



Submission to the

**Australian Communications
and Media Authority**

on the

**Children's Television
Standards Review**

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About CHOICE

CHOICE is a not-for-profit, non-government, non-party-political organisation established in 1959. We work to improve the lives of consumers by taking on the issues that matter to them. We arm consumers with unbiased, expert information to make confident choices and campaign to make consumers' lives safer, fairer and better.

Executive Summary

In recent years there has been an alarming increase in the incidences of childhood overweight and obesity in Australia. The levels of childhood obesity tripled between 1985 and 1995. Overweight and obesity have very significant health and financial costs. A growing body of evidence suggesting that food advertising influences children's food preferences, diet and health, and that better regulation of marketing and promotion of food to children is warranted as part of a broader government response to childhood obesity.

CHOICE believes that the current Children's Television Standards are ineffective in protecting children from the influence of advertisements for unhealthy foods for the following reasons:

- Regulation of food marketing to children is mostly left to industry codes.
- The majority of food advertisements are for unhealthy foods.
- The CTS applies only to advertisements during children's (C) and preschool (P) programs, not during the periods when most children are watching television, for example the early evening.
- Existing standards and codes don't prevent the use of celebrities, cartoon characters and sporting personalities to appeal to children.
- Competitions, prizes, giveaways and premiums are used to create incentives to buy foods.
- The current system does not adequately deal with 'pester power'.
- Complex complaints processes aren't consumer-friendly and are likely to discourage complaints.
- The term 'directed to children' is not defined.
- There are no equivalent standards that apply to other media, in particular subscription (pay) television and the Internet.

CHOICE recommends that ACMA promote nutrition-based regulation of advertisements for unhealthy food using the Food Standards Australia New Zealand (FSANZ) nutrition profiling system. Under this model regulations would prohibit advertising foods which are classified as unhealthy because they fail particular nutrition tests. Nutrition-based regulation should apply not only during C and P programs but also during periods when a large proportion of children are viewing, and to other programs that are popular with children. It should also be used to determine appropriate products and manufacturers for program sponsorship, and which products can be advertised to children, or use techniques that appeal to children.

There is strong community support for stricter regulation of food marketing to children. ACMA must respond to consumers' calls for tight regulation to protect children from the unhealthy influence of food marketing.

Introduction

CHOICE appreciates the opportunity to provide comments to the Australian Communications and Media Authority (ACMA) on its review of Children's Televisions Standards (CTS). For over 20 years CHOICE has been concerned about the impact of food marketing on children's health and has called for tighter restrictions on food advertising to children.

Childhood overweight and obesity have reached critical levels in Australia. About one in five Australian children are estimated to be overweight or obese¹. More recent estimates from NSW suggest it could now be as many as one in four². Alarming, today's children might be the first generation to have a shorter life expectancy than their parents³.

Overweight and obesity have enormous health and social consequences. Children who are overweight are likely as adults to have an increased risk of high blood pressure and blood cholesterol levels, two factors associated with heart disease. Type 2 diabetes – often called adult-onset diabetes because it usually doesn't develop until adulthood – is now appearing in children and adolescents⁴.

Short-term health problems associated with childhood obesity include orthopaedic problems such as back pain and flat feet, respiratory conditions such as asthma and sleep apnoea, and psychosocial impacts such as poor self-esteem, depression and learning difficulties. Longer-term health impacts of overweight and obesity include cardiovascular disease, Type 2 diabetes, stroke, cancers, osteoarthritis, and kidney and gall bladder disease⁴.

Overweight and obesity affect about 9 million Australian adults and a further 1.5 million children, and its associated illnesses place an enormous burden on our health system and society in general. The total cost of obesity in 2005 was estimated to be as high as \$3.767 billion⁵. This includes productivity costs, costs to the health system and carer costs.

Poor eating habits coupled with a sedentary lifestyle over a prolonged period lead to weight gain. Overweight children are more likely to become overweight adults. Bad childhood eating habits are difficult to break so it's vital that children have a healthy diet from an early age.

Over the last decade there has been increased government attention given to childhood obesity, with a series of obesity forums held by Commonwealth and State and Territory governments. There are many causes of childhood obesity and therefore a range of actions are needed to address the problem. Strategies to address obesity are needed in schools, health services, neighbourhoods, communities, workplaces, the food supply and food marketing, and the media.

¹ Magarey, AM et al (2001). Prevalence of overweight and obesity in Australian children and adolescents: reassessment of the 1985 1995 data against new standard international definitions. *Medical Journal of Australia*. 174, p561-564.

² NSW Centre for Overweight and Obesity (2006). *NSW Schools Physical Activity and Nutrition Survey 2004: Short Report*. Sydney : NSW Department of Health.

³ Australian Medical Association (24 April 2006). Media release, *National Nutrition Survey needed in war against obesity 'epidemic'*. <http://www.ama.com.au/web.nsf/doc/WEEN-6P69Q9>. Accessed 27/9/06.

