



**Review of the
Commercial Television Industry Code of
Practice
Free TV Australia**

Obesity Policy Coalition's Submission

25 September 2009

Executive Summary

This submission from the Obesity Policy Coalition (OPC) focuses upon the role that the Commercial Television Industry Code of Practice (CTICP) may play in restricting unhealthy food advertising to children.

The OPC believes that there is sound evidence that unhealthy food advertising influences children's food preferences, requests and consumption and is a probable causal factor in weight gain and obesity. It shares the view of the National Preventative Health Taskforce that the evidence is sufficiently compelling to justify restricting the volume of unhealthy food advertising on television in Australia, as well as the marketing techniques most commonly used by food advertisers to target children.

The OPC was disappointed by the contrary findings by the Australian Communications and Media Authority (ACMA), when reviewing its Children's Television Standards (CTS), that the current level of evidence is inadequate to justify introducing general restrictions on unhealthy food advertising. The OPC is hopeful that ACMA will reconsider its position in light of the Taskforce's findings and recommendations.

The OPC urges Free TV Australia to take the opportunity of this review of the CTICP to consider the role that it may play in reviewing the current co-regulatory system and amending the CTICP to phase out unhealthy food advertising to children.

This submission proposes the following amendments to the CTICP:

1. At the very least, clauses 6.20, 6.23 and 1.10 should be amended to strengthen the few protections currently offered to children. The complaints handling procedures in section 7 should also be strengthened.
2. Preferably, however, comprehensive amendments should be made to the CTICP to address the volume of unhealthy food advertising to children and the marketing techniques most commonly used to target children. The OPC recommends that Free TV Australia introduce:
 - time based restrictions on unhealthy food advertising during children's peak viewing times; and
 - restrictions on the permitted content of unhealthy food advertisements that are directed to children at all other times (encompassing the advertising techniques most commonly used to target and appeal to children).

1. Recommended amendments to clauses 6.20, 6.23 and 1.10 and section 7 of the CTICP.

Advertisements Directed to Children for food and/or beverages (Section 6 - clauses 6.20 and 6.23)

Clause 6.63

Clause 6.63 is the only provision of the CTICP that deals specifically with food advertising directed to children. It states that advertisements directed to children for food and/or beverages should not encourage or promote an inactive lifestyle, should not encourage or promote unhealthy eating or drinking habits and must not contain any misleading or incorrect information about the nutritional value of the product.

The OPC is concerned that clause 6.63 is very limited in its scope and application and does not cover the marketing techniques most commonly used by unhealthy food manufacturers to create an impression that a food is healthy, or should be consumed as part of an active lifestyle or healthy diet. The factors identified in the Advisory Note to the CTICP for identifying when an advertisement is 'directed to children' are also very narrow, meaning that an advertisement is only likely to be considered to be directed to children if it is intended or designed specifically for a child audience.

The OPC recommends that:

- Section 6 should be amended to state that unhealthy food advertisements directed to children must not be misleading or deceptive or create any impression that the product is healthy or

contributes or is beneficial to, or ought to be consumed as part of, a healthy diet or active lifestyle.

- The test for determining whether an advertisement is ‘directed to children’ should be amended to require broader consideration of the circumstances in which the advertisement was broadcast, the nature of the advertisement and the nature of the food product advertised. The definition of ‘directed to children’ that the OPC proposes should be incorporated into the Advisory Note (and/or incorporated into the CTICP) for the purpose of clause 6.23 is the same as the definition of ‘directed to children’ it proposes in section 2 of this Executive Summary (for the purposes of its recommendations in relation to broader advertising content restrictions). Importantly, an advertisement, or product being advertised, should be considered to be ‘directed to children’ regardless of whether children are ‘the’ or ‘an’ intended or probable audience.
- The definition of ‘children’ should be amended to state that ‘children’ means people younger than 16 years of age (currently it means people younger than 14 years of age).

Clause 6.20

Clause 6.20 of the CTICP requires advertisements directed to children to exercise special care and judgment and to comply with the advertising provisions of the CTS (CTS 17 – 21). The effect of this clause is to extend the application of the advertising restrictions in the CTS beyond just advertisements shown during P or C programs or periods, to all advertisements ‘directed to children’.

The OPC believes that this clause offers little protection to children from unhealthy food advertising due to the limited scope of CTS 17 – 21 (the OPC notes that CTS 17 – 21 have been re-numbered to CTS 30 – 34 in the new CTS 2009). The meaning of advertisements directed to children is also likely to be limited, as discussed above in relation to clause 6.23, and apply only to advertisements that are intended or designed specifically for children.

The OPC recommends that:

- Clause 6.20 should be amended to require that the reference to CTS 17 – 21 be amended to CTS 30 to 34 to reflect the new CTS 2009.
- Clause 6.20 should be amended to include a reference to, and thereby incorporate, CTS 35 (promotions and endorsements by popular characters).
- At the very least, the definition of ‘directed to children’ proposed by the OPC in section 2 of this Executive Summary (for the purposes of its recommendations in relation to broader advertising content restrictions) should apply to clause 6.20. However preferably, the CTICP should require that the advertising provisions in CTS 30 - 35 apply during children’s peak viewing periods, i.e. weekdays: 6am – 8.30am and 4pm – 9.30pm and weekends and school holidays: 6am – 10am and 5.30am – 9.30pm.
- The definition of children should be amended to state that ‘children’ means people younger than 16 years of age (currently it means people younger than 14 years of age).

[Ideally, as proposed below, stricter restrictions on the advertising techniques most commonly used to market unhealthy food to children should be introduced under the CTICP and apply at all times].

Requirements for Television Commercials (clause 1.12)

Clause 1.12 of the CTICP states that television advertisers are expected to ensure that their commercials comply with the AANA Advertiser Code of Ethics and the AANA Code for Advertising to Children

The OPC recommends that:

- Clause 1.12 of the CTICP should be amended to reflect that television advertisers are also expected to ensure that their commercials comply with the AANA Food and Beverages Advertising and Marketing Communications Code.

Handling of complaints to Licensees (section 7)

The procedures for handling complaints under the CTICP are outlined in section 7.

The OPC is concerned about the complexity of the current procedures for handling complaints and the time taken to respond to complaints. It is also concerned that the current system is complaints based only, that all complaints about commercial content are referred to the Advertising Standards Board and that no appropriate sanctions or penalties are available to deter or penalise breaches of the CTICP (in relation to advertising content).

The OPC recommends that:

- ACMA (or a separate watchdog) should be required to monitor compliance with the CTICP or pre-vet advertisements.
- Proposed clause 7.2.3 to the CTICP (that requires complainants to identify the date and time an advertisement was broadcast, or the television program in which it was broadcast) should be deleted.
- To improve the accessibility of the complaints system for viewers, the CTICP should be amended to:
 - Remove the requirement for complaints to be in writing – allow telephone and email complaints.
 - Provide a toll-free number for viewers to submit telephone complaints.
 - Improve the accessibility of information about complaints procedures on the Free TV and ACMA websites. Currently, this information is buried amongst the huge amount of information on the websites and may be difficult for viewers to locate.
 - Publish *all* reports of investigations into CTICP breaches on the ACMA website.
- Complaints about the content of advertisements (unless the complaint relates to the CTS or an AANA Code) should be dealt with by the licensee and/or ACMA. Appropriate sanctions and penalties should apply and be actively enforced. ACMA should also review its procedures to improve the speed of the complaints handling process and devote more resources to complaints handling.
- Free TV Australia should expressly be provided with the power to commence own motion complaints about the placement and content of advertisements to licensees and/or ACMA.

2. Recommended amendments to the CTICP to comprehensively address the volume of unhealthy food advertising to children and the marketing techniques most commonly used to target children

The OPC believes that merely adopting the recommendations outlined above will be inadequate to protect children from the potentially harmful impacts of unhealthy food advertising. Comprehensive restrictions that address the volume of unhealthy food advertising to children and the marketing techniques most commonly used to target children are urgently required. Accordingly, the OPC recommends that Free TV Australia amend the CTICP to:

- Carefully define key terms;
- Introduce time-based restrictions on unhealthy food advertising; and
- Introduce restrictions on the permitted content of unhealthy food advertisements that are directed to children

If Free TV Australia is not willing to introduce and enforce the comprehensive restrictions recommended by the OPC, legislation will be required to ensure that they are introduced and that unhealthy food advertising is adequately phased out within four years (as proposed by the Taskforce).

