type products and 50 per cent by bottled water. Professor Tapsell and Dr Levy worked out that the reduction was equivalent to 300 million cans of sugared soft drink per year.

Senator BOB BROWN—Was this due to a change in advertising?

Mr Gentile—This was due to a change in industry responding to consumer demand for different products. We also have not advertised to children for at least the last couple of years, and for longer than that in regard to the major companies. May I preface this with: we cannot stop third parties, because you cannot stop retailers doing whatever they want. It is a free country. But my members have totally stopped advertising directly to children for sugar sweetened beverages. In fact, rather than the definition of 'healthy' and 'unhealthy', we have decided to take the New South Wales school canteens' guidelines and say, 'If the product is permitted to be sold by the New South Wales government in school canteens, that product is one that can be advertised.'

Senator BOB BROWN—My question was that we have known about the problem of soaring obesity rates in children and that the consequences are massively detrimental for the health of the Australian population in the coming generation, and the costs. We have known about that for three decades. Why has the industry chosen the last month or two to come up with a standards arrangement? What action has the industry itself taken? You have talked about a consumer led opposition to buying sugar rich food, but what action has the industry taken over those three decades, not in the last—

Mr Gentile—I beg to differ that it is in the last month. Our policy has now been running for two years at least, long before the last couple of months and the last spate of state generated inquiries and inquiries generated by this bill. In my submission to you we spelt out exactly what we are committed to in terms of action. That was done two years ago. I might point out that I have been the executive director of the Beverages Council and its predecessors for 28 years now. Back in 1988, I believe, the major companies took the decision not to sell sugar sweetened soft drinks directly to primary schools unless a primary school asked for it. Now we have gone further in this policy and said, ‘Whether they ask for it or not, we won’t sell it except for sports days and fetes.’ I think the industry has taken action over a long period. We believe we have acted responsibly. But if you also look at the situation, yes, obesity has increased over a long period. I do not dispute that. However, to put the blame on food alone is to miss the bigger picture of the wider changes in society—

Senator BOB BROWN—But you will agree that food is a central agent in the increasing problem of overweight and obese Australians that we see?

Ms Carnell—There is no doubt that the industry is part of the solution as well as part of the problem, just as we all are—parents, the legislative system and the whole range of people in that space. As to the issue of food, we know that a chunk of a problem is about portion sizes, about a fast lifestyle where maybe we are not cooking as much and maybe we are looking for the faster food approach. We certainly have what we would like to now call obesogenic environments. We drop our kids at school. This is happening for a whole range of reasons. To suggest that this is as simple as advertising food to kids would be hugely underestimating the problem.

Senator BOB BROWN—I do not think anybody is doing that.

Ms Carnell—In terms of what industry has done already, you only have to walk into a supermarket to see the huge range of products now that have been reformulated to be lower in salt and lower in fat. In terms of, again, soft drinks, low or zero calorie soft drinks have become absolutely mainstream. They certainly were not 20 years ago. There are lots of changes in composition of food. Industry stopped advertising to preschool-age children quite a long time ago. Codes have been in place. But this is a progression. I think the fact that you are sitting here, having now put your bit on the table, indicates that society is changing and is taking on board the issue of prevention in our community and trying to keep people healthy rather than just treating them when they get sick. I have to say it is good that we are now thinking about those things, because they matter.

Senator BOB BROWN—You have said that members will not advertise in markets dominated by children. This bill aims to quite squarely prevent unhealthy foods being marketed to children audiences. So, what is the problem?

Mr Gentile—The problem comes down to one of definition. It has been our experience that when dealing with these issues definitions can be manipulated to suit particular philosophical positions. I will give you an example of this. In Britain when they set out to categorise foods into the green, orange and red variety, based on the parameters that they set they came up with the fact that diet soft drinks would fall in the orange category. They did not like that so they changed the parameters to ensure that diet soft drinks fell in the red category. What I am saying to you is that it is not appropriate to just say ‘unhealthy foods’. I would suggest that occasional foods, whether they are sweetened soft drinks or diet soft drinks, or a whole range of foods have a right to advertise. We do not advertise during children’s hours, but my understanding is that a lot of the moves, especially by some of the state governments, go way beyond where children’s hours are determined to be essentially 6 am till 9 pm. What we are finding is that all of a sudden children are getting older and older. Some people are defining children at 18.

Senator BOB BROWN—What is your definition?

Mr Gentile—I would say primary school age is an appropriate delineation point. This is derived from a consumers group’s own research, that is, the Coalition on Food Advertising to Children. Their paper *Children’s health or corporate wealth?* reported that children by the age of 10 or 12 can actually determine whether it is an advertisement and what the purpose of that advertisement is. Over that age when they get to high school I think it is a different category. As a person who has had three children who have gone through the teenage and high school years, I can assure you that by the time they get to high school if they have not been taught properly then one would be in big trouble.

Senator BOB BROWN—Do either of you know what your members spend in advertising food on television in Australia?

Ms Carnell—No. I expect we could easily find out and I am sure that people like Free TV and others will well know what those figures are. I think they are appearing later today. I would just like to make the comment though that surely what we are trying to aim at here is not some heavy-handed banning approach but to have a partnership of the community, parents, government and industry to address what is a broader issue than just whether there are ads on television to children on free-to-air, which is all this bill does. It does not differentiate between healthy and possibly unhealthy food, although there is the potential for the exemption. But there is nothing in this approach to encourage the advertising of healthy products, healthy diets, healthy lifestyles, to be using cartoon characters and high-profile individuals to be encouraging healthy lifestyles. That is what we have to do. It is not just about not advertising this product or that one. It is about a whole change in attitude not just about kids but right across society. That is why it has to be partnership. It will not work otherwise.

Senator BOB BROWN—Yes, but the food corporations and the beverage corporations are into advertising product. They are not into advertising a healthy lifestyle or the rounded out improvement of children's health. You would agree with that, wouldn't you?

Ms Carnell—No.

Mr Gentile—I disagree with that.

Ms Carnell—Absolutely.

Mr Gentile—We do advertise our product. I would rather use the word 'market' our products, because what you will find from the television people is the actual dollar spend on advertising, say, from soft drink companies has decreased dramatically over the years. They just do not advertise on TV except for fairly late in the evening mostly. The dollar spend has decreased dramatically, but you have to take into account how we style the ads, how we style the marketing campaign, working in cooperation with government, can have the effect that Ms Carnell has suggested, that is, be built around a healthy message about an active and good lifestyle. There is a huge variety of products, and it is very easy to decide, 'This is good; this is bad'—

Senator BOB BROWN—You are saying that you are not in the business of promoting product?

Mr Gentile—No, I did not say that at all. I said we are in the business of marketing products. The marketing of those products can be done in a variety of contexts, and what Ms Carnell has suggested is that under a black and white approach where you cannot advertise a whole range of products that kind of marketing would not be possible.

Senator BOB BROWN—But just let me use an analogy here. Are you opposed to the ban on advertising cigarettes?

Mr Gentile—I am opposed to bans because I do not think that bans work. Where bans have been applied elsewhere in the world there has been no discernable change in the level of obesity in children. I do not believe that advertising has any marked effect or that there is any evidence out there that it has a marked effect on obesity. There is a huge number of other issues not being tackled by this bill, including the amount of time that children watch TV, play computer games and doing a whole range of other inactive pastimes. Also, in today's society parental concerns means that children are driven to and from school instead of riding a bike as I used to in my day. Things have changed. Society has changed and food plays a part. We do not dispute that. But it is only one part. To address obesity we need to address all of the factors that impact—

Senator BOB BROWN—We all agree with that, but what is wrong with addressing the problem of junk foods, unhealthy foods that are high in sugar, fat and/or salt being promoted in children's TV viewing hours? I might ask you about that, because I am talking about food here.

Ms Carnell—You asked about tobacco first, and I know you know the answer to that question. Tobacco is actually bad. It is a bad product. There is no doubt. Yet food is about balanced diets. We are not talking about poisons or things that are addictive or all of the other issues, and to confuse tobacco—

Senator BOB BROWN—Can I just intervene here to say we are talking about unhealthy foods high in fat, sugar and salt being advertised to children, specifically targeted at children.

Ms Carnell—As you know, what we have put on the table is an approach that we believe will work better than the approach that you have put on the table. As I said in my opening statement, we do not in any way walk away from the fact that industry has an absolute role to play in being part of the solution here. It is absolutely fundamental. We think that the bill that has been put on the table is just heavy-handed, does not address the issue, does not produce a partnership between industry and government and the community and

also does not encourage industry to be advertising healthy eating and healthy activity and to be reformulating product to make it more in line with established scientific guidelines.

Senator BOB BROWN—It does not prevent any of those things. Is there any harm to children in this bill?

Ms Carnell—Is there a benefit? Because I think in legislation—

Senator BOB BROWN—No, my question is not: is there a benefit? Because, yes, there is. I am not—

Ms Carnell—Which benefit?

Senator BOB BROWN—What I am asking is: is there harm in this bill for children?

Ms Carnell—Yes, we believe there is, because it does not—

Senator BOB BROWN—What is that?

Ms Carnell—produce the sort of partnership we are talking about. It does not produce advertising that will ensure the mix of advertising to children is encouraging healthy eating and healthy lifestyle. The bill does not do that. It certainly does not in any way address even issues such as: does our approach mean there will be no advertising on children's TV? No, it does not mean that at all. It means the advertising that is there will be for healthy food, healthy lifestyle, healthy portion control and those sorts of things. The bill that is on the table does not in any way guarantee that approach.

Senator BOB BROWN—What I asked about, though, if I may—you are talking about what it does not do and it certainly does not ensure that children ride bicycles, as Mr Gentile said, and it does not involve the exercise cycle for children and education and so on. All of those things are part of the package. We agree with that. But what I am asking you is: what harm do you see this bill doing to children?

Mr Gentile—With all due respect, the bill does not reduce obesity, either.

Senator BOB BROWN—What is your evidence for that?

Mr Gentile—There is international evidence that the bill will not reduce obesity. If you are referring to the fact of what the bill does not do in some of the other areas, I would suggest that in a primary area that you purport to address with this bill it will not achieve its aim.

Senator BOB BROWN—We will have evidence to the contrary. I am very aware that the tobacco advertisers said that advertising does not cause lung cancer, too, but we have seen a dramatic drop in the amount of lung cancer from an approach—

Ms Carnell—To compare food with tobacco is—

Senator BOB BROWN—We are in a major epidemic. Health experts are predicting a shortening of life spans across the community due to obesity. Is that not a huge health concern for this nation?

Ms Carnell—It obviously is and that is why industry has come to the table, and actually has been for a while, and is looking at reformulation and a whole range of other issues. But it is not simple. I must admit I am fascinated with an argument where you say, 'We should pass this bill because it doesn't do any harm?'

Senator BOB BROWN—No, I did not say that. Please do not verbal me. What I asked you was: what harm does the bill do? You could see no good in it. I wanted to at least get to the basis of your establishing a harm factor in it, because that was implied in what you were saying.

Ms Carnell—I went through a whole range of things. It only looks at free-to-air TV. It does not differentiate between healthy and unhealthy products. It does not encourage industry to—

Senator BOB BROWN—It does, doesn't it?

Ms Carnell—reformulate inside guidelines. It does not allow cartoon characters or high-profile characters to promote healthy lifestyle on children's TV. There is a whole range of things that it does not do. If you look at what it does do, there is no evidence—and there is no evidence worldwide—to suggest where countries have introduced bans or limitations on advertising that levels of childhood obesity have reduced. What there is evidence about is that advertising can change preference, and there is no doubt about that, but you cannot compare changing preference—kids might like a particular sort of food because they have seen it advertised—to obesity. A good balanced diet can and does include snack foods, protein, and all those sorts of things in a balanced approach with good, solid exercise. That is what a good, balanced diet is.

Senator BOB BROWN—Is it not a fact, though, that the industry is now coming forward with its responsible marketing initiative because legislators are moving into this area? We have seen that in Britain recently. We have seen it in other countries and there is very cogent evidence that advertising to children does

influence what they buy and that advertising of unhealthy foods that are high in sugar, fat and salt does lead to increased sales of those products and that that is not going to be stopped by this code?

CHAIR—I want to ask if anyone has any objection to having some film taken of the hearing. I always like to check first. I am sure no-one here does. That is fine. Go ahead. I hope I have not interrupted your flow.

Mr Gentile—I would like to take your earlier point, which Ms Carnell also addressed. I take great umbrage at the comparison of any food standardised by Food Standards Australia and New Zealand to tobacco. Tobacco—one cigarette does you harm. You cannot say that having a lolly or having a soft drink will do you harm—

Senator BOB BROWN—I am sorry—

Mr Gentile—If you will let me finish, the comparison is absolutely farcical.

Senator BOB BROWN—The comparison was with the impact of advertising on consumers. I was just asking whether you thought the ban on cigarette advertising was unwarranted and you said, yes, you did.

Ms Carnell—I am sorry, we did not actually. The approach to advertising tobacco has been multifaceted. It has not been a case of just banning advertising and doing nothing else. There has been a whole range of public approaches done together. A lot of it has been about being in partnerships—

Senator BOB BROWN—I think we are in great agreement on this.

Ms Carnell—Okay. We are saying that what we need to do in this area is look not at just free-to-air TV, not just at C and P programs but to look at this much more broadly and have industry and government working together, as they are in the UK and in a range of other countries around the world. It is not just about advertising. It is about formulation, portion control and about getting healthy messages out as the nutrition survey showed. It is not just about overweight and obesity. It is about good, balanced diets.

Senator BOB BROWN—In your submission you say that the Australian Food and Grocery Council will not address the link between advertising and obesity in the submission.

Ms Carnell—That was because everyone else had, and we thought that you were sick of reading about that.

Senator BOB BROWN—Really?

Ms Carnell—We were aware of—

Senator BOB BROWN—It is a fundamental matter that this committee is looking at, though, isn't it?

Ms Carnell—I would not have thought so, to tell you the truth; the recent Preventative Health Taskforce report has recommended looking at restricting advertising, but has gone on, as did everybody else, to suggest that quite seriously the evidence to directly link advertising and obesity is simply not there at this stage. There is some evidence to link advertising with food choice. But as to a link between food choice and obesity—just because I might happen to like chocolate does not mean I am obese. It is about a balanced diet and good education.

Senator BOB BROWN—Why do food producers advertise?

Ms Carnell—To encourage people to choose their product over others.

Senator BOB BROWN—Why is it that advertising in children's TV viewing hours is loaded with products that are high in sugar, salt and fat?

Ms Carnell—Advertisers have made huge changes in that area over the last few years. To assume that is not the case is simply unfair. Advertising to preschool-age children for food products does not exist—full stop. Many companies have chosen to stop advertising in those spaces. We determined that it was important to put a line in the sand and to bring the whole industry on board with an across-the-board code. Many companies had already done bits in their own space, but we believed it was important to bring the whole of the industry to the table with government to work in cooperation.

Senator BOB BROWN—Again, why is it that the majority of advertisements in children's TV viewing hours have foods that are high in salt, fat and/or sugar?

Ms Carnell—I think that is a dramatic overstatement these days. I really do. I think there are lots of companies—

Senator BOB BROWN—That is the evidence before this committee.

Ms Carnell—that have chosen not to advertise in those areas.

Mr Gentile—Why don't you ask the reverse question: why is it that fruit and vegetable and other products that are sold are not advertised more? Maybe it would be more appropriate if the government were to put some resources into achieving greater exposure for those products. You asked me earlier for some evidence—

Senator BOB BROWN—Why would the government get involved when you are proposing to this committee that the industry become responsible for the advertising?

Mr Gentile—I am more than happy to answer that question. What we are proposing is that the industry will self-regulate for the products that it produces and that the industry will work at reformulation of products and development of new products to meet current consumer needs, and we will control our own advertising. But we represent the processed food industry, or at least my end of it, beverages—

Senator BOB BROWN—Isn't your argument therefore, as Ms Carnell is saying, there should be an across-the-board approach here involving all facets of the problem of obesity so that we tackle all of them, not just advertising? But what you are now proposing is that the industry look after advertising and the government take responsibility for the rest?

Ms Carnell—No, we are not.

Mr Gentile—No, I do not propose that. You are putting words in my mouth. I simply stated that instead of asking the question why certain products are advertised you should also ask the question why certain other products are not advertised, and maybe there should be incentives to advertise those products. I go back to your previous point—

Senator BOB BROWN—The answer to that is that fresh fruit and vegetables, for example, are produced by farmers and sold through the supermarket without the intervention except for the retailer of a processor, and what we are doing today is talking to processors, aren't we?

Ms Carnell—Certainly.

Mr Gentile—You are. Can I go to your previous question where you asked about evidence? I can submit to you a table here—it is not my own evidence, it is from Neilson Media Research—which shows that there is no correlation, and there is actually an inversely proportional trend, between advertising and obesity.

Senator BOB BROWN—Shouldn't we be on a good thing if we stop advertising; it will solve the problem?

Mr Gentile—No, the level of advertising has no effect. This table shows that the level of advertising in Britain has had no effect. It has been falling. The number of advertisements has fallen and obesity has been increasing in Britain. There is no relationship so why regulate something where there is no proof that there is a cause and effect? The government and the opposition are both committed to reducing the amount of unnecessary regulation on industry. I believe that, given that the evidence is that there is no relationship between banning advertising and obesity, I would suggest that this would fall into the category of unnecessary regulation and overreaching regulation.

CHAIR—Can we have that evidence?

Mr Gentile—I am happy to pass it to you.

CHAIR—That would be useful. I just do not remember seeing that in your submission.

Senator SIEWERT—Ms Carnell said that there were a number of companies that had decided not to reduce their advertising. Could you provide us with a list of those companies?

Ms Carnell—Absolutely. There is also a global pledge that has been provided in the past by seven major companies that have made certain decisions in that area. Yes, we can provide all of that information.

Senator BOB BROWN—Do members of your organisation use child psychologists in devising advertisements? If so, can you give us an indication of what the instruction base to those psychologists is?

Ms Carnell—I have no knowledge of that being done.

Mr Gentile—Could you repeat the question, please?

Senator BOB BROWN—The use of child psychologists in devising advertisements—

Mr Gentile—I have no knowledge of their doing so.

Senator BOB BROWN—The second question is to you, Ms Carnell. There was a similar inquiry looking into the banning of plastic bags a few years ago. Your industry in particular roared in and said, 'We'll self-regulate.' And it has failed. We now have the South Australian government about to advertise for a ban on

plastic bags because there are billions of them still going into the environment. Why should we think that this sudden—and I think belated—move to self-regulation we are seeing in the industry in the wake of this legislation coming into parliament is going to be more successful?

Ms Carnell—What I said to you in my opening statement was that I can understand criticisms at times of industry based self-regulation. What I am suggesting to you is we have put a very transparent approach on the table. We can get it up and running significantly quicker than any either Commonwealth or state approach could possibly do. We believe we are looking at a 12-month review. If we have not delivered what we said we would do, we would expect to be appropriately judged on that.

Mr Gentile—Major members of the Beverages Council that represent 90 per cent of beverage production are fully in support of the AFGC's—

Ms Carnell—I have to say about industry self-regulation that I can cite one that worked and you can cite one that did not. It is absolutely true. There are ones that have and ones that have not. There is no doubt about that. We believe this will work. We believe it is essential that it does work for a healthier community generally. We have put it on the table and we are willing to be judged by it.

Senator BOB BROWN—Finally, what about those advertisers that are not members of your—

Ms Carnell—We are very happy for everyone to sign up. We are not saying it is only about our members, although I would have to say—

Senator BOB BROWN—No, the question is: what say do you have over them?

Ms Carnell—We do not think there are any manufacturers or major manufacturers or even minor ones beyond just one or two ads occasionally that are not our members. We really do have quite a broad range of membership of manufacturers who are advertising in this sort of space.

Mr Gentile—We cover pretty well—

Ms Carnell—Everyone.

Mr Gentile—95 per cent of beverage company advertisers.

Senator SIEWERT—You cover manufacturers. What about the retailers?

Ms Carnell—We do not cover the retailers, although we do have a close working relationship with the major retailers in Australia and they are very supportive of the same sort of approach as this code. There really is a partnership. We are also of course talking to the fast food providers as well and I know they are in discussion about coming up with a similar approach. We take this seriously.

CHAIR—As to the issue about using cartoon characters and famous people, in the submission you refer to another regulatory body. On record, exactly what is the limitation in what you have given us?

Ms Carnell—What we have said is that cartoon characters or high-profile individuals will only be able to be used to advertise products that fall under the healthy product guidelines. We think it is really important that characters that can encourage young people to adopt a particular approach are used, rather than to just take them out of the game totally.

CHAIR—I just wanted to clarify it, because it is such a contentious area.

Ms Carnell—It is a fine line. I think that some of the advertising that we may have seen over the last couple of years using very high-profile cartoon characters to advertise products that may not have met the guidelines would not be allowed under this approach.

Senator SIEWERT—Some of the issues that come to mind when using high-profile characters is that they may advertise one particular healthy product of a particular line and all the rest is full of sugar and fat, et cetera, and of course the name is associated with the whole brand, not just the product. I am thinking of a very high-profile fast food chain that used high-profile athletes to advertise healthy salads. They knew damned well that the kids watching that would not be interested in the salads, they would be interested in other products from that very high-profile fast food company. Where do you draw the line? Would you say that is appropriate or inappropriate?

Ms Carnell—We are saying quite clearly that those sorts of cartoon characters or high-profile individuals should not be used to advertise products that do not fit the healthy guidelines. I do not think that you can step outside that because to assume for a moment, as I think the bill does a little, that any high-profile individual who has ever marketed food in the universe or company, even when they are not advertising foods that do not

fit under the healthy guidelines approach, are somehow banned because they have been associated at some stage. That was the bit of the bill I just could not get my head around at all without it being incredibly heavy-handed. I am actually quite bemused by any suggestion that that would be the case; that you would suggest that if a high-profile individual had advertised a product that was not healthy then somehow there is a ban or something, because they might be associated with it. Is that what you are saying? I do not get it.

Senator SIEWERT—Are you allowed to name companies?

Ms Carnell—Absolutely. It is all public.

Senator SIEWERT—High-profile athletes associating their name with McDonald's, for example, selling a healthy salad when everybody knows very well that what it is about is advertising McDonald's, not the healthy salad.

Ms Carnell—Would you ban that high-profile individual from advertising apples and pineapples in the future on the basis of association?

Senator BOB BROWN—The bill does not do that.

CHAIR—As that has been raised, it may be useful if you just want to clarify that aspect of the bill. As the final bit of this evidence, it has been raised by the witness. It is the element of the bill that looks at what happens to people who have been involved in advertising; is that right?

Ms Carnell—That is right. And companies when they are not advertising a particular product. So, when there is a general ad, say, for milk, and the company may have advertised other products, what does it do to the advertisement for milk?

Senator BOB BROWN—The minister has the discretion to be able to advertise healthy foods. And here is the difference. You are proposing that that discretion be left to industry. The bill proposes that that discretion be left to the minister and the health experts who are not motivated by the need for sales, which industry is motivated by. It is open to the minister to promote the health benefits of milk in children's TV viewing hours.

Mr Gentile—Regrettably we come from two different philosophical points of view. You come from a regulatory point of view; wherever you see a problem you wish to regulate.