⁴ National Obesity Taskforce (2003). *Healthy Weight 2008: The national action agenda for children and young people and their families*. Canberra, Department of Health and Ageing.

⁵ Access Economics (2006). *The economic costs of obesity*. Report by Access Economics Pty Ltd to Diabetes Australia.

While numerous school and community initiatives have been implemented across Australia, CHOICE is concerned that progress in relation to improving food marketing and the food supply has been limited, primarily due to resistance from the food and advertising industries that are fearful of the impact of stricter regulation on their bottom line.

Whose responsibility?

The causes of obesity are many and complex. For many years politicians, health professionals, academics, industry and the community have debated whether unhealthy diet, lack of exercise, food marketing or poor parenting is to blame. And all the while Australian children have been getting fatter. In order to reduce our rate of childhood obesity we must all take responsibility: governments, the food and advertising industries, health professionals and schools as well as parents and individual consumers.

To date, much of the focus has been on encouraging individuals to eat a healthy diet and exercise regularly. The onus for ensuring children maintain a healthy weight has been placed on parents. But rates of obesity are steadily increasing and it is evident that this strategy by itself is not working.

Parents are ultimately responsible for what their children eat and drink at home and at school. Children also learn healthy, or unhealthy, eating and lifestyle habits from their parents. Unhealthy eating habits developed in childhood can be hard to break.

But parents can only do so much. We live in an environment that makes their job harder. Parents are busier and have less time to prepare meals and many rely on convenience foods. Children spend more time watching TV, surfing the internet or playing computer games. Parents have only limited time and ability to supervise all their 'screen time'. There is an abundance of kilojoule-laden snacks and fast food meals that are convenient for parents and appealing to kids. On top of this there is the relentless promotion of unhealthy foods to kids through TV, internet and other media.

If parents are expected to take ultimate responsibility for their children's health and diet then we need to both assist them to make healthy choices for their children (through for example better food labelling) and remove some of the factors that undermine parents' authority including marketing that promotes peer power.

But not all parents will make choices in the best interest of their children all the time. When parents consistently fail to make healthy food choices it is the children who are likely to suffer. Tighter regulation of food advertising to children helps to limit the health consequence for these children.

Childhood obesity and the impact of food marketing

CHOICE does not suggest that promotion of unhealthy food to children is the only factor contributing to overweight and obesity nor is better regulation of food marketing to children the only course of action that CHOICE supports. CHOICE's childhood obesity campaign document *Little Bellies, Big Problems*⁶ includes seven calls to action to help combat childhood overweight and obesity. These are:

⁶ CHOICE (2006). *Little bellies, big problem: how parents, governments and industry can solve Australia's childhood obesity crisis*. CHOICE.

1. Effective health promotion and healthy eating education programs for parents and children.
2. Food manufacturers and fast food outlets to reduce the fat, sugar, kilojoules and salt content of kids' food.
3. Better alignment of the Commonwealth Government's anti-obesity strategies with food regulation.
4. A consistent nutrition labelling scheme to help consumers make healthy choices.
5. Active enforcement of the new nutrition, health and related claims standard.
6. Stronger government regulation of food marketing to children.
7. A single contact point for complaints about food ads.

We believe the evidence is now overwhelming that childhood obesity cannot be tackled without including changes to food marketing as part of the package of reforms, and conversely we believe that regulation of food marketing will have a positive impact on obesity.

Previous research by CHOICE highlighted that many foods designed for and aimed at children were unhealthy. A survey of lunchbox snacks found that 75% were too high in kilojoules, saturated fat, sugar or sodium to be a healthy everyday lunchbox snack⁷. Nearly half of children's breakfast cereals assessed contained more than 27% sugar and 40% of those cereals contained more than 40% sugar. 24% of children's cereals were also high in salt. Most were a poor source of fibre compared to many other breakfast cereals that weren't aimed specifically at children⁸.

Australian children continue to be bombarded with TV ads for unhealthy foods and exposed to significantly fewer ads for healthy foods. A study by Chapman et al⁹ found that 81% of foods advertised during 7am and 9pm on weekdays and weekends surveyed in four locations across Australia were for unhealthy or non-core foods. A study prepared by the Australian Centre for Health Promotion¹⁰ commissioned by NSW Health found that advertisements for high fat/high sugar foods were most frequent during programs that rated highly with children, equating to 65.9% of food ads during programs popular with 5-12 year olds.

A number of international studies and systematic reviews conclude that food advertising influences children's food preferences, diet and health. Livingstone¹¹ concluded that exposure to advertising influences food preferences of 2-11 year olds and that television exposure was associated with weight or obesity among children and adolescents.