Define key terms

Advertising restrictions should apply to ‘unhealthy food’, which should be defined as any food or beverage product that fails to meet an Australian nutrient profile scoring criteria for eligibility of foods or beverages to be advertised directly to children (including during any time based advertising restrictions on television). This criteria should be based upon the criteria developed by Food Standards Australia New Zealand for identifying foods eligible to make health claims, under the proposed new health claims standard to be included in the Australia New Zealand Food Standards Code (and the similar criteria developed for the Office of Communications in the UK as the basis for it identifying

high fat, sugar and salt foods that are subject to restrictions on television advertising in programs popular with children).

Restrictions should apply to ‘unhealthy food advertising’, which should be defined broadly to include any visual or audible message that publicises or promotes an unhealthy food, or a trade mark, character, design, brand or name of a manufacturer that is closely associated with an unhealthy food. As such, it should cover all direct advertising for unhealthy food, as well as indirect forms of promotion such as sponsorship matter, product placement and brand advertising.

‘Children’ should be defined as children younger than 16 years of age.

Time-based restrictions

Restrictions on the broadcast of unhealthy food advertising should apply during the following time periods:

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

Content restrictions

In addition to time-based restrictions, restrictions should be imposed on the content of unhealthy food advertising ‘directed to children’. An advertisement should be considered to be ‘directed to children’ if any of factors, such as the following, indicate that the advertisement is intended for, or is likely to appeal to children:

- The age of people (actors or presenters) in the advertisement (particularly whether the advertisement featured children who appeared to be younger than 16).
- Personalities or characters featured in the advertisement, for example:
 - personalities or characters popular with children or appealing to children;
 - personalities or characters from children’s media (television programs, books, films, comics, magazines, computer games etc); or
 - cartoon or fantasy characters.
- Any offers of premiums, competitions, prizes or other benefits promoted in the advertisement that would be likely to interest children.
- Any activities featured in the advertisement that would be likely to interest children, for example, sports, games, competitions, quizzes, quests or challenges.
- The presentation or design of the advertisement, for example, use of:
 - imagery or graphics likely to appeal to or interest children, for example, cartoons, bold graphics, or images or pictures of children, animals, toys or balloons;
 - colours likely to appeal to children;
 - music or songs likely to appeal to children;
 - production techniques or technical effects likely to appeal to or interest children, such as animation, repetition, fast cutting; and/or
 - language intended or suitable for children, or spoken by or directly to children.
- The content of the advertisement, for example, themes, plots or concepts likely to interest or appeal to children, such as fantasy, magic, adventure, fun, play, suspense, heroism, school, peer relationships, peer admiration, sporting success or youth culture.
- The nature of the product advertised – whether it is intended for children, likely to appeal to children, usually promoted to children, or typically consumed by children.
- The likely audience for the advertisement (based on the time when, and the program during or adjacent to which, the advertisement is broadcast).

Alternatively, specific restrictions could apply to the types of unhealthy food advertising most commonly used to target children, such as:

- advertisements that feature a personality or character which is popular with or appealing to children;

- advertisements that feature or refer to a premium (including a competition/prize offer), if the premium would be likely to appeal to children;
- advertisements that are intended or likely to lead a child to believe that possession or consumption of the advertised product would lead to social success or peer approval.

1 Introduction

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

The OPC is grateful for this opportunity to participate in Free TV Australia’s review of the Commercial Television Industry Code of Practice (CTICP). The OPC’s interest in this review relates to the role the CTICP may play in regulating ‘unhealthy food’¹ advertising to children. While the OPC recognises that the issue of unhealthy food advertising to children is not a focus of this review, it believes that consideration of this issue (and in particular, the role that the CTICP may play in addressing it) is required in light of the National Preventative Health Strategy recently released by the National Preventative Health Taskforce.

Taking into account the objectives of the *Broadcasting Services Act 1992* and the CTICP, this submission urges Free TV Australia to amend the CTICP to protect children from unhealthy food advertising by amending the provisions that currently relate to advertising directed to children for food and/or beverages (clause 6.23, 6.20), requirements for television commercials (clause 1.10) and the handling of complaints (section 7). It also identifies the further reforms that will be required to the CTICP (or via legislation if Free TV Australia is not willing to act) to comprehensively and adequately protect children from the potentially harmful impacts of unhealthy food advertising in Australia.

2 Food advertising and promotion to children

Australian children are exposed to vast amounts of advertising for unhealthy foods on commercial free-to-air television. There is sound evidence that this influences their food choices and contributes to weight gain and obesity (which has significant social, health and economic consequences). It also raises serious ethical issues given many children cannot properly understand or interpret advertising messages. The current co-regulatory scheme to protect children from food advertising is highly ineffective.

Background information in relation to food advertising and promotion to children (and its impacts) is summarised below. A more detailed overview of the evidence is provided in the **Appendix** to this submission.

Extent of food advertising and promotion to children

Australia has one of the highest rates of food advertising aimed at children on television in the world, rates of food advertising are highest at peak viewing times for children, and the vast majority of food advertising is for unhealthy products.

Promotion of unhealthy food to children through other media and in other contexts is also becoming increasingly pervasive. Unhealthy food products are advertised and promoted to children through subscription television, children’s websites, magazines and films, email and SMS messages, sponsorship of schools and children’s sport, product placement, and through point of sale promotions, such as competitions, premium offers and give-aways.

Evidence of the effects of food advertising and promotion on children

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

Most health agencies, researchers and experts agree that the evidence justifies intervention to restrict and/or change the nature of food advertising to children as one component of a multi-strategy approach

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

to improve children's diets and reduce obesity. Modelling undertaken in the recent 'ACE Obesity' project indicates that restricting children's exposure to TV food advertising is likely to be a particularly effective and cost-effective strategy for preventing obesity in children and adolescents.

Possible harmful effects of food advertising on children's health

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

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

Overweight and obesity in Australian children

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

Ethics of advertising unhealthy foods to children and rights of children

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

Consumer concern about advertising of unhealthy food to children

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

International action to prevent advertising of unhealthy foods to children

Internationally, countries and health agencies are recognising the need to restrict children's exposure to advertising for unhealthy foods. For example, in 2007, restrictions on television advertising of high fat, sugar and/or salt foods to children under 16 were introduced in the United Kingdom.

Inadequacy of current regulations to protect children from food advertising

The current co-regulatory system is ineffective for protecting children from the harmful effects of food advertising. The existing codes, standards and voluntary initiatives do not apply during the programs and time-periods when children are most likely to watch television, and are substantively ineffective for protecting children.

Problems with self-regulation of food advertising

Self-regulation is not effective for addressing food advertising and promotion to children.

Food advertising to children poses serious public health and public interest concerns, and should not appropriately be addressed by self-regulation.

Food advertisers lack sufficient incentive to develop, comply with, and enforce effective food advertising restrictions.

Self-regulatory schemes do not typically restrict the amount, timing or placement of food advertising directed to children, or the nature of products that may be advertised, and are not effective for ensuring children's exposure to advertising for unhealthy foods is minimised.

In addition, there are often deficiencies in the administration, complaint handling and enforcement of advertising self-regulatory schemes.

3 Recent reviews and developments

This review of the CTICP is occurring at a time when the Australian government and related bodies are actively engaged in assessing how the problems of overweight and obesity may be addressed through comprehensive action by federal, state and local governments, schools, community organizations, the medical industry, the food and advertising industries and others.²

Of particular relevance to this review, the impact of food advertising on childhood overweight and obesity (and whether further restrictions are required) has recently been explored by the National Preventative Health Taskforce (Taskforce) and the Australian Communications and Media Authority (ACMA). When considering how the CTICP may be improved, Free TV Australia should give these reviews careful consideration.