Senator BOB BROWN—No, that is not the case at all.

Mr Gentile—This industry is coming from the point of view that there is a problem and we will act responsibly to address that problem without the need for regulation.

Senator BOB BROWN—I believe in free enterprise and the free market and I also believe in the democratic system, which is elected representatives being put into parliament by the populace to look after their needs. That is what I believe in.

Mr Gentile—I do not dispute your position on democratic principles.

CHAIR—Thank you very much. Thank you for the tabled evidence this morning. If there is anything you wish to add, please contact with the committee.

Ms Carnell—Would the committee like a copy of the Nestle statements?

CHAIR—Very much so. And that is an international—

Ms Carnell—An international position, yes.

[9.58 am]

RICKWOOD, Professor Debra, Delegate for Professor Lyn Littlefield, Executive Director, Australian Psychological Society

CHAIR—You have information on parliamentary privilege and the protection of witnesses. We have your submission from the association. Thank you very much. If you would like to make an opening statement we will then go to questions.

Prof. Rickwood—The Australian Psychological Society's submission strongly supports the broadcasting amendment to the bill protecting children from junk food advertising. While we also support and strongly advocate and encourage a multifaceted and partnership model, we would argue that the need for this bill is very clearly supported by a large body of evidence. It is quite clear that obesity is increasing in Australian children and this has major and significant impacts on child and adult health and wellbeing and also the growing incidence and costs incurred in terms of chronic disease. It is indisputable that multiple measures need to be taken to prevent child and also consequently adult obesity. I think it is also very clear that junk food or foods that have high levels of sugar, salt and fat do contribute to childhood obesity. Other experts who are better placed to quite clearly establish those relationships will be providing submissions later to the committee.

What the Australian Psychological Society can contribute to this issue is a very strong and longstanding evidence base confirming, firstly, that health related behaviours adopted in childhood are enduring habits that are carried throughout life and are very hard to break, and that advertising to children clearly impacts on their food choices and the health behaviours that they adopt and carry throughout life. While children's eating habits are affected by a wide range of influences advertising indisputably has an impact on many of these influences. Most importantly I think for this bill also the younger the child the greater the impact of advertising. There is a range of very well-founded theoretical and evidence based reasons that support that understanding.

Due to the amount of advertising that children are exposed to advertised images become one of the prevailing messages that start to form their cognitive scripts of their world view. These in turn become normative influences and these normative pressures then impact on the child themselves, it impacts on their peers, it impacts on their parents' behaviour and a range of other socialising influences in the community, to the point that, while I acknowledge it is quite difficult to occasionally establish the direct link between here and here, you can see that a vicious circle develops where you have a number of self-sustaining and self-repeating influences that encourage and facilitate the link between advertising on one hand and the much further downstream issue of obesity on the other.

We would admit that we do not have evidence on where exactly we should put a particular intervention to reduce obesity. We have evidence on a range of interventions, but we really would not be able to argue that this is the best intervention at any particular point in time because there are multiple factors affecting obesity. We would argue that it is very hard to argue that advertising of foods high in sugar, fat and salt to children is not an area of significant influence. More importantly, it is one of the areas that we could have an impact on through regulation, which is not the case for many of the other influences that we might like to impact on. The media both creates and reflects society and it should be used in this field to promote positive health behaviours rather than create and reinforce negative health habits.

Importantly, our evidence base shows the marketing of junk foods to children uses most of the psychological and social techniques that we know to be effective in changing behaviour. While I do not know whether the advertisers directly use child psychologists, I can tell you that many psychologists go into the marketing field. It is a very lucrative field for people with a degree in psychology. The evidence is so strong regarding the impact of advertising on children that it is hard to imagine a defensible argument in favour of continuing such advertising in terms of the influences on children's health.

Senator SIEWERT—I think you were in the room when the Beverages Council and the grocery council were here. Evidence has been tabled disputing any link between advertising and obesity. I hope this is not a leading question, but do you have any evidence to the contrary, or what is your opinion on the links between advertising and childhood obesity?

Prof. Rickwood—It would be interesting to see the data that they tabled. But if you were attempting to draw a direct link between the amount of advertising and obesity in any particular country at any time it would be very difficult to establish that direct link, because there are so many other influences occurring at any particular time, and the link between advertising to children and obesity is not a direct link in terms of being

able to see that a change here that will automatically produce a change in obesity. The link is indirect. The evidence quite clearly establishes a number of links. There is a logic and in that is a causal argument that evidence has to be built up in different ways to establish. We know that obesity is increasing. It is indisputable that the types of food and the amount of food consumed and that food high in fat, sugar and salt contribute to obesity. We know that childhood obesity is increasing and that obesity in childhood contributes to adult obesity and chronic disease. We know that children's eating behaviours are influenced by a wide range of factors, including parental influences, peer influences and other community influences, but we also know that advertising impacts on all those influences. It impacts both directly and indirectly on children's food choices. The APS submission shows that there is a very strong and logical argument where the evidence is clear at each of those points. However, if you just did a correlational survey of the amount of advertising of these particular types of food and obesity in any particular country, that is far too broad brush. There are too many other influences. The link between advertising to children and obesity is a bit downstream from each other, so you have to build up the logic of the argument. You are unlikely to see that just in a direct correlation.

Senator SIEWERT—The other issue that was raised was that in other countries where there has been a similar sort of legislative approach it has not worked. Have you looked at that area at all?

Prof. Rickwood—I have not looked directly at that. Some of that was noted in the APS submission. Again, you would need to look more closely at the data. The APS's submission argues that childhood obesity is an issue that has a range of factors that impact on that. We are strongly supportive and argue in our submission that you need a range of interventions and that this is just one and that this is clearly not the panacea. It would be interesting to look at those studies, firstly, to look at what the other interventions are and what the timeframes are to have an impact. We have seen it in smoking. We have seen it in wearing seat belts. You need a wide range of interventions, of which regulation is one. Regulation can often be a very important first step that then in turn over time changes some of the normative influences. It is when you have those normative influences change that you start to get behaviour change that you can observe. But I guess, firstly, these things take time. Secondly, it is very hard in this type of research to be able to pull something out to say: this particular intervention did this. It is a complex issue that is going to require a range of interventions.

Senator SIEWERT—I have spent a bit of time looking at the issues around alcohol abuse, and the evidence there is similar in terms of there being no one thing. There is no magic silver bullet. As you have said, there is a range of interventions that all need to work together. Are you saying that pulling one out and saying that it did not work, if it did not have the back-up; if it did not have the package, it is quite likely to fail on its own?

Prof. Rickwood—Exactly. It is difficult to say, 'That didn't work.' Nothing in a complex area like this on its own is going to work. But you have to start in a range of ways, and I would argue again what we have seen in tobacco and some of the other areas; when you start to directly change some behaviours through legislation that can be an impetus to a range of some of the other changes that are required for these complex community based behaviour changes.

Senator SIEWERT—We also heard industry putting a strong line for self-regulation. Firstly, what is your opinion on that and, secondly, have you had experience with self-regulation in other areas?

Prof. Rickwood—We have not touched on that in the APS submission and it is not really an area that I am familiar with. I guess clearly if self-regulation occurred in an appropriate way that would be ideal, but I think again in some other areas we have seen where people have waited for self-regulation and it has not occurred or it has not been strong enough. The legislative change and regulatory change we have seen in many health promotion areas has been the catalyst to some wider changes. It changes the sort of mentality in a whole range of areas, including industry's, parents', peers' and community expectations. Legislation is one avenue that we have for setting what the community says, 'These are the standards', and making them very clear to people.

Senator SIEWERT—In your opening remarks you touched on the issues around psychologists being employed to advertise. Again, I am going back to the recent inquiry we had on alcohol. It was fascinating hearing some of the evidence in terms of the psychology around the ads. Have you looked at some of the psychology around advertising to children of foods—junk foods and healthy foods?

Prof. Rickwood—I have to say I have not researched in that area, but I teach social psychology and developmental psychology. In social psychology we teach persuasion. This is where marketing and advertising get their theories and their evidence base from. They are based on the most solid theoretical understanding of how to influence people and persuade people to change their behaviour.

Senator SIEWERT—You made a comment about the number of psychologists going into marketing. How many would you—

Prof. Rickwood—I do not have those numbers, but the Australian Psychological Society may be able to tell you how many people are working in marketing and in the media.

Senator SIEWERT—Would you mind taking that on notice and, if possible, letting us know?

Prof. Rickwood—Yes.

CHAIR—I do not think there is any inference that going into marketing is not a worthy thing to do in that basis—

Senator SIEWERT—No, no.

CHAIR—I was just concerned that there would be something of that in the process.

Prof. Rickwood—I guess the point is clearly that our body of knowledge and our skills are fundamental to marketing and advertising and are certainly used in that area.

CHAIR—My understanding is that in some courses in psychology it is actually something people study.

Prof. Rickwood—We have many debates about the appropriate use of psychological theories in terms of influencing behaviour and what is ethical and what is not for those of us who are members of the Australian Psychological Society and similar bodies.

Senator BOB BROWN—I am particularly interested in the submission where it talks about food and drink advertising and its affects on children. It states:

Research confirms that the interests of children are targeted and exploited by advertisers ... Children's overall exposure to TV food advertisements is high. Surveys of the content of advertising directed to children consistently demonstrate that it is dominated by advertisements for foods high in sugar, fat and salt ... On television, of the estimated 40,000 ads per year that young people see, half are for food, especially sugared cereals and high-calorie snacks (Committee on Communications, 2006).

That refers to Australia. It continues:

Estimates indicate that 5-12 year olds are exposed to up to 96 food ads, including 63 for high fat/high sugar foods, per week, if they watch one hour of commercial TV a day, and this occurs during popular programs (Australian Centre for Health Promotion, 2006). One in three television advertisements during children's viewing times in Australia is for food. Australian studies over the last 10 years have consistently shown between 55%-81% of all foods advertised are for unhealthy foods high in fat and/or high in sugar ... Advertisements like these would lead to the view that junk food is fine to eat and the norm for most people.

It states that 55 per cent to 81 per cent of foods are unhealthy are being advertised, and there is a view that these foods are normal foods. Why do people fail to distinguish between what is healthy food and what is not a healthy food after being exposed to such advertising?

Prof. Rickwood—You can see by those data the extent to which people, and particularly children, are exposed to these messages. Firstly, one hour of television viewing a day I think is substantially less than most children are exposed to, particularly preschool children, who are possibly still at home. That data is relatively easy to obtain and is hard data looking at the level of exposure of people to advertisements of these particular types of food. The younger the child is the more it creates a normative environment. These children are awash with advertisements—very sophisticated, highly developed advertisements of these types of food and linking these foods with fun, with characters and other types of influences that are highly persuasive. In contrast, the odd 'eat healthy' promotion that you see and the messages from parents are much more limited. The pervasive view and impression that people are getting is that these are the foods that are out there. They are being bombarded with highly persuasive messages about these foods. That becomes a normative influence; that these are the fun foods and that these are the ones that people notice and pay attention to. We have strong evidence in psychology, for example, that the more familiar you are with something the more you like it. So, repeated messages, just simply repeated messages and familiarity makes people like and want things more and therefore pursue them. I cannot see how you can argue against that being one of the factors that strongly influences the types of food that people are choosing to eat.

Senator BOB BROWN—What is the difference between a television advertisement for a hamburger and a parent's injunction to 'eat your greens'?

Prof. Rickwood—Firstly, I guess the parent does not have the benefit of a whole marketing department in terms of how to persuasively get their message across. Also, as to the parent telling a child to eat their greens,

if you think about it in the context of how much people are exposed to these messages, the parent may say that once or twice at a meal, but the data is showing that children in that particular day have been exposed to 63 ads for a high fat, sugar or salt content product. Given let alone the type of impact but just the amount of impact the parent can hardly overcome the amount of immersion that there is in advertising and the sophistication of the advertising for the other types of products, which are also intrinsically attractive in some ways and become increasingly attractive. We know that the more sugar and salt and fat that you consume the more you want to consume. Particularly in relation to sugar, the younger a child is we start off developmentally with a preference for sweet types of products. The advertising builds on some natural developmental pathways, anyway, which makes it doubly forceful, I would imagine.

Senator BOB BROWN—Is there evidence that sugar and/or salt and/or fat are developmentally attractive to children anyway?

Prof. Rickwood—I am aware of evidence that children, particularly younger children, prefer sweeter products. I am not quite sure about the fat and salt.

Senator BOB BROWN—That is my recollection.

Prof. Rickwood—But certainly there is definitely evidence that sugar and sweet things are something that is attractive to younger palates. You would have to ask a nutritionist and some others about where salt and fat come in, but definitely the evidence is there that I am aware of for sugar.

Senator BOB BROWN—In relation to the advertisers, the psychology there I suppose, for the want of any other idea, is that they need to promote and sell their foods. Why is it do you think that self-regulation has been absent from this field for three decades even though obesity rates have been soaring? It is only in the last couple of years, according to evidence before the committee, that self-regulation from the advertisers has come to be part of the public debate?

Prof. Rickwood—I do not have any direct evidence on that, but I can offer an opinion. There appears to be a conflict of interest. If you are advertising products, the whole aim of advertising is to increase the use of that product. If they are advertising products that are high in fat, sugar and salt, their aim is to increase the uptake of those products. We know that those products are contributing to obesity, so there is a conflict. How can they self-regulate really when there is a direct conflict there?

Senator BOB BROWN—With the bill itself, even though it is limited to advertising, do you have recommendations for alterations or amendments that might be helpful?

Prof. Rickwood—I guess what the APS would argue and would like to see is that this bill is embedded and is part of a wider and multifaceted strategy. There are of course already a number of things in place to try to encourage healthier lifestyles. Different places have different media campaigns. There is a whole range of strategies to increase incidental exercise, increase actual exercise, reduce television viewing—the range of other influences that we understand to impact on obesity. Our view is quite clearly that just regulating advertising alone would not work or you would not see a demonstrable effect on obesity in any short time. That is quite clear. But this is one place to start that would have some further consequences. We would like to see it embedded in a broader health promotion and prevention strategy, many of the elements of which are in place. This should be seen in the light of being one prong in a multifaceted strategy.

Senator BOB BROWN—Finally, you are recommending that there be no advertising at all for children under the age of eight. Would you like to elaborate on that?

Prof. Rickwood—In our submission we show the evidence that shows clearly that children under the age of about eight—and this is supported by the Australian Psychological Society and also a task force by the American Psychological Association that they reported in 2004—to start with cannot distinguish in a television show what is advertising and what is the show. To them it is all reality. Consequently, whatever messages are coming across in television shows to children under eight is what they take on board as being what the real world is and their cognitive scripts start to be based on that, despite arguments if you sit down and talk to your child and what have you and help them to understand that this is advertising and what the goals of advertising are and try to distinguish that from the television show. Clearly, advertising to children under eight is setting up well formed cognitive scripts. They are not able to discern that this is advertising with a different purpose. Although it is very difficult to develop evidence for this, we would probably argue that these are scripts that are indelibly in the brain.

Senator BOB BROWN—They are hard to get rid of later in life?

Prof. Rickwood—Yes.

CHAIR—Thank you very much. If there is anything you want to add, please contact us.

Proceedings suspended from 10.26 am to 10.45 am

CHAPMAN, Ms Kathy, Chair, Coalition on Food Advertising to Children**STANTON, Dr Rosemary Allison, Spokesperson, Coalition on Food Advertising to Children**

CHAIR—Thank you for your submissions. I invite both of you to make short statements and then we will go to questions.

Ms Chapman—Protecting children from junk food advertising is a significant concern to the Australian community, particularly parents. Our Coalition on Food Advertising to Children is a coalition of public health groups who have all come together on this particular issue because we know that the promotion of unhealthy foods and beverages to children is a significant concern for their nutrition and their future health. It is good to note that the Coalition on Food Advertising to Children is made up of 13 organisations. We have groups that are concerned about the prevention of obesity, such as the Cancer Council; we know obesity is an important risk factor for cancer. It also has different medical groups and dental groups, which are faced with the aftermath of the overconsumption of unhealthy foods as well. We also have Young Media Australia, which is concerned about the protection of children from harmful advertising. We believe this is an issue that clearly requires a legislative response. We know there is strong community support out there. Our coalition conducted a Newspoll survey last year and we found that 86 per cent of parents supported a ban on advertising of unhealthy foods at the times when children are watching TV, and 89 per cent of parents think that the government should do more on this issue and introduce stronger restrictions. As well last year we ran a campaign when the Australian communications and media authority was first reviewing the children's television standards, and we had 20,521 people sign up to that postcard campaign at that time. Unfortunately, Australian Communications and Media Authority really did not take enough notice of that strong community concern.

One of the most important messages for the committee would be that any restrictions that we have on food advertising, if they are really going to protect children, need to apply during the times when large numbers of children are watching, which is actually primetime. It is important that the committee understands that at the moment I think we have an artificial structure between children's classification times and the times when children are actually viewing. Children's classification times, those C programs, which is when a lot of the industry codes might start to kick in, are actually not when we have large numbers of children watching. In its discussion paper, the Australian Communications and Media Authority looked at viewing data and found that the peak viewing time for children was between 7 and 8 in the evening, and you had about 500,000 children watching at that time. If you looked at the time between 4 and 5 in the afternoon when the dedicated children's programs are on, that is when you have only 80,000 children watching. We certainly have also seen in some of the studies that members of the coalition have done that persuasive marketing—the use of cartoon characters and premium offers—are seen in the most popular programs with children, not necessarily in those dedicated children's programs.

Dr Stanton—I just thought I would summarise things with three quick points. Firstly, what do we need? We basically need to change the diet of Australia's children. We have ample evidence that children are eating more foods, which I will call junk foods, by which I mean foods high in fat, sugar and salt and low in nutrients. The public and the dictionary call them junk foods so I will, too. We have children eating more of those foods and a very low intake of fruit and vegetables, and it is getting worse. The latest survey is showing a decrease in the consumption of fruit and vegetables. The foods are being displaced. We basically need to change the diet quite dramatically.

If we look at why we need to do that, obviously obesity is a huge problem. We are up to pretty well 25 per cent and much more in some groups of children. That of course affects the children's health. From a government point of view, a report on childhood obesity in this week's *Medical Journal of Australia*, which just came out Monday, details the problems of obesity that are relevant to government, including increased healthcare costs of course and decreased productivity. There is also the fact that children are likely to live two years less than their parents. That is all detailed in this week's *Medical Journal of Australia*. Thirdly, what can we do? We have to emphasise that a range of activities are needed, but a 'range' means you have to start somewhere.

Most of the states have started making changes in school canteens. We do not have any studies yet, but that may or may not be responsible for a slight plateauing of the rate of increase in childhood obesity. But we need to do a whole lot of things. The fact that we need to do a range does not mean that we do not start on any of them. There is no single magic bullet. What I see as really important for the parliament to consider is that

parents expect that the government will help their individual efforts rather than hinder them so that, if we do not have any regulation, we are actually hindering the efforts of those parents who are trying to do the right thing. Every report that comes out on prevention of childhood obesity recommends banning advertisements for junk foods and drinks at times when children are most likely to be watching television. This whole idea that we will just look at this small bit of C time is totally impotent. It really is not going to do the job. It is also important that we realise that recent reports extend this to internet games and promotions that are directed to children, which are probably even more able to engage with the child and change their behaviour. Restricting sponsorship of sporting and other events in schools is also important because it is exposing children to subtle advertising. It also restricts the teachers from criticising the sponsor's products. We are impinging on parents' good efforts and we are also impinging on teachers' efforts if we allow this sort of advertising to occur in the schools.

It is really important to realise that we do not need anymore reports or inquiries. We do have one of our nutrition professors who has a very nice slide with an actual wheelbarrow full of reports. We do not need anymore reports. We actually need someone to do something. Advertising obviously increases consumption. Companies would not spend so much on it if it were not effective in increasing sales. We cannot actually do controlled trials of a group of children similar in all respects to another group with one group exposed to advertising and another group not exposed. That is not possible anywhere on the Earth. We cannot do those sorts of trials. We cannot come up with strong evidence because strong evidence by definition is evidence that comes from randomised controlled trials, and we cannot do those. But the evidence that we do have—and there is really quite a lot of it—is enough to have every expert group recommending that we ban things.

Education on its own is unlikely to be effective. We tried that with tobacco. We appealed to a very small section of the population, but it was not until advertising of cigarettes was banned and governments actually took action to change the idea that cigarette smoking was normal that we saw a dramatic decline in consumption. We had 75 per cent of men smoking. It is now down to about 18 per cent. That sort of dramatic reduction is possible if you take an approach here. I think that banning advertising of junk foods and beverages is essential to change the idea that these foods are normal and appropriate for everyday use. I am very glad that this inquiry is taking place. It has been a long time coming and I think it is essential that we do something to protect our children's health.

Senator BOB BROWN—The Australian Food and Grocery Council has produced the responsible children's marketing initiative for the Australian food and beverage industry and they will self-regulate to do the same thing. Why would that not be good enough?

Dr Stanton—We have not seen self-regulation work before. Self-regulation is fairly ineffective. Also, the campaign that they are looking at really needs to be read quite carefully. They are being a little bit cagey about what times they would look at. The list of programs in their submission that they have included would all be programs for little preschoolers. They are not the sorts of things that are shown between 6 and 9 or 7 and 8 when children are actually watching television. It is a very small percentage. Most of them are not Australian programs so that if someone were concerned that banning advertising might impinge on the production of Australian programs most of those programs are not made in Australia; they are shown for the preschoolers. I do not think that is particularly effective. I just noticed in the Australian Beverage Council's submission that it is, 'As producers of a wide variety of beverages we fundamentally believe that all of our products can be part of a healthy lifestyle.' That is the belief of people producing those kinds of foods, so which ones are going to be permitted? Where they are going to draw the line is not at all clear.

Ms Chapman—I think it is great that the Food and Grocery Council has finally woken up and is listening to the concerns of parents and realises this is an issue, but I see it as a little fairy step in the right direction rather than the big leap that we need. Their initiative talks about limiting advertising or promotions to children under 12, so that means just those dedicated C programs, which we know are the least popular with children. They are more likely to be watching things like *Idol*, *Home and Away*, *The Simpsons*. That is when we see a lot of unhealthy food advertising. Those programs are also popular with adults so it looks like you do not have a large proportion of children watching, but you actually do have a large number of children watching. We cannot really expect that the parents are going to be covering their eyes during those ads and saying, 'Don't pay attention to these messages.' As to Ms Stanton's comment about how they would define 'healthy' and 'unhealthy', I really think it is up to government to set that line in the sand of what we class as something that should be promoted to children, such as fruits and vegetables and good healthy core foods, as opposed to giving them a lot of mixed messages in regard to foods. You might have breakfast cereals where you hear

about the vitamins and minerals in them but they fail to tell you about the high sugar and that there is not much fibre in them as well.

Dr Stanton—We even have a product now of water with vitamins in it but it is basically cordial with vitamins added. I imagine this might come under the idea of being a healthy food in some people's book. It certainly would not in mine.

Senator BOB BROWN—Nestle overnight has announced an initiative to self-restrict. In fact, it is going to take some items out of advertising. But as the world's biggest food producer I presume that is a tiny proportion of what they are aiming at. However, do you think that the impulse in these food corporations can ultimately deliver advertising healthy foods to children?