A systematic review commissioned by the UK Food Standards Agency, conducted by Hastings et al¹², concluded that there was a lot of food advertising to children and that the advertised diet was less healthy than the diet recommended by health authorities. This review

⁷ CHOICE (2005). Lunchbox Lessons. *CHOICE Magazine*, January/February 2005, p23-27.

⁸ CHOICE (2007). Serious cereals. *CHOICE Magazine*, May 2007, p8-13.

⁹ Chapman, K et al (2006). How much food advertising is there on Australian Television? *Health Promotion International*, 21, 172-180.

¹⁰ Australian Centre for Health Promotion (2006). *Report to NSW Health: Food advertising on Sydney television - the extent of children's exposure*. School of Public Health, University of Sydney.

¹¹ Livingstone, S (2006). *New Research on Advertising Foods to Children - An Updated Review of the Literature*. Annex 9 to the Ofcom report - Television advertising of food and drink products to children.

¹² Hastings, GB et al (2003). [Review of Research on the Effects of Food Promotion to Children](#). Food Centre for Social Marketing, Glasgow.

also found that food promotion affects children's preferences, purchase behaviour and consumption. A report by the Institute of Medicine¹³ in the US found that there was strong evidence that TV food advertising influenced the food preferences, purchase requests and short term consumption of children aged 2 - 11 years.

Parents play a vital role in ensuring that children eat a healthy diet, but they need help. Governments have a role to play in providing parents with the tools to make healthy choices for their children and removing the barriers that make their job difficult.

The level of childhood obesity in Australia tripled between 1985 and 1995 and has continued to increase since then⁴. Given this increase we believe better regulation of marketing and promotion of food to children is not only warranted, but overdue. We acknowledge efforts within the industry to improve self regulation, but it is clear that these have not been sufficient to adequately protect children from the promotion of unhealthy food.

Support for regulating and/or banning food advertising to children

A May 2006 Newspoll survey commissioned by CHOICE asked 1200 consumers about their attitudes to childhood obesity¹⁴. A third of the participants were parents or legal guardians of at least one child under the age of 18.

Most parents (88%) said that parents themselves could be doing more to help overcome the problem, while 69% said governments could do more. The survey also investigated attitudes towards three potential government initiatives, revealing overwhelming support for government action in all cases.

- ⇒ 82% wanted government to regulate the way food and drinks are advertised and marketed to children.
- ⇒ 80% were in favour of educating parents and children to develop healthy eating habits.
- ⇒ 83% wanted the government to require manufacturers to make children's foods healthier.

When asked about advertising unhealthy foods and drinks during popular children's TV programs:

- ⇒ 24% supported government action to stop the practice completely
- ⇒ 65% thought government should restrict the practices but not stop it completely
- ⇒ 10% said the practices should be not regulated by government at all

Survey participants were also asked about the use of cartoon characters, popular media personalities and toys to market unhealthy foods to children.

- ⇒ 26% wanted government to stop these practices completely
- ⇒ 59% thought governments should restrict these practices but not stop them completely
- ⇒ 13% said these practices should be not regulated by government at all

Parents understand that they need to do more to prevent children becoming overweight. But they can't do it alone. Our research showed that consumers think government should step in.

¹³ Institute of Medicine of the National Academies (2006). *Food Marketing to Children and Youth, Threat or Opportunity?* The National Academies Press.

¹⁴ CHOICE (2006). *Childhood Obesity Research - CHOICE/Newspoll Survey*. CHOICE.

More recently, the Coalition on Food Advertising to Children (CFAC) commissioned a survey of 400 parents which showed that more than half of the respondents supported a ban on advertising of unhealthy foods at times when children were watching TV¹⁵. *In addition*, more than a quarter supported a total ban on advertising of unhealthy foods – more than three quarters of survey respondents wanted all advertising of unhealthy foods banned, or advertising of unhealthy foods banned at times children are watching. Further, CHOICE understands that some 20,000 individuals have supported the CFAC Pull the Plug campaign which calls for better regulation to protect children from food marketing.

Clearly, there is strong community support for stricter regulation of food marketing to children. While figures differ as to the extent to which consumers support bans on food advertising, there appears to be strong community support for the view that bans are one way of achieving tighter regulation. ACMA must respond to consumers' calls for tight regulation of food advertising to children.

Inadequacies of the current regulation of food marketing to children

Given the seriousness of obesity in Australia and the impact that food marketing can have on children's food preferences, CHOICE believes that further government regulation of food marketing to children is one of many actions that need to be taken to reverse increasing obesity rates.

We believe that there is scope within the CTS to limit children's exposure to food advertising when they are watching television. Currently, there is only one clause in the CTS that addresses food advertising. Provision 19(6) requires that advertisements for food products may not contain any misleading or incorrect information about the nutritional value of the product.

CHOICE believes that the CTS is ineffective in protecting children from the influence of advertisements for unhealthy foods because it fails to address the following issues.