3.1 Recommendations of the National Preventative Health Taskforce

The National Preventative Health Strategy (Strategy) was recently released by the Taskforce and announced by Federal Health Minister Nicola Roxon on 1 September 2009.³ With respect to the issue of unhealthy food advertising to children, the Taskforce took the view that:

“Phasing out the marketing of unhealthy foods during peak viewing periods and during periods when children and young people are watching television would help to reinforce and normalise healthy eating for Australian children, and enable them to make healthier food choices”. (p.122)

The Taskforce found that “on balance, the weight of evidence of the negative effects of inappropriate food advertising on children’s knowledge, attitudes, food preferences and consumption is now sufficiently compelling to recommend ameliorative action”. (p.125)

Accordingly, the Taskforce recommended:

“Phase out the marketing of energy-dense nutrient-poor EDNP food and beverage products before 9pm, on free-to-air and Pay TV, and phase out premium offers, toys, competitions and the use of promotional characters, including celebrities and cartoon characters, used to market EDNP foods and beverages to children within four years by:

- Developing and adopting an appropriate set of definitions and criteria for determining EDNP food and beverages.
- Monitoring and evaluating the impact of voluntary self-regulation in reducing children’s exposure to unhealthy food advertising
- Identifying any shortfalls within the current voluntary approach, and addressing this through the introduction of a co-regulatory agreement; monitor, evaluate and report on effectiveness of co-regulation
- Introduce legislation within four years if these measures are not demonstrated to be effective.”

While proposing a staged approach to phasing out unhealthy food advertising, the Taskforce has recommended that it commence with the phasing out of unhealthy food advertising on free-to-air and Pay TV before 9pm, given the significant reach of television and its influence on children’s food preferences and purchasing request.

² See for example, the National Preventative Health Taskforce’s National Preventative Health Strategy, ACMA’s review of the Children’s Television Standards, the Final Report of the National Health and Hospitals Reform Commission and the House of Representative’s Health Committee’s report *Weighing it up*.

³ National Preventative Health Taskforce. *Australia: The Healthiest Country by 2020. National Preventative Health Strategy – the roadmap for action*. 30 June 2009. Available at: www.preventativehealth.org.au

3.2 Review of the Children's Television Standards

The OPC was disappointed that on the same day the Taskforce's Strategy was announced, ACMA announced its new Children's Television Standards (CTS) and confirmed its view that there is inadequate evidence of a link between food advertising and obesity to justify taking action to introduce general restrictions on unhealthy food advertising.⁴ This view is in direct contrast to the view expressed by the Taskforce, that the evidence is compelling enough to justify taking action.

Following ACMA's two year review, the new CTS continue to apply only immediately before, during and after low-rating, C and P programs and periods. The only standards contained in the CTS that purport to protect children from unhealthy food advertising relate to advertising that may mislead or deceive children (CTS 30 and 32), pressure in advertisements (CTS 31) premium offers (CTS 33) and promotions and endorsements by popular characters (CTS 35). These provisions are limited in scope and do not address the problem of the volume of unhealthy food advertising to children. They are likely to have very limited impact for the following reasons:

- CTS 30 and 32 only require that claims in advertising are accurate and do not mislead or deceive children. While these standards may protect children from statements in advertising that are factually misleading or incorrect, they are unlikely to protect children from the use of 'selective claims' in advertising which the OPC believes can create an overall misleading impression about the healthiness of a food and its role in a healthy diet. See section 6.1.1 of this submission for more information about the use of selective claims in food advertising.
- CTS 31 prevents the broadcast of advertisements during P or C programs that state or imply that a product or service makes children who own it or enjoy it *superior* to their peers. However, this does not prevent advertisements that state or imply that having a product will impress children's peers or make children liked or admired by their peers, or advertisements designed to make children believe a product is 'cool' or socially desirable.
- CTS 33 prevents advertisements shown during P or C programs from featuring premiums in a way that is more than incidental to the advertised product or service, or that stimulates unreasonable expectations of the product or service. However, this does little to protect children as it does not prohibit the promotion of free toys with fast food meals or the promotion of other types of premiums, such as toys, competitions and give-aways. It only requires that the emphasis not be on the premium itself.
- The new CTS 35 prevents the promotion or endorsement of products during P or C periods by popular personalities and characters, popular cartoon, animated or computer-generated characters, licensed characters and proprietary characters. However, it will apply only to advertising for a 'commercial product or service'. It will not apply, for example, to McDonalds advertisements for Little Athletics or corporate social responsibility type advertising. Nor will it limit the use of all personalities, program characters, cartoons or personalities. It will only limit their use if they are 'popular', i.e. not if they are nevertheless fun and appealing to children. Finally, it will only apply if the popular personality or character 'endorses, recommends or promotes' a product. This means that a character or personality could still appear in an advertisement and be associated with a product, so long as it doesn't actively promote or recommend the product.

3.3 How should these reviews be taken into account by Free TV Australia?

ACMA's view, that there is inadequate evidence of a link between food advertising and obesity to justify taking action to restrict unhealthy food advertising on television is in direct contrast to the view taken by the Taskforce.

As acknowledged by ACMA itself, ACMA is not a body with internal expertise on health matters and must be guided by the advice of experts.⁵ Following the announcement of the CTS review in August 2007, and the release of the draft CTS in October 2008, many public health groups expressed concern

⁴ ACMA. *Review of the Children's Television Standards 2005 - Final report of the review*. August 2009. Available at www.acma.gov.au

⁵ ACMA. *Review of the Children's Television Standards 2005 - Final report of the review*. August 2009. Available at www.acma.gov.au p.5

about the evaluation of the evidence undertaken by Dr Jeffrey Brand for ACMA.⁶ In particular, concern was expressed that this evaluation failed to consider the leading and most comprehensive systematic reviews of the evidence undertaken to date by the US Institute of Medicine in 2005 and by Hastings G et al in 2006.⁷

The Taskforce, on the other hand, is a body of Australia's leading health and public health experts. The Taskforce is clearly more qualified and in a more appropriate position to systematically evaluate the evidence and assess the need for reforms to protect children from the potentially harmful impacts of unhealthy food advertising on children.

The OPC is hopeful that in light of the Taskforce's findings and recommendations, ACMA will reconsider the evidence and the role it ought to be playing in phasing out unhealthy food advertising on television. While the OPC appreciates that Free TV Australia is required to take into account research conducted by ACMA⁸, it is urged to do so with caution and in light of the findings and recommendations of the Taskforce.

While the government is yet to announce its response to the Taskforce's recommendation, the OPC believes that the current review of the CTICP offers a valuable opportunity for Free TV Australia to commence its consideration of the shortfalls in the current voluntary initiatives and co-regulatory scheme as a whole, and determine the role that the CTICP may play in phasing out unhealthy food advertising to children. An overview of the current voluntary initiatives and why self-regulation is inadequate to protect children from unhealthy food advertising is provided in the **Appendix** to this submission. This is also an opportune time for Free TV Australia to commence its consideration of how it may work with ACMA, the proposed National Preventative Health Agency and the government to develop systems for effectively monitoring the volume and nature of unhealthy food advertising on free-to-air television.

A failure by Free TV Australia (and ACMA) to adequately consider their roles and obligations in these regards will mean that legislation will be required to protect children from the potentially harmful effects of unhealthy food advertising.

4 The objects of the *Broadcasting Services Act 1992*, the CTICP and the CTS

The OPC believes that the CTICP has an important role to play in protecting children from unhealthy food advertising on television.

Protecting children from the possible harmful effects of advertising material on television is an object of the *Broadcasting Services Act 1992* (Broadcasting Services Act). Section 3(1)(j) of the Broadcasting Services Act provides that an object of the Act is 'to ensure that providers of broadcasting services place a high priority on the protection of children from exposure to program material which may be harmful to them'.⁹ Under section 6 of the Act, program material includes advertising material.¹⁰ Therefore, this object includes ensuring that broadcasters place a high priority on the protection of children from exposure to harmful advertising material.

The CTICP has been developed and is administered by the free-to-air commercial television industry (represented by Free TV Australia), pursuant to section 123 of the Broadcasting Services Act. The CTICP applies broadly to all commercial free-to-air television, however as reflected by clauses 6.20 to 6.24, it is also concerned specifically with advertising to children. This concern recognises that pursuant to section 123 of the Act, codes of practice developed for sections of the broadcasting industry (in consultation with ACMA, and taking into account any relevant research conducted by ACMA) may relate to:

⁶ See for example, submissions to the review of the Children's Television Standards by the OPC, Choice, The Coalition on Food Advertising to Children and the Australian Chronic Disease Prevention Alliance. Available at: http://www.acma.gov.au/WEB/STANDARD/pc=PC_311355

⁷ Hastings G, McDermott L, Angus K, Stead M & Thomson S. *The extent, nature and effects of food promotion to children: a review of the evidence*. World Health Organisation: Geneva, 2006; JM McGinnis, JA Gootman, VI Kraak, eds. *Food Marketing to Children and Youth: Threat or Opportunity?* Washington DC, USA: Institute of Medicine of the National Academies, 2005.