Dr Stanton—Not in my opinion, because we have ample evidence that the foods that are advertised are those that would be classed as unhealthy. If we restrict it to healthy foods then we are looking at fruits and vegetables and core foods, for which there are virtually no advertisements apart from the few the government puts on occasionally. The overwhelming bulk of ads are for unhealthy foods. If they suddenly say, 'We're only going to advertise our healthy ones', the definition of 'healthy' becomes extremely important. We have had instances in the past where we have had breakfast cereal manufacturers, for example, claiming that their breakfast cereals are healthy when the breakfast cereal may be 30 per cent or 40 per cent sugar. That is not what we consider healthy and it is certainly not dentally healthy. I think we have a real problem with whose definition of 'healthy' is going to be taken here. The food industry maintains that all of their products can be part of a healthy lifestyle. I would agree with that if the incidence of consumption was down at parties only. We have evidence from a Victorian study that 93 per cent of children have junk foods in their lunchbox each day, and the average number of junk foods they had was three. The seven per cent of children without junk foods probably consider they are abnormal. Of those junk foods, many would be considered by their manufacturers to be healthy because they have added some nutrient to the food even though the food is high in fat, sugar or salt.

Senator BOB BROWN—The other thing that is being promoted is the idea that they will fall within World Health Organisation standards or in this case, FSANZ, Food Standards Australia and New Zealand, which I am told set lower limits for salt, sugar and fat in foods. However, they are not going to be advertising fruit and vegetables. I can see it would be quite easy for the food corporations simply to move into a whole range of foods that are just within the upper limits set by health authorities and still continue to advertise foods which if consumed in great amounts are going to deliver high quantities of salt, sugar and fat in the diet of the consumer. Am I right about that?

Dr Stanton—We are seeing this with the front-of-pack labelling on products where they tell you the percentage of your daily intake for particular nutrients that are in the product. For things like sodium, for example, they use the upper limit for adults, which is very confusing to the consumer. That one would be extremely hard for the food industry to go along with. But we have seen in the past food companies advertising things like fruit Roll-Ups, which are basically pear juice with a whole lot of concentrated sugars, as fruit. In fact, we even see people advertising some of these products against fruit. Some of the ads that show kids squashing fruit, throwing fruit, doing some awful to fruit and then having the yummy fruit bar instead, which really denigrates the whole idea of children eating fresh fruit and vegetables. When we have made complaints about that we are told we have no sense of humour. It has been very, very difficult in the past if we do make complaints. In fact, many of us do not bother making complaints anymore, because there is always some excuse made. I cannot see how this would not be exactly the same if any self-regulation-type mechanism came into being.

CHAIR—Where do you make those complaints?

Dr Stanton—Usually to the Advertising Standards.

CHAIR—What is the process that you use?

Dr Stanton—They take years actually—more than a year. It is only sometimes when we write and say, 'We have not heard from you for a year', by which time, of course, the advertisement has long since been superseded.

Ms Chapman—It is a really confusing process depending on when the ad is shown, but if it were in a dedicated children's program you would make your complaint to ACMA. If it were at another time you would make your complaint to the broadcaster and to the Advertising Standards Bureau, but it is a really hard system to navigate. Within Cancer Council Victoria there is actually a legal person who has started making some of

these complaints. For a lawyer it is something that takes up a big chunk of her work. For the average mum and dad who just get incensed by these things it is a much harder process.

Dr Stanton—I think the process of complaints is actually quite important. If it is left to individuals to spot things to complain about, this seems to me to be quite unacceptable because by the time you have made the complaint time has moved on and, as you say, it should not be left to individuals. There are also no penalties for breaches. If there are no penalties for breaches why do you bother sticking with the self-regulation? Nothing happens; you are told not to do it again.

Ms Chapman—There was the example of a Milo ad shown last summer that had a premium offer and that was something that was clearly in breach of the children's television standards. The premium offer, which was a DVD, was a large part of the ad. That was something that was found to be in breach. It took a year for the complaint to be made and by that time it was just a little note that was sent back to the company saying, 'This is no good. Write a letter about it', which was really the equivalent of being slapped on the wrist with a feather.

Senator BOB BROWN—What would you do to alter this bill?

Ms Chapman—I think the most important thing would be to make it apply during the times when we know large numbers of children are watching. The simplest way of looking at that would be to make the restrictions apply up till 9 o'clock in the evening. That would be the clear thing. And using something like the nutrient profiling tool, which has been considered by Foods Standards Australia New Zealand for what foods can make health claims. That is a good way of delineating whether a food is healthy or unhealthy. That would allow things like fresh fruits and vegetables to be advertised, if the poor fruit and vegetable growers could afford to be advertising, and stop the foods that have a lot of the high fat, sugar and salt from being advertised. I think they would be the particular things.

Senator BOB BROWN—Would it stop them being advertised or would it simply stop them being advertised as healthy?

Ms Chapman—It would depend on the wording of your bill. If you have a bill that bans the advertising of foods that do not meet the nutrient profiling criteria up to 9 o'clock at night that would be nice and clear. If it is only a bill that applies during C programs, that would be only something we would see happen in the afternoon and not actual stop in programs like *Idol* and *Dancing with the Stars*.

Senator BOB BROWN—Children watching *Idol* and so on?

Ms Chapman—Yes. It would be great to reach 80,000 children. That would be a step in the right direction, but again just a little fairy step rather than a big leap.

CHAIR—Are you going into the wider area of advertising, because up to 9 covers adult viewing?

Ms Chapman—It covers adult viewing, but if we decide that children need to be protected during their own special programs it does not make sense not to protect them when there are a lot more of them watching. To me it just seems like a contradiction to say they only need to be protected during programs like *Blinky Bill* or whatever is on at those times.

CHAIR—The process that we have been discussing up till now is looking at targeting during children's programs, which has led to the discussion around P and C classifications. You are actually asking for it to go wider than that and go into adult viewing?

Ms Chapman—Adult viewing, which we know large numbers of children are watching. That was something—

CHAIR—Certainly, the free-to-air TV people would know better, but they start putting on adult drama from 8.30 pm. By going to 9 you have actually gone into a clearly delineated adult area?

Ms Chapman—Yes. It would be great if we could get more children watching their special programs, but I think it is unrealistic to think that is ever actually going to change. We know that children probably more in that eight to teenage years are watching a lot more of those drama-type programs. We could all say programs like the *Simpsons* are more adult-type programs, but the reality is that a lot of children are exposed to them and we need to be protecting them from the advertising during those programs.

Dr Stanton—We also need to realise that obesity does not stop at age 12. It actually gets worse in the teenage years and for girls it gets worse in those very early teenage years. For boys it continues to get worse throughout the teenage years. This is not something where we can think that we only have to protect the children under 12. It is extremely important to protect those older than 12, and once they are overweight or

obese—the progression from overweight to obesity tends to occur during those teenage years—those children have an extremely high chance of being overweight or obese adults. It does not go away. I think it is very important that the bill extend the age of children beyond 12 and also that we realise that C programming is only obligatory for five hours a week. It really is quite a small amount. Even if we did not allow for the time I would be prepared to compromise and make it till 8.30 pm. That would be a compromise, but I am not sure that going for just the C programming is going to do much at all. Can I make one comment about something I just picked up that I had not seen before? There is an annexure stating there is no correlation between exposure to food advertising and overweight obesity, and it has the number of ads per hour and the percentage of children who are overweight or obese. I am pretty sure those figures are not correct. They apply to very differing ages of children by differing methods and I would like to take this on notice and supply you with some figures. I do not have it in my head and I have not seen it before today, but I do not think those figures are correct.

CHAIR—We had not seen it before, either. We only got it this morning.

Dr Stanton—The figures are not done with the same age of children at the same time period. I do not think they are right. I will send you information to say whether they are right or wrong.

CHAIR—Thank you very much. If there is anything that you wish to ad, and certainly on that point we will be waiting for your evidence.

Senator BOB BROWN—As to the description of foods as being healthy, could you just tell me a little more about that, please?

Ms Chapman—It is the nutrient profiling model that was actually first developed by Ofcom in the UK. When they decided that they needed to look at food advertising to children they commissioned a group. It was Professor Mike Raynor who developed a tool where you looked at the positive nutrients in food as well as the negative nutrients. It looks at the fat, the energy and the salt and takes away points for that and then gives positive points for the good nutrients in it, and you come out with an overall score. FSANZ has looked at that model as part of P293 to look at health claims and nutrient claims. What they were proposing—because this standard has not been ratified yet—is that those foods that would be allowed to make health claims would only be those ones that met the nutrient profiling criteria for healthiness. It is actually a really good system. Certainly it would need tweaking, and that was something that FSANZ looked at. They looked at changing the classifications for beverages compared with solid foods and giving slightly different scoring bandwidths for those. It is something that looks at the positive nutrition as well as the negative nutrition in the food and comes up with an overall score. In New Zealand they used that as a model to look at the food ads on TV and they found that—I think it was—60-something per cent of the food ads shown in New Zealand would not have passed that nutrient profiling score, which is consistent with other studies that I have seen where something like two-thirds of the ads on TV are for what we would call high fat, high sugar, high salt foods.

Dr Stanton—That nutrient profiling system was criticised in the ACMA document as being developed for health claims not for advertising, but in fact it was developed from a system developed for advertising. FSANZ actually changed it a little bit to make it suitable for looking at health claims. The ACMA document had that wrong. The ACMA document also had commissioned a review that failed to look at quite a bit of the evidence. I am not saying that was deliberate. It was simply that they did not consult with people who work in areas such as public health and nutrition, and so they just left out quite a bit of evidence, which is detailed in our and several other submissions. I think the ACMA report failed on those two counts. But it is not valid to say that this tool was developed for health claims. It was developed from a specific profiling system for food advertising. It would need a bit of tweaking and there are a few things that would need changing. I would make the suggestion that it also take into account the acidity of drinks for the problem of dental erosion, which the dentists tell us is a major problem in Australia. You may have to look at a few other things like that. But the tweaking would actually be quite small. It would be quite an easy job and you could simply get a few people with no vested interests to have a look at that and come up with quite small changes that would make it suitable to decide whether the food could or could not be advertised.

CHAIR—It is my understanding this morning that the Australian Food and Grocery Council was using that FSANZ tool. When they were giving their evidence and they were talking about the guidelines they were presenting they referred to the fact that it was that FSANZ tool that they were basing—

Ms Chapman—It might be that FSANZ has some other criteria for fat and sugar?

CHAIR—No, it was the one that was still being finalised. That was quite clear.

Ms Chapman—That is good.

CHAIR—The *Hansard* will be available in a couple of days. You might want to have a look at the evidence, but in the discussions this morning I am sure it was that tool that they said was going to be the basis of their regulatory process. However, it was limited to P and C programming. It did not take the point that you have raised about extending it beyond that. Is that your understanding?

Senator BOB BROWN—Yes.

Dr Stanton—The members of the Australian Food and Grocery Council are quite a small percentage of actual food companies, but a high percentage of the dollar value of food companies. There are approximately 150 food companies out of the 2,000 or so food companies that actually belong to AFGC, but they do represent about 80 per cent of the dollar value of food sold. They would be representative largely of the foods that are advertised on television. But I think it is also important to look at the fact that many of the smaller companies that are not members of AFGC do their advertising via the internet, via school sponsorships and other things that are less costly for them. You need to look very much beyond the companies that happen to be members of AFGC.

Senator BOB BROWN—Could we have a copy of the *Medical Journal of Australia* article that Dr Stanton referred to?

CHAIR—Certainly. Thank you very much. We will wait to get the supplementary information that you want to give us. If there is anything else please send it to the committee.

[11.15 am]

BAIN, Ms Alina, Director, Legal and Broadcast Policy, Free TV Australia

FLYNN, Ms Julie, Chief Executive Officer, Free TV Australia

CHAIR—I know you have information on parliamentary privilege and the protection of witnesses; Ms Flynn is an experienced presenter. We have received your submission. Thank you very much for that. I now invite you to make an opening statement and then we will go to questions.

Ms Flynn—I thank the committee for inviting us. For reasons best known to everybody or nobody I should say that, while we were aware of the bill, we were not aware of the Senate committee and hence the late submission. We were not advised as we normally would be by the committee secretariat and asked to make a submission. There seemed to be a few things fall through the cracks, but we are very glad to be here. We do not support the bill and we do not support advertising bans as an appropriate regulatory response on television to concerns around childhood obesity. Commercial free-to-air broadcasters are subject to an extensive range of regulations covering programming and advertising to children. The regulatory regime includes the Children's Television Standards, which are a condition of licence on every commercial free-to-air broadcaster, and of course there is also the Commercial Television Industry Code of Practice. The CTS is currently under review by the Australian Communications and Media Authority and we strongly support the ACMA process as the appropriate place for regulations to be set in this area. ACMA's extensive review of the CTS has found that there is no clear evidence of a causal link between advertising and obesity and they have determined that ad bans are not warranted. The combined impact of the CTS and the code is that commercial free-to-air television is the most regulated of all media platforms. The stringent regulation remains notwithstanding fragmenting audiences and an increasing number of other screen time activities available to children, none of which is subject to any regulation whatsoever.

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

CHAIR—Do you have anything to add at this stage?

Ms Bain—No.

Senator BOB BROWN—Do you support a ban on cigarette ads?

Ms Flynn—Cigarettes and food are not the same thing.

Senator BOB BROWN—No, I am just asking: do you support it?

Ms Flynn—It is not a matter of whether or not I support it. That is irrelevant. There is a ban and as broadcasters we follow it. Every other section of the media does the same. I think the relevance of the advertising ban on cigarettes is that it applies at all levels. It does not single out one form of media against the others. It applies to everybody.

Senator BOB BROWN—Would you be happy with a ban on junk food ads for children if it crossed all media forms?

Ms Flynn—We do not believe that there should be an ad ban. I have repeatedly made that very clear. I think you and I have had this discussion in the past. If the parliament were of a mind to impose an ad ban and it wants to treat all food in Australia in the same way as it treats tobacco then we would certainly be arguing that you should treat any ad bans ala tobacco—internet, pay TV, newspapers, magazines, outdoor, point of sale, everything. Otherwise you are just picking out one section of the media in a discriminatory fashion at a time when it is very clear that the particular audience that the parliament is rightly concerned about is actually fragmenting away from that form of media. It takes no account of the fact that we are obliged under the Children's Television Standards to provide a range of children's programming, which we do. The parliaments of Australia and governments of both persuasions have determined over a long period of time that they will deliver these types of programs through an advertiser funded model. We do not have subscription revenues. We do not have any other form of revenue. We just have advertising. In that context the Children's Television Standards put a set of regulations around the advertising to children. As you are probably aware, you cannot

advertise in P time, which is preschool programming. You can in C time, but the ads are limited to 10 minutes—

Ms Bain—Five minutes for a half hour.

Ms Flynn—And 10 minutes per hour. And you also have a range of other constraints on the content of those ads. Further to that, under our own code of practice we have a set of provisions and during the last code review we included provisions specifically for the first time in response to this debate in relation to food and beverage advertising. We have a further clause that says that for any ad directed to children regardless of what time of day it is—we take the CTS as the basis—we say, ‘If you are going to advertise to children we don’t care if it is just in C and P programs; you must comply with the Children’s Television Standards if the ad is directed to children.’

Senator BOB BROWN—Do you think there should be any prohibition on advertising on television?

Ms Flynn—There are prohibitions on advertising. There are restrictions—

Senator BOB BROWN—What I am asking is—

Ms Flynn—We do not support ad bans. As I said, in this particular area we do not support ad bans and there are restrictions. You cannot advertise alcohol before 8.30 at night. You cannot say we do not support ad bans. It is part of our code of practice.

Senator BOB BROWN—Which ad bans do you support?

Ms Flynn—It is not relevant what I support. There is a code of practice and there is CTS and that is what we follow and are obliged to do. We have responded to concerns in the community by including new clauses in our code of practice and we are participating in the ACMA Children’s Television Standards review and that is the appropriate place, in our view, for those matters to be considered.

Senator BOB BROWN—But the point is that Free TV Australia does not support prohibitions on advertising.

Ms Flynn—That is not correct. We have them in our code of practice.

Senator BOB BROWN—What I am asking is: in relation to food and beverages where do you draw the line in advertising on free-to-air TV?

Ms Flynn—Where we draw the line is that we comply with the Children’s Television Standards and our own code of practice. We do not have any problems with ensuring that there are regulations about the content of those ads. We do not have any issues around that, but we are very concerned that once you start marking out areas of banning then you are basically undermining the model that we have for commercial free-to-air television. And let us not forget the other part of this deal is that those programs are made available free to every Australian. You do not have to pay a monthly fee of upwards of \$100 to watch that programming. A large percentage of the population still relies exclusively on free-to-air television. We have no problems at all in having proper regulations around how you can advertise, and restrictions on advertising to children, but we do not support bans.

Senator BOB BROWN—The estimates are that obesity is costing the Australian economy \$8 billion, \$10 billion or \$15 billion a year. We have just had it reiterated that the expert advice is that obesity will reduce the lifespan of children currently in this country by two years. What do you think should be done about that?

Ms Flynn—I am a broadcaster. I have been involved in this debate since 2002. I have looked at the various arguments and I have to say that, as a journalist, as you are well aware, in this building for a very long time, it is my approach to these things to have a look at the various arguments. This is one of the more misleading debates that I have ever come across. There is no definitive evidence that bans work anywhere in the world where they currently apply, so why are we singling out commercial free-to-air television as a solution?

Having sat through a range of public forums over the last six years, I would have thought that starting with the two teachers that I saw in Victoria in 2002 who talked about the fact that their home science, or what we used to call domestic science, classes have been pushed to the side of the curriculum for 15 years and children are not being taught at school about food and balanced eating and all those things is probably a good place to start—education for our kids. I think it is a good place to start when we look at our city planning. I have heard lots of city planners around the country talking about the fact that we are now designing suburbs that have no footpaths—

Senator BOB BROWN—What evidence do you have that that would reduce obesity in Australia?

Ms Flynn—I am not an expert about childhood obesity. What I am an expert on is broadcasting and broadcasting regulations. You asked me what we thought. I am telling you what I have heard the experts say at various hearings or forums that I have attended—very genuine people who are seriously committed. I have heard Rob De Castella talking about the program that he has run here in the ACT, which was basically about finding out what children's basic gross motor skills were at the beginning of primary school. I do not know whether or not that program is still funded, but I think that it did lose its funding. There is a range of things that governments and the proper authorities can do. I do not think that broadcasting is the first or the last place that you start. I think that broadcasting regulations are appropriately considered by the people who are expert in that area and that is what is happening.

Ms Bain—The other concern we have of course is that to ban advertising on commercial free-to-air television is not a cost-free solution. It is often argued that this is just a simple solution and it will solve the obesity problem. Certainly at every forum that I have been to people around the table have agreed that this is a multifaceted problem, that it is an issue of the energy equation, food in and exercise, and the availability of all of those things for our children. To focus solely on commercial free-to-air television we think is misguided and it is certainly not a cost-free solution.

Senator BOB BROWN—Here is an area where you do have expertise. What is the value of food advertising on free-to-air television in Australia?

Ms Flynn—You would have to talk to the individual broadcasters about that. They do not reveal those figures to me.

Senator BOB BROWN—You do not know?

Ms Flynn—That is absolutely correct.

Senator BOB BROWN—Have you sought those figures from the advertisers?

Ms Flynn—What we have sought is an estimate of how much appears in C periods.

Ms Bain—A percentage of food advertising in C periods—so all food—comes to around about 10 per cent.

Senator BOB BROWN—What is the value of that?

Ms Flynn—You have to talk to the individual broadcasters. We do not have that—

Ms Bain—It is based on the revenue to the broadcasters so, as you would imagine, that is very confidentially sensitive information to the networks.

Ms Flynn—Before we move on, there was another point that I wanted to raise in that context. This is the review of the Children's Television Standards report from ACMA earlier this year—

CHAIR—Early in 2008?

Ms Flynn—It is the part of the report headed Economic Impact of Restrictions on Television Food and Beverage Advertising. If I could take you to point 8.3, the summary on page 36, it notes:

However it is possible that broadcasters' advertising revenue forgone may not be lost to society as a whole. For example, as discussed above, if food and beverage advertisements are restricted on commercial free-to-air television, parties may switch some proportion of their advertising dollars to another advertising medium, such as the internet, print or in-store advertising. Food and beverage manufacturers may face a change in sales or costs but they may also retain some of any forgone advertising expenditure, in which case they could be expected to pass on a proportion of cost savings through to consumers in the form of lower prices.

At the extreme, if an amount equal to the reduction in revenue to broadcasters was transferred to other advertising media and/or retained by food and beverage manufacturers as increased profit, the restrictions could be described as resulting in a wealth transfer from broadcasters to other parties in the economy ... if, as discussed in section 9, if advertising expenditure is redirected to other media or manufacturers pass through some of the proportion of any savings to consumers in the form of lower prices, the benefits associated with the restrictions may also be significantly reduced due to increased consumption.'

That comes back to the point I was making earlier about the fact that there is no evidence that this will work. In fact, you will be chasing—

Senator BOB BROWN—If I can follow this thread through, what you are saying is if advertisers—

Ms Flynn—Not what I am saying, what they are saying.

Senator BOB BROWN—Yes. I know ACMA has declined an invitation to come before this committee.

Ms Flynn—I am sorry; I cannot account for them.

Senator BOB BROWN—What you are saying is that the money forgone being spent will lead to lower prices, which will lead to increased consumption?

Ms Flynn—Their argument is it could lead to two things. It could lead to a wealth transfer to other media, that media which is currently not regulated. And we already know that some of that money is gone. You can advertise on a children's channel on pay TV not subject to any of this. Two things happen. One is that you just transfer the money to somewhere else. Some of those places such as the internet are where the children are already going, anyway. One of the big problems—

Senator BOB BROWN—What ACMA is promoting there is the idea that, if this ban were to be placed on pushing junk food ads—

Ms Flynn—It is possible; that is right.

Senator BOB BROWN—kids will actually end up consuming more?

Ms Flynn—They are saying you could.

Senator BOB BROWN—And they want us to believe that?

Ms Flynn—You could have a countercyclical. I am not the expert here. You could talk to—and I am sorry about ACMA—

Senator BOB BROWN—But we cannot talk to them.

Ms Flynn—I know that Glen Wiggs from the Foundation for Advertising Research has made a similar argument, that in fact—

Senator BOB BROWN—Why does anybody advertise in that case? Why do they not just sell their goods cheaper and sell more?

Ms Flynn—Some people will sell their goods cheaper and sell more. That is their assumption—

Senator BOB BROWN—Why does the advertising industry exist?

Ms Flynn—Because they want to get market share.

Senator BOB BROWN—But why does it exist if it is not actually going to, yes, increase market share—

Ms Flynn—That is right.

Senator BOB BROWN—Our problem is that the evidence before the committee is that the majority of foods being promoted in children's TV viewing hours are effectively junk foods.

Ms Flynn—What do you define as children's TV viewing hours? That is C period you are talking about only?