1. Regulation of food marketing to children is mostly left to industry codes

Apart from CTS provision 19(6), the main regulation of food marketing to children is through industry self-regulatory codes such as the Australian Association of National Advertisers (AANA) Code on Advertising to Children, the AANA Food and Beverages Advertising and Marketing Communications Code, and the Free TV Australia Commercial Television Industry Code of Practice.

These codes are developed, enforced and reviewed by industry bodies representing the interests of broadcasters, advertisers, marketers and other industry partners such as the food industry that rely on marketing and advertising to sell products. It is these industries that stand to benefit most from weak self-regulatory codes, and confusing and protracted complaints processes.

These industry marketing codes fall well short of best practice in relation to their governance, processes and content.

¹⁵ Morley, BC (2007). *National Community Survey of TV Food Advertising to Children*. Prepared by Centre for Behavioural Research in Cancer, The Cancer Council Victoria for the Coalition of Food Advertising to Children.

2. Many more advertisements for unhealthy foods than for healthy foods

Recent studies of food advertisements indicate that advertisements for unhealthy foods (high in fat, sugar and/or salt) such as sugary breakfast cereals, fast food and confectionary significantly outweigh advertisements for healthy or 'core' foods such as fruits and vegetables, wholegrain breads, low-fat dairy products¹⁰. One study estimated that four in five food ads between 7am and 9pm were for unhealthy foods⁹.

The 'advertised' diet differs dramatically from healthy eating guidelines such as the Australian Guide to Healthy Eating and the Australian Dietary Guidelines. Food advertising has the capacity to influence children's food preferences not only by making products appear attractive but by misrepresenting how highly processed, sugary, fatty and salty foods fit into a balanced diet.

Unhealthy foods can be included in a balanced diet as treats. However, if children continue to be exposed to more advertisements for occasional treat foods than the core foods that should be consumed regularly, this is likely to distort their perception of the place of these treat foods in a balanced diet.

3. Children don't just watch C and P programs

OzTAM data published by ACMA in conjunction with the CTS Review Issues Paper indicate that more children watch television outside the C and P program time slots than inside them. In fact more children watch television in the early evening between 5 pm and 9 pm that in the times directly before and after school and weekend mornings which have been traditionally thought of as peak children's viewing times when most C and P programs are scheduled¹⁶.

The list of the 50 top-rating programs for people aged 0 – 14 in January to June 2006 includes few C or P programs. Reality TV programs *Big Brother*, *Australian Idol* and *The Biggest Loser* feature prominently as do the PG-rated animated series *The Simpsons* and *Futurama*. Currently, the CTS only regulates food advertising during C and P programs

4. Celebrities, cartoon characters and sporting personalities appeal to children

CTS provision 22 states that advertisements featuring C or P program characters should not be used to endorse products during, or immediately before or after a C or P program in which the character appears. The CTS does not prevent the use of other characters, celebrities or sports personalities. Australian sportspeople have promoted sugary cereals and snack bars; pop stars have promoted sugary soft drinks such as Pepsi, and Shrek movie tie-ins have been used to promote fast food restaurants. These characters and celebrities are recognised and likely to be admired by or appeal to children.

5. Competitions, prizes, giveaways and premiums create incentives to buy food

While not solely the domain of television advertising, competitions, prizes, giveaways and premiums appeal to children. The best known example of a premium is the McDonalds Happy Meal which consists of a burger, fries and a small soft drink as well as a toy usually associated with the latest TV show, movie or children's craze. Each set of toys is available for a limited time.

Other TV ads associated with the latest movies require you to purchase chocolate bars or soft drinks for your chance to enter a competition to win money, holidays, computers, and so on. Not only does the chance to win a prize or get a toy appeal to children there is usually an incentive to buy more of the product to increase the chances of winning, or in the case of the

¹⁶ *Children's Viewing Patterns on Commercial, Free-to-air and Subscription Television, report analysing audience and ratings data for 2001, 2005 and 2006.* Australian Government.

McDonalds Happy Meal to purchase the Happy Meal regularly to collect the entire set of toys.

See “Premium offers” below for more details.

6. The current system does not adequately deal with ‘pester power’

It is not the content of advertisement alone that contributes to ‘pester power’. The persuasive nature of advertising creates an awareness of a particular product that appeals to children which may result in them continually asking their parents for that product until they get it. The CTS does not deal specifically with ‘pester power’ nor does it address many of the techniques listed above that contribute to ‘pester power’.

7. Complex complaints processes aren’t consumer-friendly

The current processes for making a complaint about food advertising require consumers to have some understanding of the CTS and the industry codes and be able to identify the relevant body to which they should direct their complaint. Rather than making it easy for a consumer to complain about an advertisement, the complexity of the system is likely to deter consumer complaints and the experience of complaining may not be a positive one should the complaint be directed to the wrong organisation.