⁸ *Broadcasting Services Act 1992* (Cth), section 123(1).

⁹ *Broadcasting Services Act 1992* (Cth), section 3(1)(j).

¹⁰ Section 6 of the *Broadcasting Services Act 1992* defines 'program' in relation to a broadcasting service to include 'advertising or sponsorship matter, whether or not of a commercial kind'.

- ensuring that the protection of children from exposure to program material which may be harmful to them is a high priority (s.123(3)(b));
- preventing the broadcasting of programs that, in accordance with community standards, are not suitable to be broadcast by the section of the industry (section 123(2)(a));
- broadcasting time devoted to advertising (section 123(2)(f)).

Relevant objectives of the CTICP are:

- regulating the content of commercial television in accordance with current community standards (clause 1.1.1 of the Code);
- ensuring that viewers are assisted in making informed choices about their own and their children's television viewing (clause 1.1.2 of the Code); and
- providing uniform, speedy and effective procedures for the handling of viewer complaints about matters covered by the Code (clause 1.1.3 of the Code)

The OPC believes that while the CTICP purports to protect children from some harmful advertising practices, it is seriously failing to achieve the objectives of the Broadcasting Services Act and the CTICP. Children are not being adequately protected from advertising that may be harmful to them, despite the high level of public support for restrictions on unhealthy food advertising (see below). The procedures for handling complaints are also highly ineffective.

The OPC recognises that the CTICP operates alongside the CTS which are primarily concerned with 'programs for children' (includes advertising and sponsorship matters). The CTS, however, only applies during and immediately before and after C and P periods and programs (generally no more than 1 hour per day, mainly between 4pm and 5pm) which have very low ratings. Very small numbers of children actually watch television between 4pm and 5pm on weekdays (on average, approximately 80,000 children), compared to the very large numbers of children that watch television between 6pm and 9pm on weekdays (on average, approximately 400,000).¹¹ Given the significant numbers of children that watch television outside of C and P periods and programs, the CTS should not be considered to be exhaustive of the restrictions required around advertising to children under the Broadcasting Services Act.

The OPC urges Free TV Australia to recognise that restrictions on advertising that may be harmful to children are required not only during dedicated children's programming, but also at other times (and most importantly, during peak children's viewing times).

The Broadcasting Services Act clearly envisages that the commercial television industry take responsibility for ensuring that the protection of children be given high priority. In light of the Taskforce's Strategy, amending the CTICP to protect children from unhealthy food advertising would appear to be an appropriate first step towards attempting to phase out unhealthy food advertising through a co-regulatory scheme.

5 Public opinion

One of the objectives of the CTICP is to regulate the content of commercial television in accordance with current community standards (clause 1.1.1 of the Code). There is significant evidence that consumers strongly support regulation of the avenues and methods used to advertise and promote unhealthy food to children.^{12, 13, 14, 15} The most recent national Australian survey conducted in late 2008

¹¹ ACMA. 'Children's viewing patterns on commercial, free-to-air and subscription television: report analysing audience and ratings data for 2001, 2005 and 2006.' May 2007. Canberra: ACMA. For more information, see **Appendix** to this submission.

¹² Morley B, Martin J and Dixon H. *Obesity prevention policy initiatives: consumer acceptability*. Centre for Behavioural Research in Cancer, The Cancer Council Victoria. December 2008.

¹³ Morley B. *National Community Survey of TV Food Advertising to Children*. Centre for Behavioural Research in Cancer, The Cancer Council Victoria. 7 May 2007.

¹⁴ SA Department of Health Data collected through the SA Health Monitor in 2006, cited in SA Health. *Television advertising and the consumption of unhealthy food and drinks by children – Consultation Paper*. August 2008. Government of South Australia. Available at <http://www.health.sa.gov.au/PEHS/branches/health-promotion/hp-advert-unhealthy-food-children.htm> (accessed on 3 August 2009)

¹⁵ Choice. *Little bellies, big problems: How parents, industry and government can solve Australia's childhood obesity crisis*. 2007. Available at <http://www.choice.com.au/files/f126310.pdf> (accessed on 3 August 2009)

found that 91% of consumers were in favour of the government introducing stronger restrictions to reduce the amount of unhealthy food advertising seen by children, with 79% strongly in favour. More specifically, it found that:

- 88% of consumers believe that the government should ban advertising of unhealthy food at times when children watch television, with 73% strongly supporting a ban.
- 91% of consumers are in favour of the government regulating the use of unhealthy food products in games and competitions on websites aimed at children, with 73% strongly in favour.
- 96% of consumers believe that the government should regulate unhealthy food marketing via e-mail or SMS after children have provided their contact details, with 81% believing the practice should be stopped completely.
- 95% of consumers believe the government should regulate the use of children's magazines to market unhealthy food to children, with 58% in favour of stopping it completely.

Consumers are also fed up with the tactics used by food companies to influence children to 'pester' their parents for unhealthy food products. In particular, the 2008 national survey found that:

- 91% of consumers believe the government should regulate the use of toys and giveaways to market unhealthy food and drink to children, with 55% believing the practice should be stopped completely.
- 91% of consumers believe the use of popular personalities or characters should be regulated, with half in favour of stopping it all together.
- 90% of consumers believe the government should regulate the use of competitions to market unhealthy food and drinks to children, with 45% believing it should be stopped completely.

6 Recommendations

6.1 The current provisions of the CTICP that relate to food advertising directed to children.

The CTICP currently contains very limited provisions to protect children from unhealthy food advertising. It does not address the volume unhealthy food advertising to children. Nor does it adequately address the pervasive marketing techniques commonly used by food companies to target or appeal to children, such as premiums (i.e. free toys with purchase), competitions or popular characters and celebrities. Of further concern, compliance with the CTICP is not monitored and its complaints and enforcement process is extremely complex, making it difficult for consumers to lodge complaints.

6.1.1 Section 6 – Advertising directed to children

Section 6 of the CTICP imposes restrictions on advertising certain potentially harmful products or services (e.g. alcohol, condoms and betting or gambling), and includes provisions dealing with advertising directed to children. However the only clauses with relevance to food and beverage advertising to children are clauses 6.23 and 6.20.

Clause 6.23

Clause 6.23 is the only broad provision of the CTICP that deals specifically with food advertising directed to children. It states that advertisements directed to children for food and/or beverages:

- should not encourage or promote an inactive lifestyle (clause 6.23.1);
- should not encourage or promote unhealthy eating or drinking habits (clause 6.23.2);
- must not contain any misleading or incorrect information about the nutritional value of the product (clause 6.23.3).

Clause 6.23.4 defines 'inactive lifestyle' as 'not engaging in any or much physical activity as a way of life', and 'unhealthy eating or drinking habits' as 'excessive or compulsive consumption of food and/or beverages'. This means that clauses 6.23.1 and 6.23.2 have very little, if any, practical effect as they only apply to advertisements that encourage or promote not engaging in any or much physical activity as a way of life, or excessive or compulsive consumption of food and/or beverages. It is difficult to think of or imagine any individual advertisement that would directly encourage or promote either of these things. What would be the point of an advertisement that encouraged or promoted physical

inactivity as a way of life? It is common for advertisements to associate unhealthy foods with physical activity to create the impression that products boost energy levels or that they should be consumed as part of a healthy lifestyle, but such advertisements would not breach clause 6.23 (these types of advertisements are discussed in further detail below).

Presumably, to breach the 'unhealthy eating habits' limb of clause 6.23.2, an advertisement would have to show children consuming a product continuously or consuming a huge amount of a product in a single sitting, or suggest that children should do this. Even if such advertisements did exist or were ever likely to be created, it is the cumulative effect of children's exposure to the huge volume of advertisements for unhealthy foods on television that is likely to lead them to consume unhealthy foods excessively or compulsively, not exposure to individual advertisements that encourage excessive consumption.

The requirement under clause 6.23.4, that food and beverage advertisements must not contain misleading or incorrect information about the nutritional value of a product is also particularly narrow given it is likely to be interpreted as only preventing advertising that contains factual inaccuracies about the content of a certain nutrient in a product. For example, a statement that a product is 90% fat free when in fact it is 70% fat free. This is much narrower in scope than the obligation not to mislead and deceive consumers (including children) under the AANA Codes and the Trade Practices Act 1974, and therefore appears to offer little utility.