Senator BOB BROWN—The evidence we have is that when children are watching television—

Ms Flynn—The problem with that is that we are not a children's channel. We are actually a broad free-to-air commercial television channel tasked to provide services to all Australians. Children can constitute a very small part of the audience. Again, I would take you to the earlier ACMA research, which I think is quite useful on children's viewing patterns.

Senator BOB BROWN—While you are looking for that reference I will ask you: is it not true that children become the whole audience and is it not true, as in our earlier evidence, that what children take from TV advertising can be indelibly written into their brain for the rest of their lives?

Ms Flynn—One of the reasons that we understand that there is a ban from nought to five is that children at that age cannot differentiate between advertising—

Ms Bain—They do not distinguish between what is being advertised and the program content. ACMA many, many years ago deemed that a ban on all ads to children in that age range was appropriate but they have never, following extensive consultation and research and study, determined that a similar ban was necessary in the older age group for children, being the C—

Senator BOB BROWN—Which is the age group you are talking about there?

Ms Bain—Nought to four for the preschool programs. There is a complete ban of all advertising during P programs.

Senator BOB BROWN—The evidence is, is it not, that children up to the age of 12 cannot make that distinction—certainly to the age of eight?

Ms Flynn—We are not experts on that, but that is not as we understand it. That is certainly not as has been applied by ACMA or the previous—

Senator BOB BROWN—What is the situation for children between the ages of four and eight?

Ms Bain—ACMA, which regulates us and determines what is harmful and what is not harmful for children—something it is required to do under the Broadcasting Services Act—has not determined that advertising to children above four is harmful to the extent that it needs to be banned completely. They have restricted the volume of those ads within children's programming and they have also restricted the sorts of messages that you can put within those advertisements. We as broadcasters say that that is the most appropriate way to regulate this space. Given that we are an advertiser funded model and ACMA has determined that these ads are not harmful the important thing is to make sure that children are receiving the right messages through those advertisements.

Senator BOB BROWN—But the question I asked is: at what age do children distinguish—

Ms Flynn—We are not expert on that. That is set by others.

Senator BOB BROWN—You introduced the argument. This is why I am putting it back to you: at what age does this crossover occur?

Ms Flynn—The age as determined by ACMA is that children at school age are able to see a restricted number of ads.

Senator BOB BROWN—Because they can distinguish between advertisements—

Ms Flynn—You would have to ask ACMA as to what their reasoning for that is, but that is what ACMA have determined.

Ms Bain—I should point out, too, that that distinction between advertising being banned in P programs and not in C programs has been in place for many, many years, and most people would agree that children are actually getting smarter and wiser in terms of when they are and are not being advertised to. If that were the case many years ago, we would argue that that would continue to be the case. The education of children in schools very much focuses on living in a commercial society and understanding what advertising is and what it is about.

Senator BOB BROWN—But children still cannot determine what is true and false in advertising, can they?

Ms Flynn—I am not expert and neither is my colleague to answer your question on that. All I can tell you is this is the regulation that has been set. What I can tell you from personal experience is that my children by the age of nine were set tasks which I think is year four in the New South Wales school curriculum where they had to go out and find eight different forms of advertising from a range of different advertising platforms and take them back into school and explain what was being advertised, what was being sold and what techniques were being used to do the selling. I think we are assuming a level of lack of knowledge that my personal experience, for what that is worth, does not suggest is thought to be the case at least in the New South Wales primary school system.

Senator BOB BROWN—Really?

Ms Flynn—Seriously, that is right. I was pretty much taken aback myself, because at that age that would not have been something that would have been on the school curriculum when I was nine or 10, and I suspect probably not when you were nine or 10, too.

Senator BOB BROWN—The evidence is that children cannot distinguish the truth or falsity of advertisements—

Ms Flynn—That is your assertion. That is not our area of expertise. Our area of expertise—

Senator SIEWERT—It is not our assertion. It is the evidence we were given this morning.

Senator BOB BROWN—And I am looking for contrary evidence from you or ACMA or anybody else that that—

CHAIR—I think what is happening is that clearly in this letter I have just seen from ACMA, which is their letter saying they are not going to share their presence with us—I had not seen it before—the department say that they are developing new children's television standards by the end of 2008. I would imagine they would

be the people we should talk to about those things. Ms Flynn and Ms Bain have both said that is not their area of expertise.

Senator BOB BROWN—They raised the issue—

Ms Flynn—If we could go back to the audience size as found by ACMA, children aged nought to 14 comprise 20 per cent of the Australian population. I think we could roughly say that is about 4 million, yes?

CHAIR—That is fair enough.

Ms Flynn—But from 2001 to 2006 the average size of the nought to 14 free-to-air audience decreased by 24.6 per cent, from 281,000 in 2001 to 212,000 by June 2006. Over the same period the average size of the nought to 14 audience for commercial free-to-air television decreased by 25.5 per cent, from 216,000 in 2001 to 161,000 by June 2006. The fact is that you are not even going to be touching the whole of the child population. I keep coming back to this: if you are saying there is an increase in childhood obesity and our audience is going like that, I do not see where the two connect. Again, I will refer to my own personal experience, children these days are not sitting around waiting and saying, ‘Oh gosh, now I’m going to watch free-to-air commercial television because that’s the regulated area that someone said is appropriate for me to watch.’ If they want to watch something, even at a very young age they are capable of going on the internet, finding it out and searching out the material.’ Let us take something like the *Simpsons*. The *Simpsons* is regulated on free-to-air television. You cannot see a PG version until 7.30 at night; you can only watch a G version. But on Fox 8 you can watch a PG version. If there were an M version you could watch an M version at any time of the day or night. The child is not sitting there saying, ‘Oh, now I am moving from a regulated space to an unregulated space.’ The child is saying, ‘I want to watch the *Simpsons* now. It is on Fox 8.’ Bang.

Senator BOB BROWN—What proportion of children are watching free-to-air as compared with pay TV?

Ms Flynn—The total audience for pay television is just under 30 per cent nationally, but it is lower in some states and higher in others so it is probably over 30 per cent in places like New South Wales and Queensland, and probably under that in places like Tasmania and South Australia. But what we also know is that households with children are overrepresented in the pay TV universe, and we also know from the findings of ACMA that children in pay households watch more television.

Senator BOB BROWN—You are not saying that if this legislation were extended to cover pay TV you would then be accepting of it; you would still—

Ms Flynn—What I said to you earlier was if you want to put regulations on you have to treat it accordingly. If you think it is like tobacco then treat it like tobacco; ban it everywhere. But I do not know what you then say to the producers of food in Australia, what you say to the Australian Meat and Livestock Association or the dairy farmers or all the other people.

Senator BOB BROWN—What we say to them is: you bring a healthy food up for advertising on TV, get the minister’s imprimatur and away you go.

Ms Flynn—I think that you have already heard from the Australian Food and Grocery Council, and we think it is helpful. We have a complex system of regulation here. We have statutory regulation, which is all the food regulations at state and Commonwealth level—the Trade Practices Act. We have the Children’s Television Standards, which is a licence condition on broadcasters, and we have the code of practice, which by the way is subject to ACMA’s approval. ACMA is bound by the Broadcasting Services Act, BSA, to ensure that it meets community standards or it will not register the code of practice. Now you have got the Food and Grocery Council saying that they are going to apply some self-regulatory controls about what they advertise in children’s programming. We support that effort. We do not understand how they are planning to make it work. We are talking to them at the moment to see how it will integrate with us. We think it needs to integrate with what is already there, but we would think that—

Senator BOB BROWN—What do you mean by ‘it needs to integrate with what is already there’?

Ms Flynn—If you have a separate set of arrangements that is a self-regulatory arrangement, it needs to fit with what we have. We are already bound by both the Children’s Television Standards and the code of practice. We need to make sure that they fit together so that we know when this ad is coming through to us where it is supposed to go.

Senator BOB BROWN—Surely what they are saying is they are going to self-regulate; it is going to fit within the current standards as required. They are just saying that we are going to limit it—

Ms Flynn—To healthy foods, but as I said we have not had—

Senator BOB BROWN—They are not saying quite that. They are saying ‘to foods that meet certain standards’.

Ms Bain—The point is that we are going to work very closely with the Food and Grocery Council going forward in terms of their initiative to make sure that we as broadcasters understand those ads to which those guidelines apply and those ads to which they do not. As broadcasters, that is very important for us to know, because as you may be aware we do clear through an arm of free TV all ads going on commercial free-to air.

Senator BOB BROWN—Do you have no difficulty with the fact that if you are advertising a form of breakfast cereal that is high in sugar you are displacing another food that the child may be eating that is not going to lead to obesity in a way that food will?

Ms Flynn—We are broadcasters. We are not the people who determine what the advertisers—

Senator BOB BROWN—And I am a regulator, so—

Ms Flynn—Yes, you are a regulator and a legislator. I would think that we do not have concerns about content restrictions or what the parliament would determine was appropriate for ensuring that everyone knows what that food is. That is not a problem for us. We will always follow whatever those guidelines are that are laid out. We already have a range of content restrictions. As I have said in previous places on this matter, we do not oppose regulation per se. We do not support ad bans, but we certainly do support regulation. If you have any doubt, just cast an eye over the size of our code of practice. Go and have a look at the ABC and SBS and compare. That is all I would say.

Senator BOB BROWN—This is not a food ad ban. This is a regulation to restrict the most vulnerable target audience from—

Ms Flynn—It is an ad ban.

Senator BOB BROWN—a very deliberate advertising expenditure by big food corporations, which sets an indelible process in play and leads to the potential for obesity in a country where we need to tackle that problem.

Ms Flynn—It is not clear. There is clear evidence about sedentary lifestyles and the amount of time spent viewing. There is not clear evidence in relation to advertising. I sat through the New South Wales summit in 2002, and I heard Bill Deakes, who is one of the—

Senator BOB BROWN—If that is—

Ms Flynn—Just a second. Can I finish?

Senator BOB BROWN—All right. I will come back to you on that point.

Ms Flynn—I heard Bill Deakes say exactly that. I have quite an interesting report that I am happy to provide to the committee. It is from Canada and is on *Overweight Canadian children and adolescents*. I brought it for quite a different purpose, but it also tackles this issue.

CHAIR—What is the date on that?

Ms Flynn—I think it is 2004. We also have another document, which I am happy to submit, that we made available to the review and for the Children’s Television Standards, which is a comparative review of regulation of television food advertising to children, in which we made a very genuine effort. We gave Baker & Mackenzie, the law firm, the simple instruction to go out and find out what was the case in a range of different constituencies. I think in soft copy it is also useful because it gives you a lot of links to various things and that is how I found this. This is interesting, because in Canada of course there is a ban in Quebec but there is not a ban anywhere else. What you discover is that, while it is true that Quebec has a lower level of overweight and obesity—and I do make the distinction between the two; ‘was significantly below the national level in Quebec and Alberta—the ‘obesity rate in these provinces was similar to the national rate’. In other words, of the two that were the lowest one had ad bans and the other did not. One was French speaking, the other was not. One had controls and the other did not. When you took out the overweight level around children and looked at obesity rates, both of them were still about the same as the national level.

There is also some quite interesting discussion in that around the amount of time spent viewing. Of course, screen time is what we refer to now. Those children, as you probably well know, are not just sitting there watching the television anymore. Probably if there is an updated version of it it would be able to tell us more. What we know now from ACMA—and perhaps my colleague can tell you about that—is that children are multitasking. They are watching television. They are on their computer playing computer games. If my

household is any evidence, they are talking to one another on their headsets and playing their computer games and watching a television program and texting each other all at the same time.

Ms Bain—That was the result of the most recent ACMA study where they looked at 700 families, which were picked deliberately based on demographics. They picked a range of different families and they asked the children and the parents to keep a diary of all of their screen time activities throughout the day. It was really quite interesting to see the amount of multitasking that was going on particularly in the early evening hours. Yes, the family TV might be on, but children—with a low attention span—are texting their friends. They are on the internet and as they are waiting for something to download, they might hop on to iTunes and pick out a song. They are doing all of these things at the same time. Our child audience is fragmenting very quickly and children are availing themselves of all of these screen time opportunities in unregulated environments. We say a focus on commercial free-to-air television is misguided when you are looking at trying to target Australian children and what they are doing with their screen time activities.

Senator BOB BROWN—If ad bans do not work why on earth would self-regulation have any impact?

Ms Flynn—Self-regulation is not an ad ban. Self-regulation is determining what kind of food people will advertise in that space—the very issue I think you have been talking about.

Senator BOB BROWN—I understand that. I will put my question again. If ad bans do not work, have no impact, why would self-regulation have any impact?

Ms Flynn—I am not sure what your point is.

Senator BOB BROWN—My point is—

Ms Flynn—I have said to you we are not talking about an ad ban. We are talking about what I thought you were talking about earlier, promoting healthy food in that space.

Senator BOB BROWN—We have been told this by a number of witnesses, and indeed that is the huge implication of Nestle's announcement overnight. It is going to self-regulate so that children are not exposed. They are taking a number of food items out of advertising because they are unhealthy.

Ms Flynn—But it is not an ad ban.

Senator BOB BROWN—Exactly. It is self-regulation. Why do that if it is not going—

Ms Flynn—I think they are responding—

Senator BOB BROWN—Let me finish the question, because I would like a clear answer to this. Why self-regulate if it is going to make no difference to the obesity rates in children?

Ms Flynn—We have not said it will make no difference. What I have said is there is no evidence that ad bans elsewhere have worked. If people determine that they are going to advertise something different, we think that is a positive response to community concerns. That does not undermine the other obligations that broadcasters have to provide these programs. We do not have a large number of people wanting to advertise in these programs. We are not actually being flooded by people who want to advertise in children's programming times.

Senator BOB BROWN—We have 86 per cent of parents who want regulation.

Ms Flynn—According to one survey.

Senator BOB BROWN—Have you got a different survey?

Ms Flynn—We did do some work a lot earlier in the piece. We have not done one since. But we certainly saw in that survey that we did several years ago that most people thought that governments and others were responsible and not advertising.

Senator BOB BROWN—What was the question put to people in that?

Ms Flynn—It is a long time ago. I can check for you.

Senator BOB BROWN—I come back to my question about self-regulation. I am establishing from what you say that it is a response to public perception, not to the need to—

Ms Flynn—I said 'community concerns'.

Senator BOB BROWN—Of 'community concerns', to use your term, not to the problem of obesity?

Ms Flynn—No. It is in response to community concerns about the problem of childhood obesity. I am not an expert on childhood obesity. I do not pretend to be. What I am an expert on, as I said to you, is broadcasting

regulation. I have had to come up to speed on a lot of the arguments over the last six years and I will continue to do so, but our concerns are that as broadcasters we are not providing a children's channel. We are providing broad programming for the entire population, and we are advertiser based. Governments of both persuasions have determined that it is appropriate for programming to children to be funded through an advertiser funded model. Those two things are not consistent with one another. What is consistent is: if you do determine that is how you are going to provide that programming then you put a proper set of regulations around them. As I have said to you, we do not have any problems around that. We are happy to look at content. We are happy for people to talk about what they think is appropriate to be advertised in that time, but we do not support ad bans.

Senator BOB BROWN—Does your organisation lobby governments?

Ms Flynn—Of course we do. That is part of our job. You know that we lobby. I even write to you occasionally.

Senator BOB BROWN—The point I am making there is that there is a separation here between the influence that organised vested interests like your own will have on the body politic and the 86 per cent of parents who want regulation—

Ms Flynn—From a particular survey. It might also be interesting to ask what those questions were too.

Senator BOB BROWN—Newspoll will make those available, I am sure. And also the concern that we as regulators must have about obesity. I think we are agreeing that there is a difference of approach here. My concern—and I am sure other members of the committee must be concerned about this—is around our job to tackle the awesome problem of obesity and overweight Australians. Your concern is to defend the free-to-air television advertising industry, and the two do not—

Ms Flynn—It is not just the advertising industry; and programming. We have a 70 per cent popularity rate with our audiences. I think you would agree that is not bad going. That is based not just on our own research but on research that has been done independently by ACMA in relation to the reality TV programming review that took place a year or so ago. Seventy per cent is a pretty good figure. An even higher percentage than that—78 per cent, I think—said that they had seen nothing on commercial free-to-air television in the previous 12 months—nothing, advertising or programming—that was of any concern to them. Well over 90 per cent felt that they understood the regulations for commercial free-to-air television, and in fact I noticed there was an article as recently as last weekend where there were some people concerned about an outdoor advertisement for gentlemen who might have sexual performance problems where one of the parents interviewed said, 'At least on television we know what the rules and regulations are.' There is a very high level of understanding amongst our audience as to what the rules and regulations are and they know what their children are going to see at any particular time. These other areas of course are quite different. We are not anti-regulation. You need to understand that. We accept that regulation is part of the deal of being commercial free-to-air broadcasters in this country.

Senator BOB BROWN—This is regulatory legislation, so why not support it?

Ms Bain—The model that we are regulated under is put in place as a result of the provisions of the Broadcasting Services Act, the Children's Television Standards and the code of practice. ACMA is charged with ensuring that that regulation provides appropriate community safeguards. They are required to do that. With all due respect, while your view might be that we are not concerned about children and parents and what they are seeing, ACMA's edict is to make sure that children are protected from anything on TV that would be harmful to them. That flows through to the extensive review that we are currently seeing of the Children's Television Standards and the code.

Senator BOB BROWN—Nestle has said overnight that it is withdrawing a number of products from TV advertising. If it is protecting its audiences in Australia, why did ACMA not act to prevent those products being advertised?

Ms Bain—We cannot speak for ACMA.

CHAIR—That is a question that only ACMA can answer. It is on record now.

Senator BOB BROWN—Are you going to lobby the government against this legislation?

Ms Flynn—We have been publicly discussing our position at every public forum at every level of government for the last six years. But as I said to you, if you have a look at our code of practice, we have also responded. We are opposed to ad bans, but we have responded. And not only did we include the clauses; when we got a response from various state health departments that they thought we should change the clauses to

make them more specific we did so as part of the last code review process. We will continue to argue against ad bans. The other thing that we did last time around, I might add, was that we encouraged the Australian Association of National Advertisers to extend their code of ethics that appears here to a code for advertising to children, which now appears here. We also included in the code of practice an advisory note at the back of the review that explains when an ad is going to be judged as having been directed to children. We have been very positively engaged. We have not just been negatively engaged. We have been very positively engaged in ensuring that there was transparency as to how these rules were going to apply. There was consistency in getting the advertisers to develop their own code of practice hopefully consistent with ours so that the argument around there being bits of regulation here and there and no-one understands them was able to be addressed in a holistic fashion here in this code of practice. We will continue to engage in a positive fashion with you and others on these issues.

Senator BOB BROWN—Will that involve face-to-face meetings with ministers?

Ms Flynn—I cannot say whether or not it will involve face-to-face meetings. All I can tell you is that there has been ongoing lobbying publicly and privately for the last six years.

Senator BOB BROWN—Did that involve face-to-face meetings with ministers?

Ms Flynn—Yes, and shadow ministers, and I think we have even sought to have a meeting with you from time to time.

Senator BOB BROWN—Would you care to furnish a list of those meetings to the committee?

Ms Flynn—I do not see why that is relevant. I would not be able to determine which ones were specifically about food. We lobby on a range of issues. But I can tell you we have spoken to the broadcasting ministers and shadow ministers at length on this issue.

CHAIR—It seems like there is an ongoing discussion between the two of you.

Ms Flynn—It is an ongoing discussion. I would just like to add that either I or Ms Bain has attended every forum at state level. I have been to Tasmania at least two or three times. At a national level, we have been part of the National Obesity Task Force advisory group that was set up by the previous government. We have been to Queensland. We have been to New South Wales. We are happy to stand up in the public domain and argue our case and we will continue to do so. We are not trying to do something behind the scenes. Of course we lobby governments and we lobby members of parliament. That is part of our job. We have no hesitation in saying that is what we do, but we are not doing anything privately that we have not done repeatedly publicly.

Senator BOB BROWN—Nor was I implying that. I just wanted to make the committee aware—

Ms Flynn—That is all right. We have no problem—

Senator BOB BROWN—In fact, we are all going to be under quite intense pressure—

Ms Flynn—No, you are not going to be under any pressure—

Senator BOB BROWN—from various organisations about this legislation.

Ms Flynn—You are not going to be under any pressure from us. We have told you what our position is. You are well aware of it. You are not under any pressure from us. Your job as a senator is to do exactly what you are doing and my job as a representative of free-to-air television is to do exactly what I am doing. That is part of the democratic process, which I think is a great strength of this country.

CHAIR—Thank you very much. If there is any further evidence you want to provide, get back to the committee.

Ms Flynn—I could give you half-a-dozen other pieces of material—and maybe Ms Bain might like to add to that—I am sure have not been brought to your attention by others.

Proceedings suspended from 12.03 pm to 1.13 pm

HUGHES, Ms Clare Lyndon, Senior Food Policy Officer, CHOICE

CHAIR—We will recommence our hearing into the Protecting Children from Junk Food Advertising (Broadcasting Amendment) Bill. I welcome Ms Clare Hughes of CHOICE. We have received your detailed submission and I am aware that you have information on parliamentary privilege, the rules of giving evidence and so on. I would like to state that, just because there are only two of us, here it does not reflect the interest in your inquiry or your evidence. As you are aware, it will all go on record. As this is Senator Brown's bill, I would like to put forward his apologies as he had to return to Tasmania, which was beyond his control. The other problem is that a lot of committee members are unwell; I really feel for the people who come to give us their time. Would you like to make an opening statement?

Ms Hughes—Yes. Thank you for the opportunity to attend today to outline CHOICE's views on the Protecting Children from Junk Food Advertising (Broadcasting Amendment) Bill and also on food marketing more generally. Currently CHOICE is in the process of finalising the appointment of our new CEO, so we were unable to bring a CEO today. The Director of Policy and Campaigns, Gordon Renouf, also sends his apologies as he had a prior commitment. He would have liked to have been here to speak to you today.

As you are probably aware, CHOICE is an independent not-for-profit organisation and the publisher of *CHOICE* magazine and also CHOICE online, which is one of Australia's most successful subscription websites. Our funding is primarily derived from subscriptions to our magazine and to our website. We take no ongoing funding from government or from industry and we carry no advertising in our magazine or on our website. We were formerly known as the Australian Consumers Association and changed our name to CHOICE two years ago. We also have a policy and campaign team that advocates in the interests of consumers in areas such as product safety, financial services, health and food.

You will note from our submission on this bill the range of issues that we have raised. I imagine that you have a number of questions in relation to this submission, but I would like to take a few moments to give you an overview of our concerns about junk food marketing to children and our views about the need for better regulation.

You will be hearing from the public health groups this afternoon about the extent of overweight and obesity in Australia, so I will not go into too much detail. They have better expertise in conveying that particular aspect of the problem to you than I do.

We have been calling for tighter restrictions on junk food advertising to children for over 20 years. I recently stumbled across a number of letters we received back in 1987 from children when we encouraged them to tell us their views about the types of ads that they were seeing and the ones that appealed to them. I will not table them, but I can tell you about some of the ads that they mentioned if you would like. Back then we probably had not heard of the obesity epidemic or even the term. Figures from 1985 suggest that approximately 11 to 12 per cent of children were overweight or obese and more than 20 years later those figures are around 25 per cent of children being overweight or obese. We know that these children have a greater risk of becoming overweight or obese adults and developing other diet related conditions such as type 2 diabetes, heart disease, hypertension and some cancers, all of which combine to place an enormous burden on our health system.