See “Complaints processes” below for more details.

CHOICE acknowledges that the Commercial Television Industry Code of Practice and the AANA Food and Beverage Marketing Communications Code more fully address food marketing to children than the CTS. However, CHOICE believes the inadequacies in the CTS discussed above are equally applicable to the industry codes. While these codes include more detailed provisions relating to the food advertising and marketing to children, they do not protect children from the influence of advertising of unhealthy foods in any significant way.

On the surface the introduction of the AANA Food and Beverages Advertising and Marketing Communications Code in 2006 appeared to tighten restrictions on food advertising to children. However, it fails to address many concerning aspects of food advertising to children such as the use of celebrities and the volume of ads for unhealthy foods. Further comments on the weaknesses of the AANA Code are contained in our submission to the AANA dated July 2006. A copy of CHOICE’s submission to the AANA accompanies this current submission.

The definition of ‘directed to children’

The CTS does not define the term ‘directed to children’ yet the Issues Paper suggests that food advertisements could be regulated on the basis of whether they are ‘directed to children’. Until such time as the term ‘directed to children’ is adequately defined CHOICE is cautious of CTS food advertising restrictions being based on this term as it could create regulatory loopholes and limit the capacity of the regulations to protect children from exposure to the influence of advertisements for unhealthy foods.

The OzTAM figures cited above suggest that the programs most popular with children include reality TV programs such as *Australian Idol* and *Big Brother*, as well as PG-rated animated series *The Simpsons* and *Futurama*. Advertisements broadcast during these programs might use messages and characters that are intended to appeal to adults but many children will be exposed to these advertisements and the food products advertised are likely to appeal to children.

It appears that there is already a trend towards food manufacturers directing advertisements for popular children's foods to parents, rather than directly targeting children. These advertisements often highlight the positive nutritional benefits of these products, even if the product itself is not healthy. For example:

1. The most recent Kellogg's Coco Pops advertising campaign featured popular children's TV presenter Monica Trapaga talking about the added vitamins and minerals in Coco Pops breakfast cereal, despite the fact that the product has more than 36% sugar and is a poor source of fibre compared to most other breakfast cereals.
2. The advertising campaign for the Natural Confectionery Company jellies and the Natural Soft Drink Company soft drinks imply that parents can happily feed these products to their children because they are 'fat free' and contain no artificial colours, flavours or additives, making them healthy alternatives to regular lollies and soft drinks. In reality, they contain just as much sugar as the regular lollies and soft drinks, and are not healthy products.
3. An advertising campaign for Chuppa Chups lollipops promoted the 'real fruit' content, indicating that they were a healthy alternative to other lollipops. In reality, Chuppa Chups had just as much sugar and contained a mere 3% fruit pulp. The majority of the product is added sugar.

These advertisements spoke directly to parents and might not be considered to be 'directed to children'. However, all these advertisements were talking about the products as a food for children and featured footage of children and their parents and in most cases the children were consuming and enjoying the advertised product. The use of children and a popular children's presenter to advertise children's products means that these advertisements still appealed to children, despite the fact that the advertisement ostensibly targeted parents. They were also aired between during times when children were likely to be watching.

If a narrow definition of the term 'directed to children' is adopted then these advertisements might theoretically be aired during C programs and other shows popular with children, influencing children to prefer and request these unhealthy foods.

CHOICE believes that a broader definition of the term, capturing the trends identified above, would be more appropriate. Alternatively, the term 'appealing to children' would be more suitable as it would capture all advertisements that appeal to children, for example, because the product itself is aimed at children, the advertisement features children, or it uses techniques such as celebrities, characters and giveaways to appeal to children.

CHOICE's comments on proposed regulatory options

9.1 Maintaining the status quo

CHOICE does not support this option as it does nothing to address the inadequacies outlined above.

9.2 Commercial television industry to adopt a monitoring and reporting code

In theory, better monitoring of and reporting on the effectiveness of current codes would be an improvement on the status quo, but CHOICE believes this should be in addition to, not in place of, better regulation of food advertising to children. CHOICE believes that current industry codes do not successfully regulate many of the aspects of food marketing to children that need to be addressed, such as the imbalance of ads for unhealthy foods compared with

healthy foods and the regulation of food advertising outside C and P programs during other shows that are popular with children.

In addition, the processes for making complaints against these codes are complex. This is likely to deter consumers from complaining as they require some understanding of the standards and industry codes and the relevant enforcement or complaints process. As a result, there are few consumer complaints about food marketing. Reporting on complaints to these codes are unlikely to be an accurate representation of how successfully these codes are responding to community concerns about food advertising to children.