The OPC believes that the protection offered to children under clause 6.23.4 could be improved by expressly prohibiting the use of "selective claims" in unhealthy food advertising. That is, the selective promotion of certain nutritional or other characteristics of a products which may be perceived to provide health benefits (such as high calcium content, low fat content, or the presence of certain vitamins or minerals), while failing to disclose other characteristics of a product which makes it unhealthy overall, such as high sugar or low dietary fibre content. For example, many cereals, such as Nutri-Grain and Milo cereal are associated with sport and represented as being beneficial to an active and healthy lifestyle, despite the fact that they are extremely high in sugar and salt. The OPC believes this practice misleads consumers by creating an overall impression that a product is 'healthy', 'good' or 'beneficial' for them, and that it may drive the consumption of unhealthy foods.

The use of 'selective claims' to market products that are directed to, or are popular with, children is of particular concern. Children are particularly susceptible, gullible and vulnerable members of the public, and are more likely to be misled by the use of selective claims than other consumers. Psychological research has found that children are highly vulnerable to advertising messages because they lack the experience and cognitive ability necessary to assess the messages critically.¹⁶ It follows that advertisements for products that are likely to be popular with, or are likely to appeal to children, must be clear and must not mislead or deceive (or be likely to mislead or deceive) children.

Furthermore, clause 6.23 only applies to advertisements that are 'directed to children'. The words 'directed to children' are not defined in the CTICP.¹⁷ However, an Advisory Note to the CTICP, published by Free TV Australia, sets out a list of factors to be considered by broadcasters in deciding whether an advertisement is 'directed to children' for the purpose of clause 6.23:

- 'the nature of the product or service, and the persons most likely to be interested in that product or service – is the product or service one for which children are the only users or form a substantial part of the market?;
- the theme of the commercial – are adult or children's themes used? ... ;
- the 'story line' and the approach taken in selling the product or service – is the story line aimed at children? ...;
- the visuals used in the commercial – are the visuals aimed at children? ... ;

¹⁶ Kunkel, D., Wilcox, B.L., Cantor, J., Palmer, E., Linn, S. and Dowrick, P. *Report of the APA Task Force on Advertising and Children*. Washington, DC: American Psychological Association, February 20, 2004. Available at <http://www.apa.org/releases/childrenads.pdf>, accessed 9 September 2009.

¹⁷ Clause 6.23 of the CTICP defines 'children' (for the purposes of that clause) as 'people younger than 14 years of age'. Clause 6.3.1 defines 'substantial numbers of children' (for the purposes of section 6 of the CTICP) as meaning that 'children comprise 30% or more of the program's total audience or that 20% or more of all children in television homes in the license area are viewing the program'. The words 'substantial numbers of children' are not used anywhere in section 6, however, so it is not clear what effect if any this definition is intended to have.

- the language of the commercial – does the commercial use children’s language?;
- the age of actors appearing in the commercial – are child actors depicted actively using a product or service for which children constitute the market; and
- the target audience for the commercial – is the target audience children?’

This list of factors indicates that the words 'directed to children' are likely to be interpreted narrowly so that clause 6.23 only applies to advertisements with a number of features indicating that they were designed specifically for a child audience, and not, for example, to advertisements intended for a general audience or an older audience but likely to attract the attention of children or to be watched by a significant number of children.

The evidence of the effects of food advertising on children is based on children’s exposure to food advertising per se, not just children’s exposure to food advertising intended or designed specifically for a child audience. There is no reason to assume that advertisements designed specifically for a child-audience are the only types of advertisements that influence children. In fact, one would expect many advertisements designed for adolescents or adults to hold particular appeal to children since children would perceive the advertisement or the advertised product to be ‘grown up’ and sophisticated, and would find adolescent or adult themes of advertisements interesting.

It is also concerning that ‘children’ is defined to mean people younger than 14 years of age. For the reasons outlined in section 6.2.1 of this submission, children should be defined to mean people younger than 16 years of age.

As detailed below, the OPC believes that to protect children from the possible harmful effects of advertising material, advertising restrictions need to apply to advertising shown during time periods and/or programs when children are most likely to be watching, regardless of whether the advertisements are designed specifically to appeal to children.

Recommendations:

Section 6 should be amended to state that unhealthy food advertisements directed to children¹⁸ must not be misleading or deceptive or create any impression that the product is healthy or contributes or is beneficial to, or ought to be consumed as part of, a healthy diet or active lifestyle.

The definition of children should be amended to state that 'children' means people younger than 16 years of age.

An advertisement should be considered to be 'directed to children' if any of the factors, such as the following, indicate that the advertisement is intended for or likely to appeal to children:

- The age of people (actors or presenters) in the advertisement (particularly whether the advertisement featured children who appeared to be younger than 16).
- Personalities or characters featured in the advertisement, for example:
 - personalities or characters popular with children or appealing to children;
 - personalities or characters from children's media (television programs, books, films, comics, magazines, computer games etc); or
 - cartoon or fantasy characters.
- Any offers of premiums, competitions, prizes or other benefits promoted in the advertisement that would be likely to interest children.
- Any activities featured in the advertisement that would be likely to interest children, for example, sports, games, competitions, quizzes, quests or challenges.
- The presentation or design of the advertisement, for example, use of:
 - imagery or graphics likely to appeal to or interest children, for example, cartoons, bold graphics, or images or pictures of children, animals, toys or balloons;
 - colours likely to appeal to children;
 - music or songs likely to appeal to children;
 - production techniques or technical effects likely to appeal to or interest children, such as animation, repetition, fast cutting; and/or
 - language intended or suitable for children, or spoken by or directly to children.
- The content of the advertisement, for example, themes, plots or concepts likely to interest or appeal to children, such as fantasy, magic, adventure, fun, play, suspense, heroism, school, peer relationships, peer admiration, sporting success or youth culture.
- The nature of the product advertised – whether it is intended for children, likely to appeal to children, usually promoted to children, or typically consumed by children.
- The likely audience for the advertisement (based on the time when, and the program during or adjacent to which, the advertisement is broadcast).

Clause 6.20

Clause 6.20 of the CTICP requires advertisements 'directed to children' to 'exercise special care and judgment' and to comply with the advertising provisions of the CTS (CTS 17-21). The effect of clause 6.20 is to extend the application of the advertising restrictions in the CTS beyond just advertisements shown during P or C programs or periods, to all advertisements 'directed to children'. However, this is not effective for protecting children for a number of reasons.

First, the advertising restrictions in the CTS are very narrow in their scope and application and are largely ineffective for protecting children from the possible harmful effects of television. For example, they do not prohibit the promotion to children of toys in fast food meals, nor do they prohibit the use of all personalities and characters that may be appealing to children. The limitations of these provisions has been discussed above in section 3.2 of this submission.

¹⁸ See proposed definition of unhealthy foods, unhealthy food advertising and directed to children below in section 6.2.1.

Second, the meaning of advertising ‘directed to children’ is unclear but is likely to be narrow. It is not clear whether the Advisory Note (discussed above) is to be used to decide whether advertisements are ‘directed to children’ for the purposes of clause 6.20.¹⁹ But it is likely that ‘directed to children’ in clause 6.20 would be interpreted in a similarly narrow manner, so that clause 6.20 would only apply to advertisements designed exclusively or primarily for children, not to all advertisements likely to attract the attention of children, or to which children are likely to be exposed.

The definition of ‘children’ for the purpose of this clause is also unduly low (under 14 years of age). For the reasons outlined in section 6.2.1 of this submission, children should be defined to mean people younger than 16 years of age.

Recommendation:

The reference to CTS 17 – 21 should be amended to CTS 30 to 34 to reflect the new CTS.

Clause 6.20 should also be amended to include a reference to, and thereby incorporate, CTS 35 (promotions and endorsements by popular characters).

At the very least, the definition of ‘directed to children’ proposed by the OPC and outlined above should expressly apply to clause 6.20. However preferably, the CTICP should require that CTS 30 - 35 apply during children’s peak viewing periods, i.e. weekdays: 6am – 8.30am and 4pm – 9.30pm and weekends and school holidays: 6am – 10am and 5.30am – 9.30pm.

[Ideally, as proposed below in section 6.2 this submission, stricter restrictions on the advertising techniques most commonly used to market unhealthy food advertising to children should be introduced and apply at all times.]