Some opponents of tougher restrictions or a ban on junk food advertising to children would like you to believe that groups such as CHOICE are suggesting that a ban on food marketing or tighter restrictions is some magic bullet that will solve Australia's childhood obesity problems, which is totally untrue. None of us have ever suggested that food marketing is the sole reason for the rise in childhood obesity rates or that if junk food advertising or marketing more broadly was better regulated tomorrow we would see a rapid decline in obesity rates. It has taken many years to get to this point—decades even—and any reduction in obesity rates or the rates of diet related diseases will probably not be realised for another few decades.

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

All these things and more would help to create an environment that makes it easier for consumers to make healthy choices and at CHOICE our focus on obesity, particularly childhood obesity, is to do with those aspects where consumers interact with the market and where market failures are contributing to unhealthy choices. These also tend to be the areas that create the most debate and the greatest resistance from those with other interests. Food manufacturers are happy to support physical activity and school sport and introduce their own healthy lifestyle advertisements, but they are less inclined to make changes to marketing, labelling and the nutritional value of products if it is going to harm their bottom line too significantly.

Food marketing to children is one feature of the market that contributes to unhealthy choices. Marketing is designed to appeal to consumers to instil in us a desire for a particular product and the benefits that we may achieve from purchasing or consuming that product. As adults, we may prefer to believe that we are more rational and autonomous decision makers and immune from the charms of marketing, but many of us still succumb. Children are a different story. We know that there is evidence of an association between food marketing and children's dietary behaviours, such as the food that they prefer, the food they eat and the food that they ask their parents to buy. The evidence is so strong that the World Health Organisation has identified this as a global problem and that actions need to be taken at a global level. At last year's meeting of the World Health Assembly they agreed to work towards recommendations for restricting junk food marketing to children.

Food marketing is big business. In 2006 food, drink and confectionary manufacturers spent US\$13 billion on advertising worldwide. At the same time, in the same period nearly \$400 million was spent on food marketing in Australia. The majority of this was for products such as confectionary, breakfast cereals and fast foods. It was estimated in that period that between \$115 million and \$130 million in total was spent by fast food companies on food marketing. If we are to believe the claims that are made by advertisers and manufacturers that food advertising has minimal influence on purchasing habits, then food marketing is a spectacular waste of money and such significant investment in food marketing is surely a poor business decision.

While food manufacturers do not intentionally set out to make children overweight, they do inherently benefit when children consume more. At the end of the day their duty is to their stakeholders, so we cannot expect them to introduce voluntary regulation that will have any real impact on their bottom line.

CHOICE is interested in how the structure of the market helps or hinders healthy choices. We believe that simply blaming individuals, preaching self control and better parenting has not and will not work when there are other powerful markets at play. Some groups simply say that it is up to the parents, that they are the ones who are the ones responsible for what their children eat and that they just need to learn to say no. I do not think there would be any parents in Australia who would believe that it is not their job to make the choices about what children eat. Parents know that it is ultimately their responsibility but they do believe that governments have a role to play in helping them to make healthy choices.

Our 2006 news poll survey shows that 88 per cent of the parents involved said that parents themselves could be doing more to help overcome the problem, while 69 per cent said that governments could also be doing more. The statistics in our submission for 2008 suggest that 82 per cent said that they were in favour of increasing the amount of government regulation over the way food and beverages high in fat or sugar are advertised and marketed to children in Australia. Eighty-two per cent had experienced their child asking for specific foods or drinks as a result of marketing, including advertisements, because of the fact that they have giveaways, collectables or competitions associated with them, or because they involve the use of a character or a celebrity in a promotion. Eighty-eight per cent believe that food marketing contributes to parents' difficulties in ensuring that their children eat a healthy diet. Clearly there is widespread community support for improved government regulation of food marketing.

CHOICE believes the current co-regulatory system fails to adequately protect children from the unhealthy influence of junk food marketing. Regulation of food marketing to children in Australia is mostly left to industry codes, with the majority of food advertisements being for unhealthy foods. The advertised diet is in direct opposition to a healthy one and to the healthy eating messages of other government strategies. The only government regulations are the Children's Television Standards, which apply only to advertisements during C programs and periods. More children actually watch television outside these designated periods. Existing standards and codes do not prevent the use of celebrities, cartoon characters and personalities to promote unhealthy foods to kids, though this is one aspect of the recent ACMA review of Children's Television Standards that would tighten that. There are no effective guidelines around the extensive use of competitions,

prizes, giveaways and premiums to create an incentive to buy products. Once again, this is one aspect that ACMA has addressed to some extent in the recent Children's Television Standards review.

Finally, there is no government regulation on other forms of marketing to children, in particular subscription TV and the internet. Also, there is very little enforcement by government agencies of the existing regulations that apply to food marketing. The complaints process is very complex and requires consumers to have an extensive understanding of the bodies, both government and industry, involved in regulating and the co-regulatory system. Essentially this gives advertisers the right to manipulate children with a high volume of ads for unhealthy foods, while placing the onus back on parents to deal with the consequences. Essentially we are setting up parents to fail, yet it is not the parents who suffer when they make the poor decisions, but actually the children.

CHOICE commends Senator Brown for the bill, which we think will help to even the balance in favour of parents and children. We see it as an important step towards acknowledging the unhealthy influence that junk food marketing has on our children. It seeks to limit the capacity of food manufacturers to target children during designated children's programs and periods, and at school. It also proposes the use of the FSANZ nutrient profiling tool to determine whether a product is healthy enough to be promoted to children. It makes sense that we use this tool because it is based on a model that was developed in the UK for the very purpose of regulating and restricting junk food marketing to kids. In fact, CHOICE would like to see the principles proposed in this bill extended beyond the children's programs and periods to apply during other periods and programs when we know more children are actually watching TV, such as the 5 pm to 9 pm period when roughly four times as many children are watching TV, compared with during the children's C programs.

We would also like to see similar restrictions applied to licensed characters and celebrities and the type of foods that they can promote. Nutrition profiling could also be used to ensure that characters such as Dora the Explorer, Shrek and Bratz are used to promote only healthy foods.

This is a good place to conclude my opening remarks. I am happy to take any questions that the committee members may have in relation to anything that I have raised in my opening remarks and also in our submission. Thank you.

CHAIR—Senator Siewert.

Senator SIEWERT—Thank you for your comprehensive submission and comments. I would like to go back to the issue that was raised this morning that there is no link between banning advertising and the increase in obesity. Information was tabled this morning by the Beverages Council that said that they had not found any link in the UK, whereas some other witnesses suggested otherwise. I would like your opinion on whether you think there is a link.

Ms Hughes—The regulations in the UK that are restricting junk food marketing to children have only been in place for two years at the most, so it would be very unrealistic to expect that initiative to be showing signs of being effective. Also, the restrictions on food marketing to children are only one of a number of things and will never do anything on its own. It needs to be done in conjunction with better and more informative food labelling and other changes to the environment, as I outlined earlier; for example, urban planning laws that might change the density of fast food outlets. I cannot speak on behalf of people in the public health area, but I would doubt that there would ever be any such expectation from an initiative like this on its own, which is very worthwhile and certainly one factor that influences food choices; it needs to be done in collaboration with many other things.

Senator SIEWERT—It is just part of a package.

Ms Hughes—Yes, definitely.

Senator SIEWERT—Comments were made this morning that obesity over the last three years has gone down. That was interpreting results from the Australian National Children's Nutrition and Physical Activity Survey. Do you have any comments on that because all the information that the media has been carrying and other reports show that problems with obesity and childhood obesity have continued to increase?

Ms Hughes—My understanding of the results of the children's health surveys is that it is not a significant decrease, that we should be celebrating. There is a lot more that needs to be done and I do not think that we should be happy at this point.

Senator SIEWERT—I am not an expert in this area, but I understood there are concerns that the problem can be broken down into socioeconomic categories. It appears that there has been some evidence linking lower incomes with higher rates of obesity and poor diet. Is that a correct understanding?

Ms Hughes—My understanding is the same, that there is a trend in the lower socioeconomic groups towards a higher rate of obesity and diet related diseases. I am not aware that that has changed significantly in the past few years.

Senator SIEWERT—Where did the detail come from on the amount of money that is spent on food marketing?

Ms Hughes—That is from a report that was prepared by Consumers International in relation to the Junk Food Marketing Code. I cannot remember the reference where they got it from, but it would be in the *Fed Up* booklet.

Senator SIEWERT—I will look at that again.

Ms Hughes—I am happy to provide that if you would like me to.

Senator SIEWERT—Yes. You mentioned the recent changes to the ACMA codes. Could you give us a short critique of where you feel that has made some positive changes and where there still needs to be some work done?

Ms Hughes—We definitely think more work needs to be done, simply because the CTS really only applies to the programs and periods such as the C periods. The evidence and the data that have been supplied by OzTAM suggest that the period between 4 pm and 5 pm has approximately 100,000 children watching TV, so only a smaller proportion would be affected by restrictions or covered by the Children's Television Standards, yet the data suggests that it trends up to 7 pm at night where it peaks at around 500,000 children watching TV and is still quite high until about 9 o'clock at night. That is probably the biggest weakness.

While there has been some tweaking in relation to the use of characters and how they need to be identifiable from the content of the program, and also they have provided more explicit guidelines in relation to what is considered a premium. An example would be a McDonald's Happy Meal. Previously the meal and the toy in their entirety were considered to be a product, whereas the CTS would suggest that the premium for say a box of Kellogg's Coco Pops in giving away a CD, the advertisement for that product would have to primarily focus on the food, rather than the enticement of the premium. So I believe there has been some strengthening around that.

Senator SIEWERT—When they say that they have to focus on that, can they still advertise the giveaway—the toy or the CD?

Ms Hughes—Yes. It is just that the majority of the advertisement is supposed to focus on the food rather than focusing on the toy, so that the child does not ask their mother to buy the product so that they can get the toy when they do not really care about the food.

Senator SIEWERT—My experience with young children is that as soon as they see the toy it does not matter how long it is flashed up there, they will nag for it. There is a suggestion that we should not be restricting advertising, but should be looking at the other issues, in particular parental control. Have you done any research into what I call 'nag value'?

Ms Hughes—Pester power?

Senator SIEWERT—Yes, pester power.

Ms Hughes—There is quite extensive qualitative research that would need to be done, which is beyond the capacity of CHOICE to undertake. We would certainly be interested in that as well.

Senator SIEWERT—Has any international work been done in that area?

Ms Hughes—To my knowledge not in the area of the consumer movement. Internationally they are looking at comparisons of marketing techniques. Consumers International recently put out a report comparing the nutritional value of breakfast cereals. We have big multinational companies such as Kellogg's and Nestle that have similar cereals in different markets. I can provide a copy of that report to you.

Senator SIEWERT—That would be very useful.

Ms Hughes—It is not limited to how the marketing differs in each country where there are different restrictions, but also the ingredients. The sugar content also changes when you think that it would be quite

similar. You would think that Frosties in Australia should be the same as Frosty's in the United States, but they are not.

Senator SIEWERT—Another question relating to that came to mind about the announcement that was made by Nestle.

Ms Hughes—This morning.

Senator SIEWERT—Yes, very recently. Have you had a chance to have a look at that?

Ms Hughes—I have only seen the press coverage of it, not the detail. I do not know if there is a detailed report out at this point. It remains to be seen what that actually covers. Often the devil is in the detail, so we need to look at individual provisions, how they would apply in the real world and what they would restrict.

I would refer to the recent AFGC responsible marketing code. I imagine that they would have presented that to you this morning. It suffers from similar problems, as do the Children's Television Standards, in that it is focusing on either children's programs or programs where children make up the predominant part of the audience. Do not quote me on figures, but an example would be 100,000 children watching the 4 o'clock program, *Totally Wild*. They would probably be 90 per cent of the viewing audience. You could then have *The Simpsons* at 7 o'clock where you have 500,000 children watching. It is four times as many children watching but they may only represent about 20 per cent of the viewing population. It means that the food advertisements during that period are not being regulated and are not covered by the voluntary restrictions. They are only prepared to protect children when they are restricting their access to child viewers, but when it comes to the later hours where you have that mixture of children and adults, if they are going to lose the access to the adult viewing audience then they are reluctant to do that.

Senator SIEWERT—Could you take on notice if anything else comes up on that to send it in to us?

Ms Hughes—Yes. Is there a formal process for doing that?

Senator SIEWERT—You can send it to the secretariat. A number of witnesses have also mentioned the issue of the free-to-air TV, which excludes pay or subscription TV or the internet. Do you think that the legislation should extend to subscription or pay TV?

Ms Hughes—Definitely, and beyond TV. Comments within the industry are that children are moving towards free-to-air TV.

Senator SIEWERT—Do you mean away from?

Ms Hughes—Sorry, they are moving away from free-to-air TV to subscription TV. It would be very concerning if we did not have similar restrictions applying to both. That is not just in the promotion through media, but also on pack promotions, looking at using the nutrient profiling that is being proposed by FSANZ to restrict where you can see Dora the Explorer or Shrek. You would not see them on Frosty's, for example. We had the experience with Shrek being used to promote a range of products.

Senator SIEWERT—In the supermarket that I went to just down the road from here there was an entire section of Shrek products, chocolate, Frosty's and whatever else.

Ms Hughes—Some of the manufacturers may have rethought doing something like that again because it was one that really pushed the parents buttons as well. It is not just the traditional forms of marketing to children that we think of as TV advertising, now we have children's magazines and food manufacturer websites. If you are so inclined you could go to wonka.com. There are more than 40 games that you can play with Wonka confectionary products. Your child could spend a lot of time there and all the time they are being marketed to, learning about the new products and having a lot of fun. That is another aspect.

Senator SIEWERT—That may be something that the internet filter may want to deal with. Obviously it is much harder to control the internet.

Ms Hughes—Yes, we certainly appreciate that. You can fix up one aspect or start regulating the free-to-air, but you can only expect that there will be moves towards different forms of media. The use of media changes over time. When we first started looking at food marketing to children we obviously focused on advertising on free-to-air television, but we have seen how things have changed since then.

Senator SIEWERT—The Grocery Council said that they are introducing a code of practice which will apply to all the manufacturers, but retailers advertise as well. You have got Coles, Woolworths and fast food producers as well. In your breakdown of your advertising do you know what proportion are food manufacturers versus fast food outlets and retailers?

Ms Hughes—I do not, but I am sure there will be an advertiser that would be able to tell you that. That is very interesting. You have just given me an idea for a project that we are working on.

Senator SIEWERT—I am trying to work out how extensively the code of conduct will apply in reality to the advertising that occurs.

Ms Hughes—That is a very good point. If we do rely on voluntary restrictions and we have the AFGC and its members establish their code of practice and maybe the retailers association or NARGA—I am not sure which one—might establish a different set of criteria. The fast food outlets might have their own criteria. It becomes a patchwork of voluntary codes that do not necessarily match up. As I said before, they are only going to restrict it so far as it is not going to harm their bottom line too much. That appears to be restricting it just to the children's programming and where children are the predominant audience.

Senator SIEWERT—Do you support self-regulation? I know you said that you support the bill, but is that your preferred approach, a regulatory approach in a package?

Ms Hughes—Yes.

Senator SIEWERT—Would that be as a package of measures, rather than self-regulation?

Ms Hughes—We believe in this instance that the government regulation is definitely the most effective. As I said, the voluntary codes are not going to affect the broader programs that children are watching. Should we really expect the industry to put in place their own restrictions that are going to have such a significant impact on their bottom line, or is it up to the government to say, 'No. We need to take this further than you are prepared to go and we think in this case that it needs to be within government regulation.'?

Senator SIEWERT—Senator Brown asked the Beverages Council and the grocery council whether they are aware if they are employing psychologists in preparing their advertising? They said they were not. The psychologists society said that a large proportion of their graduates are employed in the marketing industry. Are you aware of whether the food manufacturers employ psychologists in their approach to marketing?

Ms Hughes—To be honest I have never worked with the food industry or in a food business, but even in undergrad nutrition we had a component of psychology, so I cannot imagine that you would be employing marketers who have no idea about psychology and how consumers would be responding to particular advertisements. That is probably all I can say in response to that, but it would surprise me. We are seeing programs like *The Gruen Transfer* that are telling us how particular aspects of various ads are designed to hook consumers in or to give them a particular message without actually using words.

Senator SIEWERT—I found that interesting because we had another inquiry into alcohol and we had the alcohol manufacturers saying that they do not employ psychologists in their advertising, which I found incredibly difficult to believe, particularly when we had another witness going through the actual psychological processes that were undertaken in generating certain ads and who they appeal to. It must have just been a coincidence that a certain ad appealed to the younger audience and they could specifically point out that one ad appealed to them and another one did not. I am quite interested in the industry saying that they do not employ psychologists.

Ms Hughes—There would be a lot of disappointed psychology students, then.

Senator SIEWERT—I am interested in countries where they have a ban in place. Are you aware of which countries have this sort of regulation and any specific circumstances where it has been or has not been successful?

Ms Hughes—Do you mean successful in reducing obesity rates or limiting exposure?

Senator SIEWERT—We would need to see the links between them. We touched on the links between advertising and obesity previously, but what sort of monitoring is going on to limit exposure? Ultimately what we are trying to achieve is an impact on obesity. Is there any work being done looking at that?

Ms Hughes—There are a number of countries that currently have restrictions in place including Norway, Sweden and Quebec as a province of Canada, rather than Canada in its entirety. Norway and Sweden have the cross-border issues where programming still comes in from the UK, for example, so they have still got access to ads. Also, in those countries it is about restricting all advertising, so it is not done as an initiative to reduce obesity rates. Their basic philosophy is that children are a no-go zone when it comes to marketing. They have quite a different philosophy and take it a step further than just restricting it to children's access to junk food marketing.

In the UK it is still early days as far as the impact that that will have, but from my understanding in communication with our sister organisation or our equivalent organisation, Which?, in the UK, what we have seen are the restrictions that have been put in place. They use a nutrient profiling system during programs that appeal to children under 16, but they have a similar problem in that it does not capture some of the most popular children's shows. There is the problem that there are so many adults watching the programs so they are not captured within the regulation. It is a similar problem.

Senator SIEWERT—Is it a similar time restriction each evening in that it is too early?

Ms Hughes—No. I am not sure that it is based on the time. I think it is based on the audience. If you have lots of adults watching it then it negates the fact that you have more kids watching a program at 7 o'clock at night rather than 5 o'clock at night.

Senator SIEWERT—So it would be the type of program rather than time restrictions?

Ms Hughes—Yes.

Senator SIEWERT—I understand one of the amendments that you would like is to extend this to subscription TV. Do you think there are other amendments that need to be made to make the bill more effective?

Ms Hughes—The main one would be in relation to extending the period. That would have the greatest impact in reducing exposure to the number of ads. It is actually the volume of ads that is the biggest concern. So many of the food ads that children are exposed to are for the unhealthy foods. There was some research from the Cancer Council that suggested that it was somewhere in the vicinity of 80 per cent of the food ads that were for non-core or less healthy foods.

The other big aspect of it is the nutrient profiling. It needs to ensure that is the basis of making the decision about whether or not a product is healthy or unhealthy.

Senator SIEWERT—Would you suggest that rather than using the C programming it should move more towards a time period?

Ms Hughes—Yes. We believe that would be the simplest way to administer it. If you have a new program and you were to base restrictions on the viewing population for that particular program, you do not know how many children are going to be watching. We saw *So You Think You Can Dance* this year, which would have been quite a popular program with the younger audience. If we did not know how many kids were going to be watching that then we would not know whether or not the restrictions should apply to that. By taking a time rather than a program approach it would ensure that all the programs that kids are watching and the times that kids are watching would be covered.

Senator SIEWERT—Thank you.

CHAIR—I have two questions. One is to do with the issue of time. When you are moving into the kinds of recommendations that you and some of the other witnesses have said, then you are moving into adult programming and you are actually extending not a restriction but a ban into adult viewing. It seems to go against the principle in the standards, which is the children's TV aspect and which are in the standards. If you are going to have the advertising aspect moved beyond those areas, would there be other things that would have to move beyond children's TV standards outside what we have already labelled as P and C programming?

Ms Hughes—What do you mean by 'other things'?

CHAIR—There has been immense work done to develop programming labels with P and C and they are the ones to which the children's TV standards apply. For advertising purposes, because kids watch TV outside those standards, are there other things in terms of other content that could be expanded into that area? That concerns me.

Ms Hughes—That is not an aspect that CHOICE has looked at. We are particularly interested in the impact of the marketing on children, so we have not delved into other aspects. Our interest in this case is the food marketing and the health impact. I am not sure of the other flow-on effects.

CHAIR—It seems to me that we have processes in place looking around what is children's content and the standards apply. This is now going to extend beyond that. We have heard 9 o'clock, which is considerably longer. I know in New South Wales and South Australia they have this thing when the bear comes on.

Ms Hughes—Yes, it is time to go to bed.

CHAIR—I think that is 7.30. There has been a standard where the bear comes on and says, ‘Bye-bye, go to bed.’ From that time onwards certain other types of TV programs can be done, particularly when we are talking until 9 o’clock. I am concerned about that because it has not come up until today.

Ms Hughes—I wonder if things have changed from what we traditionally understood to be children’s programs versus when children are actually watching TV. That may have changed since the Children’s Television Standards were implemented. We need to acknowledge that things would have changed.

CHAIR—It is a wider debate with the incremental changes. You mentioned *So You Think You Can Dance*. That is focused on a whole range of viewer groups and one of them is clearly young adults. We have had some submissions talking about the fact that the target audiences and markets are young adults in the 15 to 24 age group and people are claiming in their submissions that if that is the market that they are after then it is difficult for them to then have restrictions put on them for a market that is under 15.

Ms Hughes—The market may be a particular age group, but we know that younger kids would like to watch these shows because they appeal. When you look at the OzTAM data from January to June 2006 the biggest program between 0 to 14 was the *Big Brother* eviction.

CHAIR—It goes back to the age-old discussion about who determines what kids watch in a home. If parents agree that it is okay for kids to watch the *Big Brother* programs, with all the other social impacts on that, it would seem that there would then be some kind of agreement that they would be able to have access to whatever else goes with that. I am not taking a position. I am just summing it up. The kinds of limits are being extended and that is certainly something that needs to be considered when we are talking about the restriction of other things. We are talking about the restriction of trade in that process.

I hope you get a chance to look at the evidence that was given by the grocery council and the Beverage Council this morning. The CEO of the Food and Grocery Council put on record that they are making a move towards having their own restrictions. They made it very clear that they have a way to go. Their statement to the committee was that they should have time to be able to see whether that is working or not before that work is overtaken by government regulation. You would not be surprised to know that they are opposed to the intrusion of further regulation into a process which they feel people can work out cooperatively rather than by legislation.

Ms Hughes—It is interesting, because what I have seen from the AFGC responsible marketing code essentially would be the same as what is being proposed in this bill. It is about restricting it. The only difference is that it is regulatory versus their own restrictions.