9.3 Incorporate the additional food advertising provisions from the Food and Beverages Advertising and Marketing Code into the CTS and apply CTS advertising provision (excluding restrictions on the amount of advertising allowed during C programs) to all advertising directed to children

This option would go some way to address CHOICE's concerns; however CHOICE believes that regulation of food advertising to children is more likely to be successful if it is the responsibility of a government regulator rather than industry codes. The content of the current industry codes is not sufficient to address CHOICE's concerns about food advertising to children as outlined above in "*Inadequacies of the current system for regulating food marketing to children*".

As noted above, CHOICE is also concerned that the definition of the term 'directed to children' – or lack there of – could create unfortunate loopholes. See "*The definition of 'directed to children'*" above for more details.

If reliance was to be placed on Codes then they would need to be consistent with current best practice. Ideally they would be developed and approved under a co-regulatory model which would:

- see the Code approved by the regulator only where it is satisfied that its coverage, penalties, monitoring arrangements, process for development and review and content were adequate, and
- provide the regulator with enforcement options in cases of non compliance.

9.4 Restricting the volume and/or repetition of food and beverage advertisements allowed during C programs

This would assist in limiting children's exposure to advertisements for unhealthy food and drinks but it will not have sufficient reach. The OzTAM figures cited above suggest that more children watch TV in the early evening between 5pm and 9pm than during C and P programming time. Therefore regulating the volume and/or repetition of food ads during C programs only is not consistent with children's actual viewing patterns.

9.5 Banning all food advertisements during C programs

This would assist in limiting children's exposure to advertisements for unhealthy food and drinks but it will not have sufficient reach. Again, the OzTAM figures suggest that more children watch TV in the early evening between 5pm and 9pm. Therefore banning food ads during C programs only is not consistent with children's actual viewing patterns.

CHOICE acknowledges that a ban on all food ads during C programs will protect children from exposure to unhealthy food ads during these programs. However, CHOICE's consumer research suggests that more consumers were supportive of tighter government regulations than were supportive of an outright ban on food advertising. If, after consideration of the regulatory options available, ACMA concludes that it is necessary, simpler and more effective to ban food ads during C programs then CHOICE would support this decision

although our concerns about advertising during other times that children watch television and media other than free to air television would remain unaddressed. As noted below we do not think that a total ban on food advertising is entirely necessary and that regulation based on the nutrition content of food would be sufficient to address our concerns about the influence of food marketing to children.

9.6 Banning all food advertising directed to children

Earlier in this submission CHOICE has discussed the definition of the term ‘directed to children’ and the potential implications of basing advertising regulation on this. Despite potential flaws or loopholes in this definition CHOICE believes that this option would assist in limiting children’s exposure to advertisements for unhealthy food and drinks. We also believe that it has the scope to address marketing in children’s peak viewing times, beyond C programs. The list of Top 50 programs that children watch shows that reality TV and cartoons such as *The Simpsons* are popular with children. Therefore advertising during these programs could be classified as being ‘directed to children’ by the very nature that the program itself is popular with children.

CHOICE acknowledges that a ban on all food ads directed to children will assist in protecting children from exposure to unhealthy food ads. However, CHOICE’s consumer research suggests that more consumers were supportive of tighter government regulations than were supportive of an outright ban on food advertising. If, after consideration of the regulatory options available ACMA concludes that it is necessary, simpler and more effective to ban food ads ‘directed to children’, then CHOICE would support this decision although our concerns about advertising on media other than free to air television would remain unaddressed. As noted below we do not think that a total ban on food advertising is necessary and that regulation based on the nutrition content of food would be preferable.

CHOICE’s preferred option for nutrition-based regulation of television food advertising to children

An option that was not considered in the Issues Paper is to tighten regulation of advertising of *unhealthy* foods to children. CHOICE understands that at the time of writing the Issues Paper ACMA was unaware that Food Standards Australia New Zealand (FSANZ) was in the final stages of developing a framework for determining whether a food product would be eligible to carry a health claim*.

The framework would assess a product’s nutritional composition to determine if it is healthy enough to carry a claim about specific health benefits. The intention is that an unhealthy food should not be able to make claims about any potential positive benefits if on balance the negative nutritional attributes of the food outweigh the positive health benefits. This framework is based on a model developed by the UK communications regulator Ofcom to regulate food advertising to children.

If a food fails the nutrient profiling system it is not eligible to make a health claim on food labels or in marketing. Such foods could be considered unhealthy. CHOICE believes that this system could also be used to classify foods as ‘unhealthy’ for the purpose of regulating food advertising to children. CHOICE believes that foods which fail the nutrition profiling system should:

* A health claim is statement made on a food labelling and/or in other marketing or advertising material claiming that a product has specific health benefits, for example a margarine that claims to “lower cholesterol” or a milk that claims to be “good for healthy bones”.