6.1.2 Clause 1.12 – AANA Codes

Clause 1.12 of the CTICP states that television advertisers are expected to ensure that their commercials comply with the AANA Advertiser Code of Ethics and the AANA Code for Advertising to Children – self-regulatory codes developed and administered by the Australian Association of National Advertisers (which represents the advertising industry). This section should also be updated to reflect that television advertisers are also expected to ensure that their commercials comply with the AANA Food & Beverages Advertising & Marketing Communications Code.

Unfortunately, however, these AANA Codes provide very little protection to children from the potentially harmful effects of unhealthy food advertising on television. The **Appendix** to this submission provides further detail about the limitations of these Codes (as well as voluntary initiatives by the food industry that purport to protect children from unhealthy food advertising).

While positive steps by the food and advertising industries to protect children from unhealthy food advertising should be welcomed, Free TV Australia should not look to the AANA Codes or the voluntary initiatives to satisfy itself that children are adequately protected from unhealthy food advertising on television. Rather, these Codes and initiatives are ineffectual (as described in the **Appendix**) and are evidence of why regulation is required in this area. The OPC believes that these codes and initiatives have been largely introduced to provide an impression that action is being taken, and to ward off government regulation in this area.

Recommendations:

Amend clause 1.12 of the Code to reflect that television advertisers are also expected to ensure that their commercials comply with the AANA Food & Beverages Advertising & Marketing Communications Code

¹⁹ The Advisory Note states that it is intended to provide guidance ‘for the purpose of applying clause 6.23’ but it is entitled ‘Commercials or Community Service Announcements Directed to Children’ which is the heading of clauses 6.20-6.23 in the CTICP.

6.1.3 Section 7 - Complaints and enforcement

The procedures for handling complaints under the CTICP are outlined in section 7.

Complaints under the CTICP must be made to the broadcaster before they can be referred to ACMA. Complaints that deal with the placement of a commercial are dealt with by the broadcaster and complaints relating to the content of a commercial are referred to the Advertising Standards Board (ASB) with 10 days (except for complaints relating to matters covered by the CTS which are referred to ACMA).

Potential complaints may be raised with the broadcaster by telephone, however a complaint will only be investigated and a written response will only be provided if the complaint is made in writing. A written complaint must be dealt with by a licensee within 30 working days of the complaint being received. If a complainant is not satisfied with a written response received from a licensee, he or she may refer the matter to ACMA for investigation.

With respect to complaints about the content of commercials (except those relating to matters covered by the CTS), the complaint is unlikely to reach the ASB until 10 days or up to 40 days of the advertisement being broadcast. The ASB then typically takes up to eight weeks to deal with complaints. By this time the advertisement may have finished running and children will already have been exposed to its harmful effects. Of even more concern, ACMA can typically take up to five months to respond to a complaint. Accordingly, complaints related to matters covered by CTS 17 – 23 (i.e. complaints under clause 6.20) may typically not be dealt with until over 6 months from the date of broadcast. It must also be emphasised, however, that ACMA can take considerably longer than 6 months to deal with complaints. On 21 November 2006, the OPC made a complaint to Network 10 about an advertisement (Milo Cereal's "Hey Gilly" advertisement) which it believe to be in breach of clause 6.20 of the CTICP and CTS 20(2)(a). The OPC was not satisfied with Network 10's response and referred the complaint to ACMA on 18 May 2007. AMCA did not provide its response to the complaint until 15 July 2008, almost two years after the advertisement was broadcast. This level of delay is unacceptable.

The main problem with the current system is that licensees, the ASB and ACMA only investigates breaches of the CTICP following complaints by viewers; neither ACMA nor Free TV Australia undertake any monitoring of compliance with the CTICP and Free TV Australia do not commence their own actions against licensees. Therefore, identification of advertisements in breach of the CTICP depends entirely on viewers.

This is problematic because it is likely to be extremely difficult for most viewers to access and participate effectively in the complaints process, and because many parents are not even aware of the existence of regulations on television advertising to children. A survey conducted in 2007 found that less than half (47.4%) of Australian parents of children under 14 were aware that such regulations are in place. Moreover, almost all parents surveyed (92%) supported monitoring of compliance with advertising regulations, rather than reliance on public complaints.²⁰

Making a complaint about a television advertisement requires a high level of understanding of the system, in addition to motivation, time, resources and perseverance, and in some cases, legal expertise. The system is slow, incredibly complex, and is likely to be extremely difficult for most viewers to understand and access.

The first hurdle for viewers is determining which instrument a suspect advertisement might breach – the CTS, the CTICP, the AANA Advertiser Code of Ethics, the AANA Code for Advertising to Children, or the AANA Food and Beverages Code – and on this basis, who the viewer should complain to – ACMA, the relevant licensee, or the Advertising Standards Bureau. As discussed above, some provisions of the AANA Food and Beverages Code overlap with provisions of the CTS and CTICP, and some deal with different issues, adding to the potential confusion for viewers.

²⁰ Morley, B.C. *National community survey of TV food advertising to children*, prepared by the Cancer Council Victoria for the Coalition on Food Advertising to Children (funded by Queensland Health), May 2007.

The next hurdle for viewers is interpreting the provisions of the CTICP (or CTS or the AANA Codes) in order to understand whether an advertisement has breached any of the instruments. As discussed above, the provisions of the CTICP, CTS and the AANA Codes are ambiguous and confusing. Terms in the provisions are often defined, or have been interpreted, restrictively, and in a manner that differs from a literal reading.

In the (unlikely) event that a viewer is able to determine under which instrument and to whom a complaint should be made, he or she may nevertheless be deterred from complaining by the requirement for complaints to be in writing, and/or the time it would take for the complaint to be resolved. Many consumers are likely to find it easier, and feel more comfortable, discussing their concerns about an advertisement over the telephone, rather than being required to put their concerns formally in writing. Furthermore, as discussed above, by the time the complaint is dealt with (whether by the licensee, ACMA or the ASB) the harmful effects of the advertisement will have already occurred.

The amendment proposed to the CTICP (clause 7.2.3.1) is also likely to make it even more difficult for consumers and consumer groups to lodge valid complaints. The proposed clause 7.2.3.1 states that a complaint will only be valid if it identifies in sufficient detail 'the broadcast material (including by reference to the date and time of broadcast of the material, or in the case of a television program series, the particular episode of the series the subject of the complaint'. Often consumers will see an advertisement on more than one occasion before making the decision to lodge a complaint. At this point, they may not recall the specific date or time the advertisement was broadcast. In addition, consumer organisations such as the OPC, Choice and Parents Jury are often contacted by consumers with concerns about an advertisement. While such organisations can easily access an advertisement and view its content, to determine whether a complaint may be appropriate, it may not be aware of a specific date or time at which it was broadcast. Consumers and consumer groups should not be required to monitor television advertisements in the hope of seeing the advertisement so that a complaint may be lodged. Given licensees have easy access to information about when advertisements have been broadcast, it would seem unnecessary for this information to be provided by consumers.

The OPC is also concerned that all complaints relating to the content of a commercial (except those relating to matters covered by CTS 17-23, i.e. under clause 6.20 of the CTS) are referred to the ASB. Unless a complaint relates to a matter covered by the AANA Codes, it would seem appropriate for the licensees and ACMA to deal with these complaints. The ASB has no power to issue sanctions or penalties and can only request that an advertisement be modified or withdrawn. A complainant would also appear to have no right to seek the review of a decision by ACMA. If the CTICP is to be strengthened to more effectively restrict the content of unhealthy food advertising on television, complaints should be required to be dealt with by the licensee and/or ACMA. Appropriate sanctions and penalties capable of deterring and penalising breaches should also apply.

In the Explanatory Note to this review of the CTICP, it is stated that Free TV considers that the current Code is operating very well given, among other things, the limited number of complaints received by licensees per quarter, between July 2004 and 30 March 2009, was on average only 214 complaints or less than 2 complaints per month for each station (with only 16 complaints being upheld over this period). In addition, it is noted that only 149 complaints were referred to ACMA, of which 78 were found to be in breach of the CTICP. The OPC believes that this low number of complaints does not demonstrate that the system is working effectively, rather, it is a predictable result of the many barriers that exist to making complaints, particularly delay, and the complexity and ambiguity of the regulatory system. The low number of complaints being upheld is also reflective of the narrow application and scope of many provisions of the CTICP (some of which are explored above).

Recommendations:

ACMA should be required to monitor compliance with the CTICP (and the CTS) or require pre-vetting of advertisements. Alternatively, if ACMA does not have sufficient time or resources to do this, a separate watchdog could be established to monitor compliance and handle complaints.