CHAIR—There is a twofold issue for the industry in that if there can be change developed through agreement and that can operate that would be the method that they prefer rather than outside regulation. That is their philosophical position and that is what they put up. They also argue that they would be looking at the FSANZ tool as the determinant to what would be acceptable or not. They talked about the process of engaging with their membership and brought forward the Nestle example, which I have not had a chance to read. If you look at the products that they are raising, they are one of the largest producers in that area. Basically the argument they left us with was that they should have a reasonable time to see whether that works before you override that.

Ms Hughes—Junk food marketing to children is not a new issue so there has been a lot of time for them to do that. It is interesting that now is the time that we do start to see a code, because the political climate is also changing. We have not had a firm position from the new Commonwealth government, but certainly the advice that the National Preventative Health Taskforce has put to them does highlight the issue of junk food marketing and the need for restrictions there. We have also seen that Queensland and South Australia are quite keen to see what they can do to reduce the impact of junk food marketing in the absence of any Commonwealth changes. I wonder if we are now seeing the industry code because there is a changed political environment as well. They have had quite a bit of time to do this work before. We were concerned about it back in the 1980s, so it is not the first they have heard of it.

CHAIR—In terms of my personal process of wading my way through all the evidence it does seem to me that there would suddenly be a ban on the advertising of things like chocolate, which has always been part of life. No-one has ever pretended that chocolate was a healthy food. I do not think anyone, even in their wildest dreams, has come out and said chocolate is good for you because it is healthy. It may well say it is good for you because it makes you feel better, but it does not purport to be healthy. It does not pretend to be anything but a treat, and yet I would see that falling under the ban being put forward.

Ms Hughes—To that we would say that, just because it is not claiming to be healthy, does not mean that it is not going to appeal to children.

CHAIR—I would expect it would appeal.

Ms Hughes—Exactly. It is looking at which foods are being promoted to children. It is making a judgement about whether or not it is appropriate to be targeted towards children, rather than whether or not it is a healthy food and should not exist. We see the benefit in this—maybe not in the case with the chocolate example—it would encourage manufacturers to improve the nutrition content of some products, so that would benefit all of us. We are not saying that manufacturers cannot advertise any foods, but they need to think more carefully about the ones that they are going to promote.

CHAIR—I have absolutely no problem with people who make false claims being exposed and having that advertising banned. We have had discussion with various producers and people today about foods that are purported to be healthy and actually have neglected to state the whole nutrition element that they are making up; that, to me, is false advertising. It is like saying something is safe and it is not. I am having a personal problem in implementing a ban on something that does not make that claim, has never made that claim, and is just saying that this is something that is out there. That is something I have to work through myself, but there is an absolute responsibility on advertisers to be truthful. It does not matter in which context or for what age. The kinds of things that we have heard about are people who are saying falsely that these things are good for you, healthy, and will not make you have health problems. That sort of thing should be stopped. It is not just because they are children, but because that is false advertising. There is the element that does not make that claim and just says, ‘This is good. It tastes nice.’

Ms Hughes—If you were to look at the diet or the foods that are advertised it is actually a misrepresentation of what we should be encouraging consumers to eat by way of healthy eating. In many ways it normalises the role of not just chocolate, but in conjunction with soft drinks and fast food. It is assessing the individual ads and the products that are being promoted, but it is also addressing the messages that are sent through food advertising in their entirety as to what a healthy diet or what a normal diet should be.

Senator SIEWERT—The issue is that children, heaven forbid, do not look at what is healthy. They see the ad and think it is a good breakfast cereal. Even if the manufacturers were not advertising it as healthy when it has got lots of sugar in it, kids do not care anyway. They see it being advertised when they are watching television and then the pester power starts. They do not really care about whether it is healthy or not. They do not care if McDonald’s is not healthy.

Ms Hughes—It is the old Sultana Bran ad, ‘Don’t tell them it’s healthy and they’ll eat it by the box-full.’ Obviously the marketing worked on me.

Senator SIEWERT—I am sure Senator Brown would consider a chocolate exemption.

CHAIR—That is an example of something that is a food, but does not claim to be a core food group. It does not say that you should eat this instead of breakfast or it is good to have chocolate for lunch and dinner. The reason I used chocolate as an example is that your book talks particularly about one brand of chocolate that has games attached to it and how the kids are attached to the games.

Senator SIEWERT—Is that the Wonka one?

Ms Hughes—No. That is the Kinder Surprise.

Senator SIEWERT—Kinder Surprise is a specific product that actually puts the toy in so the kids will collect the products with the toy.

CHAIR—I understand that. The chocolate is secondary to the special feature. I see the manipulation element there, but it is almost like a health warning. For example, on every Freddo Frog it should be printed, ‘You should not eat this instead of lunch.’ It is that kind of thing if you take it down to that extreme. Any further questions?

Senator SIEWERT—No.

CHAIR—Thank you very much. Are you going to give us any supplementary information?

Ms Hughes—Yes, I have made a note.

CHAIR—I would appreciate if you could get that to the committee as soon as possible. We should have the *Hansard* in the next few days and after seeing the *Hansard* you may wish to make further comment. Please be in contact with us because it will all be up on the website.

[2.06 pm]

MARINE, Ms Franca, Executive Officer, Australian Chronic Disease Prevention Alliance

OLVER, Professor Ian, Chair, Australian Chronic Disease Prevention Alliance

BLACK, Ms Taryn, Chief Operating Officer, Diabetes Australia

WHITE, Dr Ian, National Policy Manager, Diabetes Australia

GREENLAND, Mr Rohan James, Government Relations Manager, National Heart Foundation

MOORE, Adjunct Professor Michael, Chief Executive Officer, Public Health Association of Australia

CHAIR—I now welcome a panel from Australian Chronic Disease Prevention Alliance—the National Heart Foundation, Diabetes Australia and the Public Health Association of Australia. Many of you are longstanding witnesses so you understand how it operates. We have the overall submission from the alliance and then we have supplementary submissions from some of the core groups. Professor Olver, would you like to make an opening statement?

Prof. Olver—Yes, I will start.

CHAIR—I wanted to reiterate that the number of senators does not reflect the interest in this issue. A number of people are unwell. In particular, Senator Bob Brown had to go back to Tasmania this afternoon and is particularly upset that he is not here. All the evidence will go on record and will be part of the ongoing discussion, so do not feel that it is not being taken seriously.

Prof. Olver—The Australian Chronic Disease Prevention Alliance is an alliance of the five non-government organisations representing the Cancer Council of Australia, of which I am CEO, Diabetes Australia, Kidney Health Australia, National Heart Foundation of Australia and the National Stroke Foundation. I think it is relevant that on this issue all of these organisations can come together and speak with a common voice in the area of trying to protect children from the advertising of unhealthy food as one of the ways of dealing with the obesity issue in Australia.

I would like to start off by highlighting the key points that we would like to stress and then give a short summary of our main points. First of all the Australian Chronic Disease Prevention Alliance supports the spirit and the intention of the proposed bill, but we would emphasise that we would like to see the bill extended to maximise the impact. The two particular areas are the extension to cover peak children's TV viewing times, which occur mainly in the evenings outside the designated C and P programs that are covered by the bill, and also to cover advertising in other contexts including radio, the internet and pay Television. In this context we welcome the bill's restriction on ads in schools because without global cover like that you will just get shifting of advertising from one medium to another. We recognise that restrictions on unhealthy food advertising to children will not solve the obesity problem, but they are an important plank of a comprehensive strategy to address the general community's overweight and obesity problem.

We do express some concern about the limitations of any proposal for self-regulation, particularly from the Australian Food and Grocery Council, as an example. It is voluntary, so the level of uptake cannot be guaranteed. It does not address the peak children's viewing times and it talks about children 12 and under, but some of the major problems are in that early teenage group, particularly 14- to 16-year-olds. It does not include the retailers like fast food chains and it does not address the criteria that will be used to define what is an unhealthy food or beverage.

We would like to seek restrictions on all TV food ads, except for social marketing campaigns, or at least the unhealthy food ads in the times that children watch television, with restriction on the other media, as I have said. The reason for our position is that we do see overweight and obesity as a major problem with one in four children and over half of all adults being obese. That level of obesity has not changed over the last 10 years, so nothing that has been done in the last 10 years has affected that level. Remember that with children there is a new cohort coming through all the time, so you cannot build on one lot and hope to have an increasing effect. Every new lot is exposed to the same conditions and essentially the level of obesity has remained flat. We feel that something has to be done over and above what has been offered previously because the level of obesity has not changed. It is a significant cost to the community with the figure suggested being \$58 billion as quoted in the National Preventative Health Taskforce's document. As I said, it is part of a comprehensive strategy.

In our submission we have tried to provide the evidence as it exists and have referenced the submission to show that there is substantial evidence that food advertising to children—which if you look at the number of ads is mainly for unhealthy foods, being high-fat, high-sugar and high-salt type foods—does affect children's food preferences, food purchasing and food consumption, which in turn will impact on their level of obesity. We feel that an advertising restriction would have a twofold affect of reducing children's exposure to promotion of unhealthy foods. Children are usually not able to make the same judgements as adults, so that is why advertising can be particularly effective to children. It will also allow the healthy eating messages to compete against the large amount of money spent on the unhealthy messages. We stress that children cannot critically interpret the advertising messages, so they are more likely to be unduly influenced by them. The studies of just how much show that between half and four-fifths of TV food ads are for unhealthy foods and these are more frequent during peak children's viewing times, compared to adult times.

We also note that other international organisations have been taking up this issue as well. The World Health Organisation is working on recommendations to health ministers about reducing the volume and impact of unhealthy food ads. We note that the UK, Sweden, Belgium, Denmark, Italy, Greece, Ireland and Quebec already have restrictions and they are mooted for South Australia and Queensland in terms of at least going into a consultative phase. Parents have also been polled. They are concerned about food ads and support a ban on unhealthy food ads to children. As part of a raft of measures, this has also been shown to be extremely cost effective in the Victorian ACE study where it was the most cost-effective way of managing obesity of all the options that were studied. There were 13 other ones studied at that time.

I will conclude there and just make the point again that we have attempted to reference all of those statements to the current literature.

CHAIR—Mr Moore, do you have an opening statement?

Prof. Moore—Yes. I would like to point out that the Public Health Association is not part of the Australian Chronic Disease Prevention Alliance, although we do not disagree with anything that has been said. Perhaps that is something that we should rectify.

I would like to start with reference also to the World Health Organisation which identified the underlying causes of the global obesity epidemic as sedentary lifestyle and overconsumption of energy-dense, micronutrient-poor foods and beverages, and they particularly identified sugar-sweetened drinks. They then went on to mention heavy marketing and promotion of these foods and beverages, particularly fast food outlets, and then adverse socioeconomic conditions and so on. I particularly wanted to identify some of those because they directly address this particular piece of legislation.

The Public Health Association does believe this sort of legislation regulation is necessary. We believe the issue is too serious to be left to self-regulation. We draw attention to some of the public statements of the Food and Grocery Council, my close colleague Ms Carnell, and we welcome the fact that they have come some way to recognising that there is a serious issue and there is something that they should be doing about it. That is on the one hand. On the other hand it is important to recognise, for example, that they do not cover McDonald's or KFC. These are very key elements of what I would see this legislation targeting. Self-regulation has a place in many things and should be trialled where possible, but when you can see that it is not going to address some of those advertising groups then it is important for us to go down a path of regulation.

It is also something that we cannot leave until a later date. It is something that we should be acting on fairly quickly. We know that this is a very serious situation that does need to be addressed. I do not think anybody would miss that. The Public Health Association believes that this is very sensible legislation and made sensible by the fact that it allows exemptions and allows the minister to allow advertising of foods under given circumstances.

We do have a specific issue, and we have made recommendations for an amendment to the legislation. It goes to the heart of the way we see food and the way we see the issue of obesity. The amendments that we have suggested are about nutrient profiles, that the minister's exemptions can be allowed on nutrient profiles that are established by Food Standards Australia New Zealand. That is the current system. What that misses is the benefits of whole food. The Public Health Association is doing a significant amount of work at the moment on understanding food and whole food and we would argue that just using nutrient profiles, which are not designed for this purpose anyway, although not a bad start, is not enough. We feel that the minister, in making such a decision, should be able to take into account the benefit of whole food. For example, nutrients do not address the issue of roughage. Nutrients probably do not address the issue of benefits of specific fruits and they may allow some sugar sweetened drinks that have particular benefits because they meet nutrient profiles.

If the minister can take into account whole food, then there is likely to be a better outcome in terms of how sensible this legislation is, so that would be one of our recommendations to the committee.

I would have to say we would also recommend an understanding in terms of food and obesity. Good food is not just about nutrients; it is also about how you eat. There is growing evidence about eating as a family and about food as a whole. For us, that is an important factor to bring into the committee's thinking on this legislation.

In a nutshell we believe it is a good legislation that should be supported in principle, with some very minor amendments to the exemption.

CHAIR—Thank you. Mr Greenland.

Mr Greenland—We support the approach adopted in the legislation. In our submission the National Heart Foundation calls for a ban on all commercial food and beverage advertising or promotion directed to children aged 16 years or under. The only exception to this should be for healthy eating messages promoted to children through non-commercial social marketing campaigns. We go slightly further than some of our colleagues, but the importance of tackling this issue was made abundantly clear by the recent National Children's Nutrition and Physical Activity Survey which was released in October. Some of the results of that survey underpin the need for action. Only 22 per cent of four- to eight-year-olds and five per cent of 14- to 16-year-olds met dietary guidelines for vegetable intake and 61 per cent of four- to eight-year-olds and only one per cent of 14- to 16-year-olds met the recommendations for fruit intake. So there is a serious issue going on with the nutrition of children and the need to take action through legislation like this is very important.

CHAIR—Ms Marine.

Ms Marine—Professor Olver has covered the points.

CHAIR—Doctor White.

Dr White—Diabetes Australia is committed to turning around the current diabetes epidemic through a focus on five action areas. These include awareness, prevention, detection, management and ultimately a cure. There are nearly one million Australians diagnosed with diabetes and we estimate around half a million more Australians undiagnosed in our community. Of the majority of diabetes cases that develop, there are over 85 per cent of type 2 diabetes and we know that overweight and obesity make significant contributions to the growing number of type 2 diabetes.

From a preventative health perspective we view the growth of type 2 diabetes as a real opportunity for Australia. This is because up to 60 per cent of these cases can be prevented through making decisions to adopt an active lifestyle and healthy diet. Our focus for prevention is to deliver an environment which makes healthier choices easier choices for Australians. The decision for us to support the banning of junk food advertising aimed at children is part of creating this environment. By taking this action we believe we will be helping address the growing problem of obesity, and specifically childhood obesity, which contributes significantly to the increasing cases of type 2 diabetes that we see today.

Today we have 350 young Australians living with type 2 diabetes, a disease that we are used to seeing in the older populations but which we now see emerging in much younger populations. Obviously we do not believe that banning junk food advertising alone will address the obesity epidemic, but it is nevertheless an important tool to help create the environment to make healthier choices easier choices for all Australians.

There is growing debate about the evidence base to support the banning of junk food and I am sure you will get down to discussing this shortly, but there is one piece of practical evidence that I would like to remind the committee of, that is the investment made in trying to reach children with messages about junk food. Between January and June 2007 food companies spent \$1.68 billion on food advertising on free-to-air TV. That is a very significant level of investment, presumably the result of careful consideration and driven by the desire to increase product sales. To put this into context, the Australian government has committed \$500 million over the next three years in prevention through the Australian government's Australian Better Health initiative. In just six months the advertising industry spent three times what the federal and state governments will spend on prevention over the next three years.

Some of the facts for which there is a significant amount of evidence and that need to be clearly stated here are these. The first is that our children are watching more TV and being exposed to some of the highest rate of advertising in the developed world. The second is that TV advertising influences food choices. The third is that Australian parents want tougher restrictions. The fourth is that self-regulation is not working. The fifth is that

banning TV advertising works. The sixth is that restrictions should apply when children actually watch TV. The last one is that banning junk food advertising can be easily implemented.

Clearly we all have a moral and ethical obligation to give our children the best start in life. I will borrow a phrase that was recently made famous during the US presidential elections. 'We can do it. Yes, we can.' Thank you.

CHAIR—Ms Black.

Ms Black—I support Dr White's comments.

CHAIR—Senator Siewert.

Senator SIEWERT—Mr Greenland and Professor Olver, I do not want to verbal you, but would you rather just ban all food advertising?

Mr Greenland—The principle is that you should not market food and beverage to children. In that approach you do not need to worry about how to assess what is a healthy food compared to a non-healthy food, or a healthier food option. The principle is that children are the recipients of heavy marketing; if you simply draw a line in the sand you overcome some of those definitional issues.

Senator SIEWERT—We have had a number of submissions and witnesses suggest that we should not just restrict it to free-to-air TV, that we should be looking at subscription or pay TV and then move on to internet. Would you support that as well?

Mr Greenland—Yes. In fact, in our submission we have a rather long list of various forms of advertising that runs for about eight points. We would thoroughly agree with that.

Senator SIEWERT—How would you implement it if you were banning it all? Would you do it during the time that children watch TV? I think you were here when we were having a debate on whether you would do it around programs that are specifically children's programs or programs where there is a high percentage of children watching but it is not the C time. Would you restrict it to a time or programs that you know kids are watching?

Mr Greenland—It would need to be particularly when children are watching in terms of television advertising hours. It should not be a narrow definition as is currently in place.

Senator SIEWERT—Would you suggest that we use the same sort of thing as alcohol advertising, which is 8.30 at the moment?

Prof. Olver—We would suggest 6 am to 9 pm because they are the times that children are actually watching television. At the very least it should be 7 am to 9 pm. It is in that ballpark somewhere. In fact more children watch television later than the designated C and P hours than they do during that very restricted time. It is something like four or five times as many children watch later in the afternoon and early evening than they do during the 4 to 5 o'clock time.

Senator SIEWERT—Do you all agree with that?

Mr Greenland—Yes.

Senator SIEWERT—I would like to go back to some of the evidence that we were given earlier and that you touched on before. This is the Children's Nutrition and Physical Activity Survey. I was interested to hear Mr Greenland's comments that you wanted to raise the issues from that survey. When we had the Food and Grocery Council in this morning they said that the survey shows that there has not been an increase in obesity in children in the last three years. I am trying not to misquote the evidence but it was sort of used to say that we have not really got a problem because we have not seen much movement over the last three years.

Ms Marine—It is like the public health equivalent of critical but stable. It still is a very high level, even if it has stabilised in the last 10 years or so. Since the 1995 survey the levels have been pretty much the same but, as Professor Olver noted before, you are looking at a different cohort because that original group of children that was surveyed in 1995 has moved on and added to the obesity figures of the adult population by now. The factors influencing those increases are still there.

Prof. Olver—Half of obese children become obese teenagers and three-quarters of obese teenagers become obese adults. Part of the solution to the problem is to start by having better food habits at the younger age group. Our interpretation of that data is that nothing has changed that rate of obesity. This is an urgent problem and we need to start forcing that rate down. We think it underscores our point, that the obesity rate has remained stable.

Prof. Moore—There is a question when we look back from 1960 where our obesity rate was around five per cent in children to this survey where the rates are about a quarter. Yes, it may have slowed down or plateaued and that may be a plateau at 25 per cent. Twenty-five per cent is certainly worth tackling very seriously. It is more likely, considering the increase over those years, that we have a slight aberration in the statistics. By the way, we are hopeful that it is hovering and plateauing, but the indications are that it may well be a temporary issue. With 25 per cent, either way it does require significant action now.

Mr Greenland—Some of us attended a consultation session with the National Preventative Health Taskforce this morning and Theo Vos from the University of Queensland spoke there and was saying that the nation is still becoming more obese year by year overall and gaining 0.1 BMI each year. We are certainly heading overall in the wrong direction.

Senator SIEWERT—Can someone give me a little bit more information about the socioeconomic issues as they relate to obesity and whether there are any factors there or not. We have had some evidence that there are some socioeconomic issues in relation to obesity. Is that correct or not? I think you were here when I asked CHOICE that question as well.

Prof. Moore—I believe it to be correct. I would have to get the evidence for it, but I am sure I have come across evidence that the socioeconomic aspect is a factor and it is a matter that has changed in the last 10 years. Obesity was an issue for upper middle class, as it still is in developing countries, but it now has a socioeconomic impact. I will have to take that on notice to get you some evidence to support that.

Senator SIEWERT—That would be appreciated.

Ms Marine—I can look it up for you, but I am fairly sure that it is the Australian Bureau of Statistics figures that show that.

Senator SIEWERT—Thank you. I would like to go back to the issue around self-regulation and the announcement that Nestle made last night/this morning in terms of their new approach. Firstly, have you had a chance to look at the Nestle announcement? If not, we can give you a copy of that. We would appreciate if we could get your feedback on that on notice. Secondly, we were given a copy of the grocery council's Responsible Children's Marketing Initiative, which has just been launched as well. Have you had a chance to look at that?

Ms Marine—I have had a chance to look at that.

Senator SIEWERT—I would appreciate your comments on that.

Ms Marine—There are a couple of main points about that. I am assuming that it is the same one that they presented to the Communications and Media Authority.

Senator SIEWERT—I am fairly certain it is.

Ms Marine—That is the version that I saw. When I had a look at it there were a couple of key issues. First, it was voluntary and it did not give any indication of whether all the members of the council would be obliged to sign up to it, so there is no indication of the level of uptake. The other key issue is that it only covers members of the council. That does not include KFC, McDonald's and other fast food outlets that are also very major advertisers in this area. Another point is that it only targets child specific programs. I understand that Ms Hughes also covered that point in that it is not the time when most kids are watching, so it is going to be very limited in effect. I assume that the effectiveness of the whole thing is going to be very, very limited in terms of reducing exposure. They are my three main concerns with that.

Mr Greenland—I heard it briefly on the radio this morning, but I understand Nestle was reducing the amount of sugar in some of its products. Is that the thrust of their announcement?

Senator SIEWERT—My understanding is that they are withdrawing some products and will be reformulating some of those products.

Mr Greenland—From a Heart Foundation perspective we believe that reformulation is critically important. Having the food industry in Australia move forward on food reformulation should be a very high priority in tackling overweight and obesity issues in Australia. It is not only that, we need to get industry to reduce the amount of salt, sugar and saturated trans-fats, address the issue of portion size and increase the amount of vegetable and fibre content of foods. We can do an enormous amount to improve health outcomes in the nation by engaging industry to drive reformulation, so we have put a high priority on food reformulation.

Ms Marine—If you were to restrict unhealthy food advertising then you would provide an incentive for manufacturers and advertisers to advertise their reformulated products that are healthier, products that they could actually advertise.

Prof. Olver—This shows the power of legislation or even the threat of legislation to affect a problem. When we have a problem with one in four children obese which needs to be tackled urgently, this is why we would suggest the immediacy of legislation over other self-regulation.

In the area that I deal in we have also got other examples where self-regulation simply does not work. The solarium industry was the last that I had to deal with and a survey by the cancer councils showed that 50 per cent of those people did not even know the regulations that they were meant to be imposing. We are somewhat cynical about the ability of self-regulation to actually address the major issues. It seems to be a watered down version of what the regulators would propose.

Senator SIEWERT—I must admit that I share your cynicism in terms of self-regulation. One of the most recent areas of self-regulation was alcohol and the process that the industry uses there. Have any of you had experience with that code of practice and form of self-regulation, in terms of alcohol advertising?