- be banned from advertising during C and P programs;
- be banned from advertising during other periods when children are most likely to be viewing (e.g. 5pm – 9pm weekdays) or restrictions should be placed on the volume of advertisements for unhealthy foods (e.g. a maximum of one in every five food advertisements can be for an unhealthy product);
- not be permitted to sponsor C and P programs and other programs popular with children (manufacturers who produce a significant number of unhealthy foods should be subject to similar restrictions); and
- not be allowed to advertise directly to children or use techniques designed to appeal to children, e.g. animation, characters or celebrities popular with children, and premium offers at any time.

Premium offers

As outlined in the Issues Paper, a premium offer is “anything offered with or without additional cost that is intended to induce the purchase of an advertised product or service, such as a collectible toy that comes packaged with a food product”. As the purpose of the premium is to attract children’s attention, the use of premium offers in advertisements for food products is likely to affect children’s preferences. The literature review commissioned by ACMA suggests further research is needed to determine the extent to which this results in children pestering their parents to buy a product offering a premium. However, CHOICE believes that the intent of premium offers is to influence children and that when used to advertise unhealthy foods this creates an incentive to request these products.

The CTS states that any reference to a premium must be incidental to the main product. Two complaints made to the Advertising Standards Bureau (ASB) in 2005 argued that the focus of advertisements for McDonalds Happy Meals was on the free toy rather than the meal itself. Both complaints were dismissed because it was reasoned that the free toy given away with the Happy Meal is an integral part of the product and therefore not a premium.

The current CTS provisions regarding the use of premium offers need to be strengthened to prevent this interpretation of provisions regulating the use of premium offers in food advertising. Banning the use of premium offers in all food advertisements during C programs would assist in limiting children’s exposure to advertisements for unhealthy food and drinks but it will not have sufficient reach. The OzTAM figures suggest that more children watch TV in the early evening between 5pm and 9pm. Therefore banning the use of premium offers in food ads during C programs only would not be consistent with children’s actual viewing patterns.

Banning the use of premium offers in food advertisements directed to children has the potential to limit children’s exposure to advertisements for unhealthy foods that use premium offers. However, the definition of ‘directed to children’ may create loopholes as outlined above. CHOICE’s preference would be for restrictions to be time-based, i.e. during the periods when most children are watching television.

CHOICE also feels that the FSANZ nutrient profiling system should be used to regulate the use of premium offers in food marketing to children. If, after assessment according to the nutrient profiling system a product is deemed to be unhealthy, advertisements for this product must not feature premium offers.

CHOICE's consumer research suggests that more consumers supported tighter government regulations on food advertising to children than supported an outright ban. If, after consideration of the regulatory options available ACMA concluded that it was necessary, simpler and more effective to ban the use of premium offers on food ads during C periods, directed to children or during periods when more children are watching TV, then CHOICE would support this, however we believe that a total ban is not necessary and a ban based on an assessment of the healthy or unhealthy status of the food would better serve children's interests.

Complaints Processes

Industry self-regulatory bodies are proud of the fact that they have had few complaints about food marketing to children. The current complaints process is confusing and its complexity deters complaints rather than encouraging consumer involvement.

If a consumer wishes to make a complaint about a food advertisement they need to understand whether their complaint relates to a breach of the Children's Television Standards, the Commercial Television Industry Code of Practice or the AANA Food and Beverages Advertising and Marketing Communications Code. They also need to identify the relevant authority to which they can direct their complaint – ACMA, Free TV Australia, the relevant broadcaster, or the AANA/ASB.

According to the most recent statistics available on the ASB website¹⁷, of the 2956 complaints made in 2005, only 94 were upheld, 1753 were dismissed and a further 910 were considered outside the ASB charter. Food was the most common category of products complained about (20.85% of complaints).

Only six of the complaints related specifically to the marketing of unhealthy foods to children. All six complaints were dismissed because the subject matter of the complaint was not deemed to be in breach of the relevant advertising codes relating to the representation of nutrition information, the use of a premium, the promotion of an unhealthy lifestyle, and pester power. In two cases, the ASB determined that the advertisements were in fact directed towards adults rather than children.

We acknowledge that since this time the Food and Beverages Advertising and Marketing Communications Code has been introduced, however we believe that, if assessed against the new code, the outcome would be the same for most, if not all of these complaints.

Earlier this year, parent advocacy group Parents Jury made a series of complaints to the ASB regarding the use of the popular animated character *Shrek* in advertising and marketing material for Kellogg's, M&Ms, McDonalds and Coles. The Parents Jury argued that these advertisements were in breach of the AANA Food and Beverages Advertising and Marketing Communications Code provision on pester power. However, the ASB dismissed all six complaints, stating that they were not specifically directed to children and/or did not explicitly encourage children to pester their parents¹⁷.

These determinations suggest that the industry codes are not consistent with community expectations about appropriate marketing practices. It is likely that determinations in favour

¹⁷ Advertising Standards Bureau (2006) *2005 Complaints statistics from the Advertising Standards Bureau*
<http://www.adstandards.com.au/pages/images/facts%20and%20figures1.pdf>. Accessed 27/08/07.

of manufacturers and advertisers which are so clearly inconsistent with community standards diminish trust in the effectiveness of the Codes and discourage consumer complaints.