The proposed clause 7.2.3 to the CTICP should be deleted.

The following measures should be introduced into the CTICP to improve the accessibility of the complaints system for viewers.

- Remove the requirement for complaints to be in writing – allow telephone and email complaints.
- Provide a toll-free number for viewers to submit telephone complaints.
- Improve the accessibility of information about complaints procedures on the Free TV and ACMA websites. Currently, this information is buried amongst the huge amount of information on the websites and may be difficult for viewers to locate.
- Publish *all* reports of investigations into CTICP breaches on the ACMA website.

Complaints about the content of advertisements (unless the complaint relates to the CTS or an AANA Code) should be dealt with by the licensee and/or ACMA. Appropriate sanctions and penalties should apply and be actively enforced. ACMA should also improve its procedures to improve the speed of the complaints handling process and devote more resources to the complaints handling.

Section 7 should be amended to expressly provide Free TV Australia with the power to commence own motion complaints about the placement and content of advertisements to licensees and/or ACMA.

6.2 Further amendments to the CTICP required to protect children from unhealthy food advertising on television

The OPC strongly believes that merely extending the relevant standards contained in the CTS to apply during advertisements ‘directed to children’ (as per the OPC’s proposed definition), or peak viewing times, and merely strengthening the complaints system will cause the CTICP to remain grossly inadequate to protect children from unhealthy food advertising.

These restrictions will not adequately address the problem of the volume of unhealthy food advertising to children and do not adequately restrict the marketing techniques most commonly used to target children. As discussed below, these provisions will not, for example, restrict the advertising of toys with fast food meals or the use of all characters that are appealing to children.

To comprehensively regulate unhealthy food advertising on free-to-air television under the CTICP, the OPC recommends:

- Carefully defining key terms
- Introducing time-based restrictions on unhealthy food advertising
- Introducing restrictions on the permitted content of advertisements that are directed to children.

If Free TV Australia is not willing to introduce (and adequately enforce) these recommendations via the CTICP, comprehensive legislation will be required to ensure that they are introduced and that unhealthy food advertising is adequately phased out within four years.

6.2.1 Define key terms

Comprehensive restrictions on advertising unhealthy food to children will only be effective if key terms used in the restrictions, such as ‘children’, ‘unhealthy food’ and ‘unhealthy food advertising’ are clearly defined. A failure to carefully define these terms could result in confusion, unintended consequences and permit potentially harmful types of advertising to continue unabated.

‘Children’

The OPC recommends that ‘children’ should be defined as children younger than 16 years of age for the purpose of food advertising restrictions. There are four main reasons for this view.

First, research shows the food choices of children of all ages are affected by food advertising, and indicates that adolescents may be even more influenced by food advertising than younger children.

Research has found that children aged between 8 and 12 years typically understand the persuasive intent of advertising, but are not able to use this understanding spontaneously (i.e. without being cued) until after the age of 11 or 12 years.²¹

Although children's ability to critically interpret advertising develops with age, research indicates that older children's development of cognitive defences to advertising does not prevent them being influenced.²² In fact, evidence shows that television advertising is effective across all age groups in influencing children's food choices. Research has concentrated on children aged 6-12, but the evidence that is available for adolescents indicates that their food choices are even more likely to be affected by food advertising. It does not indicate, as has been assumed, that children and adolescents become better able to resist food advertising as they become older and more media literate.²³

Second, research supports a link between advertising and obesity in older children. Recent reviews of the evidence on the influence of food marketing have concluded that exposure to television advertising is associated with weight gain and obesity in both children and teenagers.²⁴

Third, data indicate that nutrition is poor, and the prevalence of overweight and obesity is high, in children of all ages, including adolescents.²⁵

Fourth, recent international regulatory actions to restrict food advertising to children are designed to protect children younger than 16. The restrictions on television food advertising recently introduced in the United Kingdom apply to programs of particular appeal to children younger than 16.

'Unhealthy food'

Television advertising restrictions should apply to 'unhealthy food'.

'Unhealthy Food' should be defined as any food or beverage product that fails to meet the Australian nutrient profile scoring criteria for eligibility of foods or beverages to be advertised directly to children (including during any time based advertising restrictions on television).

Existing nutrient profiling scoring systems in the UK and Australia offer robust and easy to use models for defining 'unhealthy food' for the purpose of restrictions on food advertising directed to children in Australia. These models (which may be applied across food groups) take into account the positive nutritional characteristics of a food (such as fibre, protein and fruit/vegetable content) as well as the less desirable attributes (such as energy, saturated fat, sodium and total sugars) and reach an overall assessment relating to its healthiness.

In the UK, the Food Standards Agency developed its nutrient profiling model for Ofcom as the basis for identifying high fat, sugar and salt (HFSS) foods that are subject to the restrictions in the UK on television advertising in programs popular with children of HFSS foods. This model has been found to be a scientifically robust and effective tool for differentiating food and drinks on the basis of their nutrient composition, for the purpose of Ofcom's restrictions.²⁶ FSANZ has adapted this model for use in Australia as the nutrient profiling scoring criteria for identifying foods eligible to make health claims, under the proposed new health claims standard to be included in the *Australia New Zealand Food Standards Code*. The proposed FSANZ model uses the same incremental scoring system as the UK model, and applies it to three food categories: foods (including milk), beverages, and other foods (including oils, edible spreads and cheeses). It allocates *baseline* points for energy (kJ), saturated fat,

²¹ Livingstone, S. & Helsper, E. *Advertising foods to children: Understanding promotion in the context of children's daily lives*. Prepared for the Research Department of the Office of Communications (Ofcom), February 2004, published as Appendix 1 to Ofcom. 'Childhood obesity: food advertising in context.' 22 July 2004.

²² As above.

²³ Livingstone, S. & Helsper, E. *Advertising foods to children: Understanding promotion in the context of children's daily lives*. Prepared for the Research Department of the Office of Communications (Ofcom), February 2004, published as Appendix 1 to Ofcom. 'Childhood obesity: food advertising in context.' 22 July 2004.

²⁴ Livingstone, S. *New Research on Advertising Foods to Children: An Updated Review of the Literature*. Published as Annex 9 to Ofcom *Television Advertising of Food and Drink Products to Children* consultation, 28 March 2006; JM McGinnis, JA Gootman, VI Kraak, eds. *Food Marketing to Children and Youth: Threat or Opportunity?* 2005, Washington DC, USA: Institute of Medicine of the National Academies.

²⁵ Australian Bureau of Statistics. *National Health Survey: Summary of Results, 2007-08*. Cat No. 4364.0. Canberra. 2009

²⁶ Food Standards Authority. *Review of the Agency's Nutrient Profiling Model*. 25 March 2009. Available at: <http://www.food.gov.uk/multimedia/pdfs/board/fsa090306v2.pdf> (accessed on 9 September 2009)

sodium and total sugars; and then allocates *modifying* points for fruit/vegetable/nut/pulse composition, the amount of fibre and where relevant, protein²⁷. The nutrients assessed are those which have an established association with a range of chronic diseases. The baseline nutrients are those likely to increase the risk associated with these diseases, whilst the modifying factors confer health benefits²⁸. The FSANZ model has now been tested on over 10,000 Australian foods.²⁹

Given the FSANZ model is closely based on the UK model, has been rigorously tested on Australian foods, is relevant to children's nutrient requirements, and is relatively simple to use, it offers a robust method for a criteria to determine unhealthy foods for the purposes of restrictions on food advertising directed to children in Australia.

'Unhealthy food advertising'

The term 'unhealthy food advertising' should be defined broadly to include any visual or audible message that publicises or promotes an unhealthy food, or a trade mark, character, design, brand or name of a manufacture that is closely associated with an unhealthy food. As such, it should cover all direct advertising for unhealthy food, as well as indirect forms of promotion of unhealthy food, such as sponsorship matter, product placement and brand advertising.

Restrictions on the promotion of manufacturers or brands that are closely associated with unhealthy foods will be vital to ensure that any restrictions are not undermined by advertising that may not depict any unhealthy food or beverage, but may promote a recognisable brand name, trade mark, character or design to children. Advertising of this nature is likely to continue to promote brand loyalty to children and influence them to consume unhealthy products associated with the brand. For example, recent McDonalds advertisements have featured Ronald McDonald and children (in a way likely to attract the interest of children) while not depicting any actual food or beverages. Well known food companies such as McDonalds and KFC do not need to depict their food and beverages in their advertising as these are so familiar to and well known by children.