Dr White—Not specifically.

Senator SIEWERT—Professor Olver, I think it was you that was commenting on the experience from overseas. Ms Hughes also commented on it. From your experience overseas I am wondering, where the bans or restrictions have been introduced, which countries have been the most successful and were there specific ingredients in what was done or a component that led to that success?

Prof. Olver—I can make a couple of points about that. Ms Hughes made the first one that the bans in Great Britain are perhaps 18 months old, so there has not been enough time to evaluate the impact. In fact, there have not been systematic evaluations on the bans. In Quebec there is data that the children are not as obese as the children in the rest of Canada. Quebec was a province that introduced bans to children's unhealthy food advertising. Interestingly enough from that study, the French children did better than the English speaking children. The idea there was that the French children were not receiving any advertising from the United States as it was all in English. It is suggested that bans in Australia will not have that problem because we are isolated from other forms of broadcast media, so we might expect to have the same impact as occurred in Quebec. We certainly will have those countries to monitor and will have early results in. We believe that the need to have complete data in something like this is questionable, firstly, because we need to act quickly and, secondly, because we have precedent in other situations. The greatest parallel was the effect of advertising bans on driving the sales of tobacco down. We can look back on those campaigns and say that was the thing that started to make the difference in the 1960s. We can provide a graph to show that when the advertising ban started the figures dropped down. We have a precedent from another type of social marketing campaign of a harmful product in that case, but we think the parallels on the impact of reducing advertising stand.

Dr White—What accelerated that downturn was the concurrent increase in taxation on tobacco.

Senator SIEWERT—Are you advocating putting a tax on unhealthy foods?

Dr White—That is an idea.

Senator SIEWERT—I do not think that places like McDonald's would agree with you.

Prof. Moore—What we can learn from that is that we need a comprehensive approach first of all. But a comprehensive approach does not mean that you do not take action on small or even big issues when you can; you still do that. In an issue as serious as obesity and the impact that it has on the health of the nation it is important that we do not exclude any of those possibilities. We need to look at what has been successful in other campaigns and see where we can extrapolate across from those. We have not taken a position at this point to say that there should be an increase in taxation and we will want to actually assess that against the very issue that you were raising of socioeconomic status and the impact that would have within specific target groups and poorer people before we could come to that conclusion, but we certainly should not exclude it.

Senator SIEWERT—In putting together a comprehensive package, what would be the key elements that you would suggest as being essential in terms of addressing this issue?

Prof. Moore—I can give you some of them off the top of my head. They would include taking a positive approach to physical fitness and good eating, as opposed to a specific focus on nutrients. As I mentioned earlier, good eating includes eating with families and eating within context. It would also deal with things like portion size and body image. There are significant structural issues to do with transport, young people walking

or riding their bicycles to school. It is a comprehensive approach that must take into account that full range. I can just give you a potted insight into what some of things might be.

We know that so many kids now go to school not using public transport. They are not walking and not using their bicycles. Many of us do the same with work. It is not just an issue for young people, although it is important there, but it is an issue for dealing with obesity right across the spectrum. How do we get enough exercise when we are now so committed to our computers, televisions and so on?

Mr Greenland—The Heart Foundation would strongly support those key areas that have been outlined in the discussion paper from the Preventative Health Taskforce. They are, very briefly: reshape the food supply and consumer demand towards healthier products, protect children and others from inappropriate marketing, embed physical activity and healthy eating in everyday life and reshape urban environments towards healthier options. We note and applaud the additional funding that was announced by the Prime Minister yesterday for local government. A lot of that community infrastructure relates directly to physical activity infrastructure: bike paths, walking trails, swimming pools, parks and gardens, recreational facilities and so on. It is also to strengthen, skill and support primary health care and the public health workforce and close the gap for disadvantaged communities. On top of that it is to build the evidence base, monitor and evaluate the effectiveness of actions. That is doing action research and in some cases not waiting for all the evidence to come in, but ploughing ahead, taking action and evaluating how you go with ideas that seem sensible and logical.

Prof. Oliver—We would support that as well. We would add to it the availability of healthy food and healthy choices is important. It becomes difficult out in remote Indigenous communities, for example. It is not only the availability, but the people knowing how to prepare that type of food against what could be perceived as easier alternatives. In addition to the provision of the ability to pursue physical activity and the promotion of healthy eating options there is the business of making it available and making it affordable to lower socioeconomic groups. That is going to also be a challenge if the healthy food actually costs more than unhealthy food.

Senator SIEWERT—That was one of my interests in pursuing this issue about socioeconomic factors. As I said, from some of the data that I have seen and anecdotal evidence that I have heard, we are starting to have an issue in some of the lower socioeconomic areas and the impact of the cost of healthier foods. In fact, some fast foods or junk foods are a cheaper option than some of the healthier foods. I am concerned to ensure that we address those specific issues and I am interested in any suggestions that you could make in terms of how we address what appears—I really appreciate the further information you have given us—to be an increasing trend.

Ms Marine—I have seen a New South Wales study that looked at the levels of obesity according to socioeconomic groupings. I can get you the exact figures, but in upper class women there was approximately 35 per cent obesity, whereas in the lower socioeconomic quintile it was about 58 per cent. There is definitely evidence of that. I do not know that we have the data at the child level, and that is one of the issues as part of this whole debate about childhood obesity. It has been 13 years between surveys that tell us what is happening at a national level. If you cannot monitor something more closely you do not know what has been happening; you cannot develop policies or assess policies on that basis.

Dr White—I support Ms Marine's notion there that we do need urgent attention to the fact that we do not have up-to-date information. The last national health survey was back in 1995-96. That is terrible. We are making assumptions today based on data that is that old, and that is not good science.

Prof. Moore—We do have enough information to tell us that we need to take action.

Senator SIEWERT—The point was made earlier by Professor Stanton that we have a wheelbarrow load of reports saying that it is a problem.

Mr Greenland—The importance of monitoring is critical. We should have a systemic way of knowing how the health of the population is tracking over time, and there needs to be a commitment to ongoing national biomedical surveys. I understand that the UK have a biomedical survey every year and they also regularly monitor for things like sodium consumption as well. They can see when they take a public health measure how much impact it is having. On the salt reformulation, in the UK through their food standards agency they have had a strong focus on reducing salt in the food supply and have had a measurable reduction of sodium intake through appropriate population surveys. It is very important to inform good policy to do that monitoring and survey work.

Dr White—I will reinforce what Mr Greenland has just alluded to. We get the best data from biomedical surveys rather than from self-assess surveys, which is what we seem to have based a lot of our information on. They are more expensive but we get really good, sound, hard data from it.

Senator SIEWERT—As I understand it the minister is still struggling with trying to get the states to share some of their basic hospital data, let alone comprehensive surveys. I am not being facetious. It is a significant issue. When we were debating the Medicare bill it became a real issue about getting access to data and the sharing of data. That is just basic primary health care information.

Prof. Olver—There is a significant issue in this country of data that is collected by states and territories that is not being able to be linked with other data, and not necessarily being available to third parties for analysis without going through considerable hoops. It sometimes needs to go through ethics committees in each of the eight states and territories. This is data that is collected by taxpayer funded registries and so on.

Senator SIEWERT—There is an issue that has come up that I am specifically keen to ask Mr Moore about because I know that you have been running a campaign on this. That is the linking of stars, sports heroes, cartoon characters and so on with fast foods and unhealthy foods. I am aware of a campaign that your organisation ran to challenge and counter one of our major global fast food producers, McDonald's.

Prof. Moore—To be more accurate it was Professor Daube, who is our president. He also runs an advocacy institute out of Curtin University and it is that institute that ran the campaign. However, it is not surprising that I am aware of that campaign. A lot of it was built around the Olympics, some of it motivated by research that they did looking at advertising within sports games. For example, they monitored a cricket game and the amount of time for advertising. I am fairly sure it was a beer brand at the time, and it was something in the order of 60 per cent of the time that that beer brand was actually on the television as part of the background of the particular sports ground. Automatically, with the sports heroes there is an association.

Those of us who watched any of the Olympics—I presume it was most of us—would have seen the association between fast food outlets and Olympic sporting heroes. In fact, their campaign was to get some Olympic sporting heroes to give healthy messages instead of those messages.

In our perspective, these are the sorts of marketing campaigns that we are dealing with, when you look at these sorts of advertisements like those for beer. In fact, my son drew my attention to two or three beer advertisements last night. Not that he needed to, I have to say. They are irreverent, they challenge the norms and the term that he used was, 'They are so politically incorrect', but it is a way that appeals. These marketing agencies, because they are trying to sell their product, are using every tool they can and investing very large sums of money into getting their message across and presenting their product in a positive way that appeals. For governments to invest in having good food presented in the same way would probably take a very significant amount of the budget.

That is why just allowing self-regulation on these things is not enough. It does require government intervention with the exemptions that the legislation has in it, to allow positive marketing of good food, whether that food is marketed through industry or whether those messages are marketed through government. When a minister can allow for an exemption and allows for positive whole foods, then industry will see the gap and go there. I think this is what this sort of intervention can allow.

Mr Greenland—The Heart Foundation would support that, noting that Professor Daube is on our national board. In our call for a ban on all commercial food and beverage advertising or promotions, we include in that definition:

Advertising that uses characters popular with or likely to appeal to children, including licensed children's characters, characters with whom children are likely to identify or to admire, or cartoon or fantasy characters.

Senator SIEWERT—We have touched on a few amendments. I note that there needs to be a wider ban in terms of all food advertising. What other amendments would you suggest that we should be considering for this particular piece of legislation?

Prof. Olver—Just to clarify that point, the wider ban is not only in the timing, but also in the media outlets so that we do not get shifting of advertising from free-to-air to pay TV.

Senator SIEWERT—Yes. I should have clarified that as well. Are there other major gaps or areas that you think should be dealt with as part of this legislation?

Ms Marine—Professor Olver raised earlier areas like the internet, magazines, supermarket packaging promotions and so on. They are also a major source of information about these products and a major marketing

tool. There have been studies of children's popular magazines, the level of advertising of unhealthy foods in those magazines and how you have the same skewed proportion of unhealthy food compared to healthy food references in those magazines. It is the same for the internet. Some of those references are in our submission if you wish to look at those. They are certainly areas that will need to be addressed.

Obviously the television advertising is a key thing because of the amount of time that children spend watching television, which is over two-and-a-half hours a day on average, but they also spend quite a lot of time on the internet as well. The appeal of websites or games that are available that are actually associated with particular brands or unhealthy foods is also quite high. Having children myself I see how much of it they are exposed to.

Mr Greenland—The Heart Foundation would include in those marketing activities:

... free-to-air and pay television, radio, cinema, print media, the internet, email, mobile telephone (such as SMS), sponsorship of schools and children's sports, product placement, in-store displays, point of sale promotions, and product packaging and labelling.

Prof. Moore—They have learnt from tobacco advertising. The other lesson is that such amendments can be introduced later. It should not stop or slow down this legislation. This is important legislation.

Senator SIEWERT—I asked Ms Hughes about the proportion of advertising. Dr White, you said that it was \$1.68 billion in the first six months. I am interested in finding out what proportion of that was allocated to the various types of advertising specific products or fast food outlets like McDonald's and KFC.

Dr White—Do you mean how it is broken down?

Senator SIEWERT—Yes. I would like to know how it is broken down because I am still pursuing the issue that the grocery council is saying, 'We do not need legislation. We want self-regulation.' As we have been discussing, that deals with one part of the industry, but I am interested to know what part that makes up in terms of the advertising dollar compared to the other parts if that information is available.

Dr White—I do not have it here, but I can get it for you.

Senator SIEWERT—I would appreciate that. When we had the free-to-air TV people in here they made a comment which Senator Brown was following up. I think they were quoting ACMA in saying, firstly, that if the money was not spent on advertising on free-to-air TV it would be shifted elsewhere into other media and, secondly, that the cost of fast foods would possibly go down which would increase consumption. Have you heard that argument before?

Ms Marine—Yes, I have.

Senator SIEWERT—That was a new one for me.

Ms Marine—I have heard that argument before. I am not an economist so I cannot comment on economic modelling, but I do think that at the end of the day people advertise because it sells their product. The fact that they are willing to invest that much money in it means that they are going to get a decent return out of their advertising. My comment would be: if they could just save themselves that money and sell their product cheaper then why have they not done that already?

Senator SIEWERT—I must admit that was my take on it, but I was just wondering if I was missing anything.

Prof. Oliver—If indeed that is the consequence of it then we will begin to see that data out of the countries that have put advertising bans in place. We have not seen it but, as I said, there have been no systemic reviews. I agree with that, but that data will become available out of the countries that have already introduced those bans.

Ms Marine—The other thing worth highlighting is that this does provide an opportunity to evaluate an initiative like this. As we are geographically isolated we do not have the same cross-border advertising issues that you have in some of these other countries, so you are never going to get a definitive answer out of those countries, especially given that a lot of them have introduced those restrictions for reasons other than obesity control. They have done it to protect children or as part of a philosophical action, so they are not designing evaluations to assess what the impact is going to be on obesity. This is an opportunity to build in some evaluation of this to see what it is going to achieve; can we quantify it; and is there then a good case to extend it to other areas of advertising as well.

Prof. Moore—I would have to say that it sounds like a school debate technique to me.

Senator SIEWERT—Thank you.

CHAIR—Would anyone like to add anything?

Prof. Moore—I would like to make a final comment. The Public Health Association has not come to this position lightly. We value free speech and freedom of business very, very highly. This does cover an area about such freedoms and they are also an important part of public health. But on a cost-benefit analysis it is very clear to us that such restrictions are important for the protection of the health of our community and particularly of our children.

Prof. Olver—I would like to make a similar statement. We recognise that one of the difficulties is that unlike tobacco this is not an all or none. On hearing a previous submission on chocolate, the difficulty is that we are not hearing promotions about these things as an occasional treat, we are hearing a constancy of advertising about making them part of routine meals each day. That is the problem that is driving the obesity epidemic that we are trying to reverse.

The other comment that is often attached to this sort of regulation is this nanny state comment. We would believe that, with regard to children who cannot discriminate the intent of advertising, in fact children are protected by nannies and arguably the government should be proud to be a nanny to its greatest resource.

Senator SIEWERT—Thank you.

CHAIR—Professor Olver, how do you justify the statement you made about the advertisements to make these things happen every day? I am just thinking in my own mind about some of the advertisements that would be the target of the discussions that we are having today and I cannot see that those things are saying that you have to have this every day. They are saying you can have it, it is good and all that kind of stuff, but it is not stepping over the line about how people determine their diets and how people determine how they live, which is a personal decision. I see your argument, but I would like to have it more focused than that.

Prof. Olver—There is a very clear distinction here in this submission about children and advertising to children. We do see ads about the type of food children will take to school as a regular event. In other words, this type of food is being normalised, not as a special occasion, but in regular school lunch boxes. That is the type of advertising that is likely to make it part of a regular diet rather than a treat.

CHAIR—Would that not come under the heading of false advertising? It is actually making the difference between people sending out a message that is wrong and would fall under the heading of lying to the community and people sending out a message that people would still have a choice around. The point about the school lunches comes down to the kind of point we discussed with other witnesses about people promoting breakfast cereals and things like Roll-Ups, which has been mentioned twice today in evidence, that there had been a way that they were being promoted as being almost superior to your fruit. That is actually wrong and false advertising.

Prof. Olver—It may be false advertising that is equivalent to whole fruit, but even the fact that a food type like that would appear in a lunch box as a regular part of someone's school lunch is the sort of thing that an adult might be able to discriminate on and say that it is not appropriate. It is false to say that it is the same as a piece of fruit. It is not false to say that it could be part of a regular school lunch. We see this with fruit box drinks and things like that as well. That is not false. That requires discrimination that to do this regularly is going to be harmful in terms of your energy intake and the nutrient value of the food. That is the problem that we are targeting with our submission.

CHAIR—You are now recommending targeting it until 9 o'clock at night, which is well beyond the standard hours.

Prof. Olver—Yes. The targeting until 9 o'clock at night is a reflection. If you are going to make an impact on children then you must target when children actually watch television. When I was small I was not allowed to watch television until 9 o'clock at night, but the statistics are clear that children are watching television up until 9 o'clock at night and in fact more are watching in the early evening than are watching between 4 and 5 o'clock.

Senator SIEWERT—Alcohol bans go until then, too.

Prof. Olver—Yes.

CHAIR—I know it is only half an hour and we had the same discussion in the alcohol process, but that half hour between 8.30 and nine is a significant symbol in terms of television viewing and ACMA statistics. If you are saying until 8.30 when the next round of processes go on, that is one thing, but if you are saying from nine you are actually going right into another band in the ACMA process.

Prof. Olver—We have tried to make all of our submissions evidenced based and where we have not got it we try to get it to you. What we are trying to say is that it should parallel the peak times that children are watching television. That will change. If it is until 8.30, that is fine. If it is until nine, it is fine. That is the statistic. We are saying that for the ban to be effective it will have to parallel the times children are actually watching television. That is the principle that we are suggesting for the legislation.

Ms Marine—I would like to make one final comment in terms of the personal choice issue. That is the sheer volume of the advertising and the emphasis of the advertising of food at those times. There have been numerous studies that show the bulk of food advertising during children's viewing hours is for unhealthy food. As a child, if you are sitting there watching television as part of your normal process and you see one advertisement for bananas, mandarins or whatever but 10 advertisements for McDonald's, LCMs, chocolate or whatever, that distorts your perception of what is a normal thing to be eating. We are talking about children who are not in a position to be critical about that or to perhaps read a dietary guideline. They are impressed by the volume.

CHAIR—Your recommendation is not restricting the volume, your recommending is banning.

Ms Marine—That is right, because of the high volumes.

CHAIR—This is the element with which I am struggling. It is not a restriction. It is not cutting down the amount. It is a ban that is being purported. That does not fall into that kind of balance process. It is all or nothing, which is very difficult.

Prof. Moore—That is not how I read the legislation. I accept the fundamental of the legislation is a ban.

CHAIR—Also from the evidence people are talking about banning.

Prof. Moore—Indeed, but the exemption is allowed by the minister. What they are looking for is the exemption being restricted specifically to positive food and in my mind that also allows for some control in terms of changing the way food is advertised to give industry a chance to modify their products and then advertise them in that way.

CHAIR—That is how the industry group put it forward, but in the evidence from groups like yours I do not hear that, I am hearing 'ban' and ban because of years of bad practice. It is not restriction. It is not modification. It is ban. That is fine. That is the evidence that you are giving.

Prof. Olver—That reflects the seriousness of the situation we are in and the fact that it has not changed over the last decade. It will be such a burden on the health system with the five chronic diseases represented here that we need an immediacy of action that will have high impact and then later on things can be modified. It has gone well beyond the time where we can introduce a modification and expect it to have the impact in the time frame that is necessary given the seriousness of the problem.

CHAIR—Thank you very much.

[3.15 pm]

SEGELOV, Mr Collin, Executive Director, Australian Association of National Advertisers

CHAIR—I welcome Mr Collin Segelov from the Australian Association of National Advertisers. Do you have any comments to make on the capacity in which you appear?

Mr Segelov—I am the retiring Executive Director of the Australian Association of National Advertisers and an ongoing member of the executive committee of the World Federation of Advertisers.

CHAIR—We have your submission. I would suspect that you have given evidence to a committee before so you understand the rules of evidence and protections. You may care to make an opening statement and then we will go to questions. I know you heard my statement about the small number of senators not being a reflection of the interest with this issue and people being ill so they could not be here.

Mr Segelov—I have a short statement. I will firstly say that the fact that I am singularly represented here also does not reflect the seriousness with which the advertising and marketing community regard this issue. I will start with a couple of apologies. I apologise for the late submission from the AANA, which may have been a result of late notification of this inquiry being in place, but we got it in as soon as we heard about it. I have a personal apology which I hope is not associated with my recent recruitment to Weight Watchers, but I have suddenly suffered a little bit of deafness in one ear, so I may miss some of your comments. I did not miss some of the misunderstandings and misrepresentations that have been here this afternoon and I will do my best with your questioning to put some of those right as we go along.

You might not be surprised to hear that the AANA does not support this bill, not simply because it references junk foods, for which there is no definition in law as far as I am aware, and not simply because the AANA has spent the last 80 years representing responsible advertising and advocating self-regulation ahead of government regulation, but because the AANA recognises that the federal government has given the issues that are before this committee to the proper authority, the Australian Communications and Media Authority, which is still in the midst of its deliberations on the very issues that you are discussing today. Thus, we do not feel that this committee should pre-empt the proper process that is underway. With that said, I will endeavour to answer your questions as dispassionately as I may, which is quite hard when I hear some of the statements that have been made here today. I will give you an openness and honesty from the advertiser's perspective to the best of my ability. I will answer whatever questions you may have that I can and will willingly take on notice any that I cannot answer immediately.

CHAIR—Senator Siewert.

Senator SIEWERT—I would like to start with your comments about the misunderstanding or misrepresentation.

Mr Segelov—I will give you a handful. One is that the self-regulatory system regularly takes up to a year to respond to a complaint. As it happens I was part of the organisation that put in place the Advertising Standards Bureau. It is a world-class self-regulatory authority and has the capacity to answer or to respond to a complaint within 24 hours, so it has been misrepresented here as regularly taking up to one year. I have never experienced such a thing and I have been closely associated with it for its 10 years of life.

Another would be that advertising increases consumption. That is simply a misunderstanding.

CHAIR—The person who made that statement also related to a particular case, which was the one regarding Milo and a DVD promotion. Do you have any knowledge of that particular case?

Mr Segelov—I do not think that was a complaint to the Advertising Standards Bureau. I think it was a complaint that went elsewhere.

CHAIR—I think it is important that we actually—

Mr Segelov—The facts do need to be on the table and I am quite happy to research any of these matters that you may require.

Senator SIEWERT—The issue about self-regulation was not necessarily referencing just one particular type of self-regulation, either.

Mr Segelov—I do want it on record that the Advertisement Standards Bureau has been established with a capacity to respond to complaints of public interest within 24 hours. To say that advertising increases consumption is simply a misunderstanding of what advertising does and is capable of doing. Advertising

increases awareness. It can encourage a test of a product; it does not automatically increase consumption, otherwise all you would need to do is advertise to guarantee success. Let me tell you—and I am surprised the AFGC did not give you this information this morning—that with all the research and with all the advertising that goes behind the modern marketing of food and beverage products, nine out of 10 fail by the time that they come to market. Advertising does not guarantee an increase in consumption. What advertising does as far as the advertisers are concerned is allow them to compete for market share. Competition is generally regarded as positive to consumers because it helps keep prices down.

I can answer the other adjunct to that to save you asking the question. The notion that a ban on advertising can cause a price reduction, which therefore increases consumption, is a finding from Frontier Economics, which has carried out global research on the subject. They work for the federal government so it is available to you should you want to inquire on it.

Another piece of confusion, if not misinformation or misrepresentation, is that obesity rates are static and obesity rates are increasing. You cannot have them both. The government's own National Children's Nutrition and Physical Activity Survey has shown that there is no appreciable difference in the obesity rates now in 2008; not in 1995 as you were just informed, but there is no appreciable gain in obesity in children over the last 10 years.