Complaints to ASB appear to be considered on a monthly basis. This means that a complaint may take a number of weeks to resolve. Timely complaints handling may not be an issue for a one-off breach of TV program content. However, if complaints about advertising are not dealt with immediately then a potentially inappropriate advertisement may continue to be aired, exposing children to inappropriate food advertisements while the manufacturer continues to reap the benefit of the marketing campaign.

On top of this, the penalties for non-compliance are unlikely to be sufficient to discourage breaches of the industry codes. If a complaint is upheld the advertisement is either modified or discontinued however, the advertisement will have already aired for a number of weeks before this happens and will have substantially achieved the purpose for which its proponents have invested large sums.

In addition to the ASB, the Australian Competition and Consumer Commission has responsibility for regulating false and misleading claims made in food advertisements and other forms of marketing and as well as on food labels. State and territory food and health authorities are responsible for enforcing the Australia New Zealand Food Standards Code which sets out requirements for food labels and the nutrition and health claims that can be made about foods in advertisements and marketing and on labels.

CHOICE believes that there needs to be a single regulator responsible for dealing with complaints about food marketing, including advertisements directed to children. While we acknowledge that ACMA is not responsible for enforcing the Food Standards Code and that this is therefore outside the scope of this review, we believe that there needs to be a single, independent body responsible for assessing complaints about food marketing to children.

This body should deal with a broad range of media including online, TV, print and radio and should be independent of industry organisations. Complaints about advertisements and other forms of marketing should be handled in a timely manner and there must be significant penalties to deter breaches. Further, we believe the regulatory system as a whole should be simplified so that it is easily understood by consumer rather than requiring an understanding of the various industry and regulatory bodies involved and the responsibilities of each.

Other forms of food marketing to children

CHOICE supports increased government regulation of food and beverage marketing, particularly to children. For reasons outlined above we believe that industry codes are not sufficient to limit the advertising of unhealthy foods to children, nor do they regulate in any meaningful way the other techniques used to market unhealthy foods.

A CHOICE magazine report in June 2006 uncovered a range of other techniques food manufacturers and marketers use to promote unhealthy foods to children¹⁸. These include:

- **Advergaming** – Food manufacturers websites often have dedicated kids pages with activities and games that engage children and encourage them to come back to keep playing. The Nestle website features a range of games associated with specific products such as Nesquik, Milo, Milky Bars and Maggi noodles.

¹⁸ CHOICE (2006), Food marketing: child's play. *CHOICE Magazine*, June 2006, p12-14.

- **E-cards** – Children can visit food manufacturers’ websites and send branded e-cards to their friends.
- **Screensavers and wallpaper** – Children can download images from food manufacturers’ websites to use as screensavers and wallpaper on their computers. These images feature product or company branding and act as in advertisement whenever children are using the computer.
- **Spokescharacters** – Food manufacturers develop characters that are associated with their company or specific products. These characters are easily recognised by children. Examples include the Kellogg’s Rice Bubbles characters ‘Snap, Crackle and Pop’ and McDonalds’ characters such as ‘Ronald McDonald’ and the ‘Hamburglar’.
- **On-pack promotions, competitions and collectibles** – Packaging of children’s food products often feature competitions, giveaways and activities which appeal to children. The McDonalds Happy Meal is a children’s meal that comes with a free toy. Advertisements for Happy Meals focus primarily on the toy rather than the foods.
- **Product placement** – Manufacturers can negotiate with production companies to have their brands and products featured in children’s movies, TV shows and online games. In the online game ‘The Sims’ virtual characters can be employed at McDonalds restaurants.
- **Sponsorship and fundraising** – Food manufacturers often sponsor school or community activities e.g. McDonalds sponsors NSW Little Athletics and competitors wear singlets featuring the McDonalds logo. Krispy Kreme doughnuts and Cadbury products are often used in fundraising drives for schools and community groups.

We acknowledge that many of these techniques used to market unhealthy foods to children are outside the scope of the CTS and therefore this current review, however CHOICE believes that this current review presents an opportunity to address one of the many avenues by which food manufacturers promote unhealthy foods to children. We also believe that ACMA as the media and communications regulator has the responsibility to regulate other forms of promotions to children, including in the online environment and on subscription television. These marketing techniques are currently unregulated and effective regulation is urgently needed.

Once again, CHOICE appreciates the opportunity to provide these comments on the ACMA review of the Children’s Television Standards. We trust that the issues raised in this submission will be given due consideration. Should you wish to seek further information on CHOICE’s position please do not hesitate to contact Ms Clare Hughes, Senior Food Policy Officer on (02) 9577 3375 or at chughes@choice.com.au.