Senator SIEWERT—The point that was made this morning was that it has increased since 1960 and that we want it to come down. The facts that we were just given, and you were here, said that in 1960 the proportion of children with obesity issues was five per cent and it has gone up in 2008 to 25 per cent.

Mr Segelov—If you believe that the rate of obesity in children is 25 per cent, I will eat this desk. There is no 25 per cent obesity rate amongst children in this country, full stop!

Senator SIEWERT—You can say what you like but where is the data to back up what you just said.

Mr Segelov—The data is in the ACMA report or, as the chairman of the authority would have it, the A-C-M-A report, which clearly shows that there is no 25 per cent obesity rate.

Senator SIEWERT—Are you talking about the ACMA report being the Australian Communications and Media Authority report, rather than—

Mr Segelov—Correct. ACMA has researched this specifically under the government's request that it should look into advertising of food and beverages to children. It has dealt with all these things that you are dealing with again today. It seems to me that we are only here because some people do not like the direction in which ACMA appears to be going.

Senator SIEWERT—Are you trying to tell this committee that there is no obesity problem in Australia?

Mr Segelov—No. I am saying there is no 25 per cent obesity level, which is what you have just suggested it is.

Senator SIEWERT—What would you say the figures are?

Mr Segelov—The official figures are five per cent in children. If you want to lump obesity and overweight together, you can get to 25 per cent. They are not the same thing. They are quite, quite different. Professor Jenny O'Dea from Sydney University will stand here and lecture you on the fact that you cannot lump the two together. That is totally misleading. It has been done to try to impress people such as yourselves, but it is an incorrect use of the data. What I am saying is that there is a five per cent rate of obesity in children in Australia and it has not increased over the last 10 years. I am not saying that is not a problem. In fact the AANA, in 2001, was one of the first organisations in the country to recognise that obesity was an all-of-community problem requiring all-of-community response. It did respond. It proposed to the federal government an advertising awareness campaign and gave that campaign to the government to spearhead a government-led, all-of-community response. That did not happen. The industry went ahead with the advertising awareness element of the campaign and it produced \$10 million of advertising of healthy lifestyle awareness to the community. We are interested in this problem. We recognise that there is a problem, but we do not want to sit here and be misrepresented or indeed have people misunderstand what it is that advertising can do and does do. It cannot be the cause of obesity. It simply cannot.

Senator SIEWERT—People are not saying that it is the cause of obesity, and if you say that you are misrepresenting what people are saying. They are saying it is part of the problem. They are not representing it as the cause of the problem. Not one witness this morning has said that.

Mr Segelov—My deafness has obviously made me hear slightly different things. Can I go on to the fact that it has been stated just a few minutes ago that the children in Quebec are less obese than those of the rest of Canada. That is untrue. The fact that Quebec introduced bans of advertising of unhealthy foods to children is untrue. You are being given untruths here.

Senator SIEWERT—Could you just repeat that please?

Mr Segelov—It has been stated and it is in *Hansard* today that children in Quebec are less obese than in the rest of Canada. That statement is incorrect. It has also been stated just a few minutes ago that Quebec introduced bans on advertising of unhealthy foods to children. That is also incorrect. That is what I am saying.

Senator SIEWERT—What did they do, then?

Mr Segelov—They have not had advertising to children of any product or service for the last 25 years. The children in Quebec are the same size and circumference as those of the surrounding states, some of which have advertising saturation and some of which have what we would regard as a reasonable amount of advertising that we have in Australia. There is no difference. That comes directly from my association with the World Federation of Advertisers and my colleagues in the Canadian association. That is up-to-date information.

Senator SIEWERT—That is something that we can check.

CHAIR—Can we get that information from you? I know you understand that in these inquiries people have the chance to respond to comments because the *Hansard* is public. You have actually picked up a point of difference that you are wishing to respond to. We did have that Quebec example mentioned this morning as well. We have just had it in the summation of the previous witnesses, so we would appreciate if you could provide us with the information that you are putting on record to counterbalance that.

Mr Segelov—I am happy to provide it.

CHAIR—That would be very useful and then we can get into that justification.

Mr Segelov—I just feel that I have to respond to the fact that Professor Olver stated one in four Australian children is obese. That is not correct. If you start from that basis then you are going to mislead yourselves and therefore act in an inappropriate manner at the end of the day.

CHAIR—Are you saying that could well be the issue of overweight and obesity being rolled together?

Mr Segelov—Yes. Overweight children do not necessarily become obese children. Many children are overweight at some time in their life. I could go on to query the whole obesity argument. I am obese according to the regulations, and I think I am a normal size. That is the fact of the matter. I think there has been a lot of misinformation which needs to be dealt with before you get to your considerations and your deliberations on what action might be appropriate. However, I do come back to the point that surely the ACMA is the proper authority charged by the federal government with a review of children's advertising of food and beverages and to make recommendations. This inquiry, according to the website, results from the fact that exception has been taken to the draft report finding that there is no grounds for banning advertising on children's television. That seems to me to be inappropriate of itself.

CHAIR—That is the basic process. We had this inquiry referred under due process in the Senate so we are looking at the process. The point on that basis is that we still have a draft. We do not have a final recommendation from ACMA, understandably, and that has been discussed today about ACMA's role and where that is. Most of the witnesses have alluded to that; there has been no confusion about whether this overrides ACMA or not. It does not.

There are some significant differences. One of them is—and I would very much like your response to this as it could lead to some questions—about the issue of limiting bans to what is perceived as children's only programs. We have heard on a number of occasions that at the moment in Australia under the P definition there is no advertising allowed. The C definition seems to be an area of contention and most of the things that we have talked about refer to that. You would have heard evidence which has been repeated by a number of witnesses that that is inadequate when considering when kids actually do watch television, which is beyond the current definition of the Children's Television Standards, because that concentrates on the C rating. In terms of the process a number of witnesses have suggested quite strongly that we should be looking at extending restriction to periods which are outside that C rating. I would like your response to that.

Mr Segelov—You have honed in on one of the fundamental issues that needs to be determined. Given the fact that free TV was established as an advertising funded model responsible for quality programming to all sectors of the community, it was originally declared that there needed to be a preserved area for children. That

is a preserved area for preschoolers, a preserved area for children, and then adult television time. The question that you and the government more widely has to consider is whether there is a need to move the protection of a specific area provided for children to an area that is provided for adults. That is fundamental and I do not envy you that task, because I think it is absolutely problematic. There is an area of the broadcasting time which has been specifically set aside for children. If children are to be allowed to watch, to be encouraged to watch, to be enticed to watch, under parental control or otherwise, adult television, then you have a whole set of new circumstances to deal with.

I will give you one very quick anecdote. When I was involved with the Advertising Standards Bureau and board a complaint came in from a nursing mother who complained about the telephone sex ads. She did not want her child exposed to the telephone sex ads. She was breastfeeding the baby at two o'clock in the morning. Do we therefore take this regulation now all the way and say, 'That is a P child. Do we put that regulation in place in case a nursing mother has to get up in the middle of the night and chooses to turn on the television while she breast feeds her baby?' It is a huge area. As I said, I honestly do not fancy your chances in getting that particular part of it right.

CHAIR—The argument being run, I think with justification, is that data that is kept by ACMA as well indicates that there is a high percentage of kids who fall into the under-15 level who are watching television up to about 9 o'clock. We have had a discussion about that.

Mr Segelov—I do not dispute that. The argument is that, if those children were to decide that they wanted to walk along the road instead of along the pavement, would you change the motoring laws to accommodate them? You really have to decide whether there is a preserved area for children or whether you abandon that and say that the area for children is no longer prescribed this way, it is actually prescribed that way. That is quite a different argument.

Senator SIEWERT—The programs that are being shown are not just for adults. They are specifically targeted at that audience.

Mr Segelov—I do not believe that is so.

Senator SIEWERT—There is *The Simpsons*. I could name a number of shows that are on.

Mr Segelov—Many of *The Simpsons* programs are PG programs. They are parental guidance programs. You cannot say that they are targeted at children if they have already been prescribed for parental guidance, surely.

Senator SIEWERT—You know as well as I do that there are a number of programs that are shown at that time that are specifically targeted at a younger audience. I do not watch TV much nowadays because I am too busy, but the Harry Potter film, for example, is targeted at kids.

Mr Segelov—I do not necessarily agree.

Senator SIEWERT—It is shown in the hours between 7.30 and nine.

Mr Segelov—You would not have enough children watching that program to manage to get sufficient advertising to pay for that program. You have to have adults as the audience to justify the advertising rates.

Senator SIEWERT—I am not saying that adults do not watch those as well. Of course they do, but so do children. They are specifically targeted at a mixed audience. The evidence that we heard this afternoon is that there are 100,000 children watching C programs but 500,000 watching up to that time zone of around 8.30 to 9 o'clock. Every parent knows that their children watch TV at that time of the night.

Mr Segelov—You did hear before from the professor that he was not allowed to watch television at that time of night. I was a solo father due to unfortunate circumstances and let me tell you my children did not watch television at 9 o'clock at night. We do have to come back to a degree of parental control.

Senator SIEWERT—I said up to 9 o'clock.

Mr Segelov—You cannot say that the government has to make sure that every child is in bed by 9 o'clock, and neither can you say that every child is allowed to watch television until 9 o'clock. I would hope that is not the business of government, surely.

Senator SIEWERT—No. Do not put words in my mouth that I am saying that that is the point. What I am saying is that if you went out to most Australian households you would find that children are watching TV until 8.30. That is recognised by the fact that the government has in place bans on alcohol advertising until 8.30.

Mr Segelov—My children were allowed to watch television until the 7 o'clock news. Being a former television news man I did not think that they needed to watch the 7 o'clock news and they certainly did not need to watch what was coming after that period. That was my guideline.

Senator SIEWERT—As a matter of fact I had the same rule for my son. As a matter of fact he was the only one in his cohort that had that same rule.

Mr Segelov—You and I have heard the same argument.

Senator SIEWERT—Then the pester factor comes in. We have discussed the pester factor here: 'Why aren't I allowed to watch it? Everybody else is watching it. If I go over to Sam's place I can watch it over there.' We are getting tied up in an argument here that is not the point.

Mr Segelov—I agree with you. As far as the pester factor is concerned, you made a reference earlier to pester power as it is known in the advertising industry. The AANA has introduced a code for advertising to children and alongside it the world's first food and beverages advertising code, including the section to children, which prohibits pester power. So advertising cannot be geared to the use of pester power. Anyone can complain about an advertisement that they think is relying on pester power and the Advertising Standards Board will deal with it. They will deal with it by seeing such advertising is not permitted.

Senator SIEWERT—How do you implement that? What techniques are you putting in place to prohibit pester power?

Mr Segelov—If any of the people here or any single individual anywhere in Australia feels that there is pester power involved in a piece of television advertising or any other form of advertising—the one benefit that we have with self-regulation is that it covers all media and is not just specific to one particular avenue of media—then they are entitled to complain. That complaint will be considered and if there is a case for pester power then that advertisement will no longer appear. It is pretty simple stuff.

I would have to add that I do not think there have been that many complaints. There would not have been more than a handful of complaints in the last five years, to my knowledge, that there is pester power in advertising. The community is not concerned about this matter.

Senator SIEWERT—That is one interpretation. My interpretation as a parent—admittedly my son is grown up now; at least, he thinks he is—is that all parents assume that all advertising relates to pester power. That is a fact of life.

Mr Segelov—That is an assumption that you are entitled to make, but it is not one that advertisers are entitled to engage in.

Senator SIEWERT—I think you were here when we were talking about the Shrek example of cartoon characters or a well-known character associated with particular products or a range of products. Shrek is the most recent, over-the-top example that I can think of because everywhere you went there was Shrek. It was marshmallows; it was all sorts of things. Did you receive many complaints about that?

Mr Segelov—I do not have an exact number. I can get that for you. There were complaints about it, yes. The issue was more to do with the in-supermarket promotions, which remains under review. It did not qualify as advertising in that there was no paid space. No one was engaging with the supermarkets to pay for the space on which they were advertising inside the supermarket.

Senator SIEWERT—It was not for the space, but was it for product placement? It was obviously part of a marketing campaign.

Mr Segelov—Somebody made an awful lot of money out of selling the rights to the Shrek product. I was certainly surprised at the breadth of product that they had managed to attach the label to. I do not think we will ever see that again. There are a number of reasons why, not the least of which is that the advertisers are currently engaged with the ACMA in the discussion of the use of licensed characters versus the use of proprietary characters. A licensed character is one which owes its popularity and credibility to its original purpose, which was the movie. A proprietary character would be the likes of the Nesquik bunny, which they have developed for themselves as part of their branding. I do not want to pre-empt ACMA any more than I think this committee should, but I think that what you will see is that there will be a line between the use of licensed characters and proprietary characters. That is what I would support.

Senator SIEWERT—I accept the difference. I am thinking of the Ronald McDonald character. That is a proprietary character, but it almost crosses the line. It has now become so well known out there that if you go

into school and had Ronald McDonald at school that has the same power, I would suggest, almost as Shrek or something like that in there.

Mr Segelov—I do not know if that is true. I certainly have not seen any research on that. I do know that McDonald's are a member of the AANA. They are not a member of the AFGC, but a member of the AANA.

Senator SIEWERT—I am sorry?

Mr Segelov—The AFGC, the Australian Food and Grocery Council. They have their own style of marketing and it does involve the use of the Ronald McDonald character, which also has a lot of positives associated with it. It is not all about selling hamburgers. I cannot speak for them, but I would say that I think they are pretty much alone in going down that avenue. Similarly, as Ms Hughes tried to explain to you, the Happy Meal has become problematic to many people because the Happy Meal is the product that includes the toy. The toy is not an attachment to the product so if you buy a Happy Meal then that is what you get.

Our own AANA codes which provide the self-regulatory codes in Australia for advertisers and marketers say that advertising of such products must concentrate on the product and not on what you call the giveaway, the ancillary item.

Senator SIEWERT—I would like to go back to the Happy Meal scenario. When you say it is problematic, is that because it is so well known now that you get whatever goes with it?

Mr Segelov—Yes. I think so. It is an international brand which has a lot of goodwill associated with it. It is going to be problematic for anyone who says, 'We're going to get rid of Ronald McDonald.'

Senator SIEWERT—There are two things there. There is Ronald McDonald and then there is the Happy Meal. The point I was trying to get to with Ronald McDonald is that, when we are talking about associations with fast foods and so on with schools, Ronald McDonald is so well associated with McDonald's that even having the character at schools, kids automatically know that is McDonald's.

Mr Segelov—I am not disagreeing that that is the case. Somebody has to weigh up what are the positives and what are the negatives of that association. I will suggest to you today that you can look forward to the fact that the Food and Grocery Council initiative, which is jointly with the AANA the responsible marketing initiative, is likely to be followed quite soon with a fast food attachment. We would need to see what that attachment said before we could actually praise it or criticise it.

Senator SIEWERT—You were here when we were talking with Ms Hughes about the grocery one, the fast food one and the third one and the concerns with the different rules.

Mr Segelov—Yes. That is just trying to cause confusion. I do not think that it is confusing in its own right because the adjudicating body will remain the Advertising Standards Board. The bureau and board will oversee the adjudication of those as it already does, for instance, with the motor vehicle advertising code. They do come together at that point. Each sector is surely entitled to try to prescribe its own form of self-regulation rather than it being dictated to them by the likes of the AANA, for instance, or indeed by the government, in which case it is not self-regulation.

Senator SIEWERT—That is if you want to go down the self-regulation route. With this bill we are talking about the regulatory route.

Mr Segelov—Self-regulation needs to be recognised as having particular advantages over government regulation. It is faster. It is cheaper. It is generally more flexible in terms of reflecting prevailing community standards. Once you start prescribing what is outside prevailing community standards—I do not know how long that takes to write the prescription, but the system as it presently standards needs to be understood. The adjudicative body is actually a representative cross-section of the broader community. It is not advertisers. It is not marketers. It is not media people. They are people who have put themselves forward and have been selected to sit on the Advertising Standards Board. They are members of the community who come in and do their utmost. I have a great deal of praise for them, as you may imagine, because they try to reflect prevailing community standards. They are standards that change, something which is very hard to deal with with prescribed government regulation, I think you will agree. I think it has a lot of benefits with it.

As it says in our submission, the AANA is part of a worldwide movement to get self-regulation into countries that do not presently have it and to make sure that it is maintained at a high standard. The Australian system is globally recognised as having reached World Federation of Advertiser's gold standard. You have a good system of self-regulation. It does not suit some people because their agendas are quite different. They want government regulation. A lot of people appearing before you do not want advertising to children at all.

All they are doing is using the obesity debate to try to get to that point. They are entitled to do that. We are great supporters of free speech.

Senator SIEWERT—Thank you.

CHAIR—Is there anything that you wanted to add?

Mr Segelov—I think a wonderful opportunity has been missed. It was missed under the Howard government and I would be hopeful that it would be picked up under the current government. That is that the best marketing brains in the country are available to help combat the obesity issue. We do not believe advertising is the problem. We believe it can be part of a solution. It is an all-of-community problem; it requires an all-of-community solution. Picking off any little piece of that will not do anything at all. I have been talking about this since 2001. Let me tell you that I have heard all the arguments before and I have not seen one child made any thinner.

CHAIR—How would that operate? That sounds like a positive thing to me, in that the people get together and look at the issue rather than brawling.

Mr Segelov—Absolutely. I think there is a chance that Minister Roxson's task force may go down that route.

CHAIR—The Preventative Health Taskforce.

Mr Segelov—Yes. They may go down that route. I do not have any specific information. The AANA would certainly be willing and has always been willing to host a get-together of all stakeholders to say, 'Let's talk about what can be done here. Instead of fighting one another, let's try and fight the problem.' As I said, all these arguments have been heard ever since 2001-02. We have some new numbers. The new numbers say, 'We do not have the epidemic. We have a problem, but we do not have the epidemic.' I still hear the word being used. Some people are trying to ignore the national figures that the government has just paid nearly \$3 million to collect. It does not fit the argument. Let us stop the arguing and try and deal with the problem. I will use my remaining few weeks of authority to say the AANA would gladly host such a gathering.

None of the anti-advertising or the consumer representatives who you have heard today have ever approached the AANA on the issues that they have brought to you. It does not interest them to do that. That would suggest to me that perhaps they are not so much interested in a resolution as in the argument itself. That I find sad. Again, the AANA would pull upon its advertising, marketing and media colleagues and gladly host at your behest a get-together of all interested parties in trying to find a solution, not trying to find a problem.

CHAIR—An issue was touched on in the discussion with Senator Siewert about the concern that the current proposal from the grocery council does not pick up the fast food chains who are such a major element. The expectation is that they would come on board. I think you used a particular term.

Mr Segelov—You are quite right. I was being very careful in what I said so as not to break confidences, but you can be very confident that within a very short space of time, before you get very much further along with your considerations, you will see a rider to the original proposal that was announced by the AFGC on behalf of the industry.

CHAIR—The key issues.

Mr Segelov—You have to understand that not all members of the food and beverage industry are at this stage attached to that pledge, but the interest is growing. I will volunteer for you that one of the difficulties that we have had is trying to get something that would suit all food manufacturers. You, yourself, have picked on chocolate. They have a great deal of difficulty in signing up to this degree of pledge, so we may have to do something at different levels.

There are two more things. Firstly, I would like to pick up on the psychologists' talk that I have heard. I have been involved with the AANA for 10 years. I have been on the world body for four years. I have never met a psychologist working in advertising. I am not saying that they are not there. I am suggesting that some of them may be attracted to advertising agencies and that may be where they work. I personally never met one and we certainly do not involve them in the development of advertising at the level that I work in.

Senator SIEWERT—There is advertising and there is marketing.

Mr Segelov—Yes, advertising and marketing. We represent the advertisers. There is a terminology problem here. What used to be advertising managers are now marketing directors, so therefore there is a crossover. We are representing advertising and marketing communications, so it covers most of the marketing activity but

there would be some pieces of that, point of sale or the in-store stuff, that we would not be able to represent. At the moment we are representing something like \$30 billion of investment annually in the Australian economy. We recognise that is big investment and big responsibility. I am personally committed to responsible advertising and marketing communication. That is why I am continuing to work on the world body beyond my tenure with the AANA.

I do not think we are at cross-purposes. We might cross words. If you think about it, it would certainly be in the food and beverage industry's best interests to see a resolution of the obesity issue. We would like to get there. Unfortunately, all I am hearing are the same arguments as I heard in 2001, and nobody seems to want to join us with our idea that there needs to be a whole-of-community response. We are up for it. We are ready for it. We have already committed \$10 million and spent it.

Senator SIEWERT—Did you say \$10 million?

Mr Segelov—Yes, \$10 million.

Senator SIEWERT—That is \$10 million compared to \$1.68 billion spent on free TV.

Mr Segelov—I do not know where that figure comes from. I have never heard that figure before.

CHAIR—Dr White from Diabetes Australia gave the AB Nielsen figures.

Senator SIEWERT—Dr White is going to provide us with that.

CHAIR—I have to tell you that the AB Nielsen figures do not differentiate between what you call junk food—the undefined area of junk food which we do not know quite what it is—and the fruit and vegetables advertising of, for example, Woolworths. What you have got is a total figure for advertising.

Senator SIEWERT—I have asked for a breakdown.

Mr Segelov—You cannot get a breakdown because there is not one. It is not identified as such. They monitor the category of advertising, which is food, but they do not go any further. How do you identify what is junk food? What is the cut-off point for junk food? Does anyone know, because I do not know?

CHAIR—It seems there is agreement about the soon to be finalised FSANZ nutrient—

Mr Segelov—Nutrient profiling was intended for the allowance of the promotion of health claims. I would suggest to you one other avenue that you may care to explore. I do not want to take up more of your time, but I take your point absolutely that if someone is misrepresenting the health value of a food, then that is not only against our codes, that is against the ACCC; that is against the Trade Practices Act. They are gone. We certainly would support you in taking them to wherever they need to go and locking them up.

To my knowledge, for the last five years the governments have been looking at this legislation to allow the promotion of health claims for food. There are a lot of interested parties, a lot of stakeholders. The Pharmacy Guild and others would like it not to happen because it has got health in it. As I understand it, that is going before the next meeting of the health ministers.

CHAIR—COAG.

Mr Segelov—No, the health ministers and then to COAG. That was meant to be in place last year and it may not even be in place next April. If you did that can you see that you would actually give the marketers somewhere to go? You would give them a reason to be promoting the healthier-for-you products, whereas at the present time it does not matter how healthy it is, they are not allowed to make a health claim for it. There is a nonsense in it.

Part of the problem—and I certainly do not think it is all of the problem—is this government prohibition that it is against the law to say that this food is healthy for you. In Tasmania when I started on this campaign in 2001, I held up a Tasmanian apple and said, 'I am not allowed to take that on television and say that it is good for you.' I am not. That is the law. Before we start introducing more restriction perhaps we could have some sensible liberalisation so that there is an avenue for the marketers to go down. I believe they will go there.

CHAIR—Thank you very much.

Mr Segelov—Thank you very much for your time and your patience. I am sorry about my deafness. If I have been shouting at you it is because I cannot hear myself.

CHAIR—The committee now stands adjourned. Thank you to Hansard and the secretariat, as always.

Committee adjourned at 3.58 pm