The OPC believes a brand or manufacturer should be considered to be 'primarily associated' with unhealthy food if sales of unhealthy food constitute fifty per cent or more of total revenue from the manufacturer's or brand's product sales.

However, the OPC does not believe that advertisements featuring a brand or manufacturer that are solely intended to promote consumption or sale of a healthy food (defined according to FSANZ's nutrient profile criteria), and that do not feature or refer to an unhealthy food, should be subject to brand advertising restrictions.

6.2.2 Time-based advertising restrictions

The OPC believes that in order to minimise children's exposure to advertising of unhealthy food and beverages on television, and ensure children are protected from this advertising during periods classified as suitable for child viewing, unhealthy food advertising restrictions should be introduced under section 6 of the CTICP and apply during the following time periods:

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

These time periods would cover the peak viewing period for children (which ratings data indicate is from 5.30pm to 9.30pm on weekdays and weekends), as well as the G classification period (set out in the CTICP), when only material that is suitable for viewing by children is supposed to be shown.

²⁷ Food Standards Australia and New Zealand, 2007 Preliminary Final Assessment Report: *Proposal P293 – Nutrition, Health and Related Claims* Attachment 1: Draft Variations to the Australia New Zealand Food Standards Code.

²⁸ World Health Organisation (WHO). 2003 *Diet, Nutrition and the Prevention of Chronic Diseases*. Report of a Joint WHO/Food and Agriculture Organisation Expert Consultation. WHO Technical Report Series No. 916 Geneva.

²⁹ Food Standards Australia and New Zealand. *Preliminary Final Assessment Report: Proposal P293 – Nutrition, Health and Related Claims* Attachment 6: Modelling of Compositional Criteria to determine the eligibility of foods to carry a health claim. 2007. Available at:

<http://www.foodstandards.gov.au/standardsdevelopment/proposals/proposalp293nutritionhealthandrelatedclaims/p293preliminaryfinal3502.cfm> (accessed on 9 September 2009)

Children's peak viewing periods

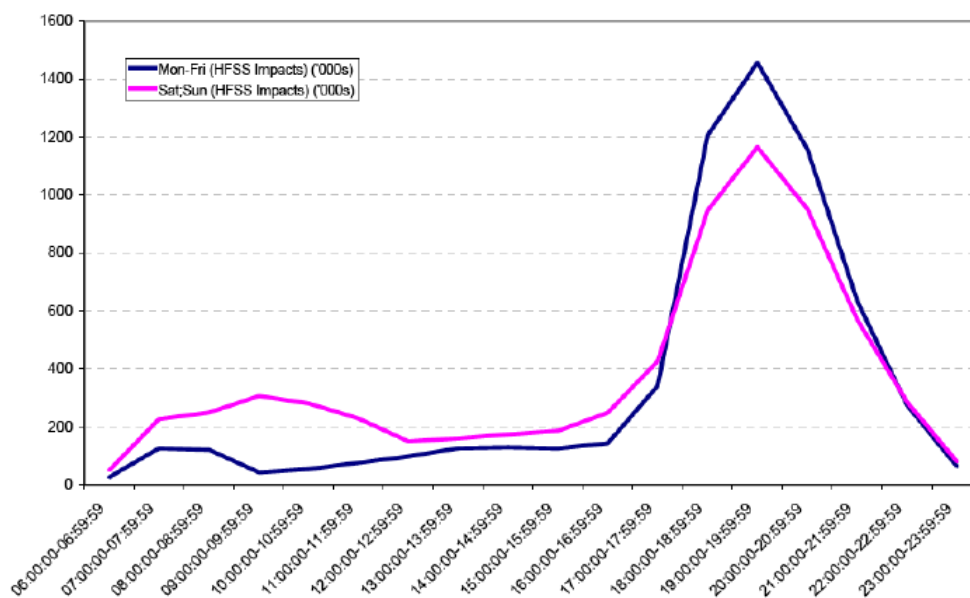
The OPC believes that for a prohibition against food and beverage advertising to be effective to protect children, it must be designed to minimise children's exposure to such advertising to the greatest extent possible. Therefore, it must apply at times when children are most likely to watch television,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

ACMA's *Children's Viewing Patterns on Commercial, Free-to-air and Subscription Television* report indicates that the peak viewing time for children on commercial free-to-air television is between 5.30pm and 9.30pm on weekdays and weekends. During this time period, ACMA's report indicates that the audience size for children aged younger than 15 ranges from about 250,000 to a peak of nearly 500,000 on weekdays, and from about 220,000 to a peak of nearly 450,000 on weekends. As a comparison, at 4.30pm weekdays when children's programming is aired on commercial television, the audience is made up of about 80,000 children.

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

The figure below shows the average number of times one child aged 14 or under views one high fat/salt/sugar food advertisement – defined as an impact.³⁰ The number of impacts climbs rapidly between 17.00 and 18.00, peaking between 19.00 and 20.00. There is also an increased number of impacts in the morning period, with higher impacts over a longer time period on the weekends.

Figure 6 - Average number of HFSS food and beverage impacts for children aged 0-14 (2006)



Source: ACMA calculations using Nielsen Media Research data and OzTAM ratings data. 30 second spot equivalents have been used for all calculations.

As noted above, in 2007 the United Kingdom communications regulator, decided to introduce restrictions on food advertising to children (in the UK BCAP Television Advertising Standards Code).

These restrictions provide far better protection to children than current Australian regulations. However, the OPC has concerns about the audience indexing system Ofcom has decided to use to identify programs likely to appeal particularly to audiences below the age of 16.

³⁰ ACMA. *Economic Impact of Restrictions on Television Food and beverage Advertising*. Commonwealth of Australia, 2008.

The indexing system (which is already used under the UK BCAP Code to determine children's programs to which advertising restrictions on subjects such as alcoholic drinks, bingo, religious matters, slimming products and lotteries apply) compares the likely composition of the audience for a television program with the composition of the general UK population. A 120 index rule has been adopted, which means a program will be considered likely to appeal particularly to children aged younger than 16 if the likely proportion of people aged 4-15 years in the audience is more than 20% higher than the proportion of people aged 4-15 in the general UK population.³¹

The OPC believes the 120 index is a poor tool for identifying programs of particular appeal to children younger than 16 because it is based on the proportion of children in the audience rather than absolute numbers of children; therefore, its application to programs watched by large numbers of children depends on the number of people aged 16 or over who are also likely to be in the audience. The programs that attract the highest ratings among children under 16 are therefore not caught by the tool, for example, 'Coronation Street' and 'The X Factor', the two commercial programs most watched by children in the UK.³²

According to Ofcom's analysis, the scheduling restriction Ofcom has decided upon will result in a 41% reduction in the exposure of children aged 4-15 to food advertising on television, whereas the pre-9pm watershed restriction on food advertising (one of the alternative options for scheduling restrictions on food advertising considered by Ofcom) would have reduced the exposure of children in this age group to television food advertising by 82%.³³ By December 2008, it was found that the restrictions had in fact led to a 34% reduction in HFSS advertisements seen by children (including 29% less between 6.00pm and 9.00pm), compared to in 2005.³⁴

Although the scheduling restriction in the UK is a significant step forward in addressing food advertising to children, the OPC believes it highlights the problems with adopting a time-based restriction on food advertising based on the *proportion* of children in the television viewing audience relative to adults, and the need for time-based restriction on advertising of unhealthy food based on absolute *numbers* of children in the audience.

G classification period

The OPC believes unhealthy food advertisements should also be prohibited during the G classification period, when only viewing material that is suitable for children is supposed to be shown.

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

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

Unhealthy food advertisements should also be prohibited from being shown during G classification periods. As discussed above, evidence establishes that food and beverage advertising influences children's food preferences, demands and consumption, and is a harmful influence on children's health. Therefore, the OPC believes unhealthy food advertising should be considered unsuitable for viewing by children. Parents should be able to let children watch television unsupervised during the G

³¹ The index tool uses historical scheduling data to predict the audience composition for programs. For one-off programs or new program series, indexing is based on the predicted audience for the program or series according to similar material that has been broadcast in the past.

³² According to analysis by UK consumer advocacy organisation Which? based on 2005 UK viewing figures, in their response to Ofcom's consultation paper, 'Television advertising of food and drink products to children: options for new restrictions', December 2006.

³³ Ofcom, *Impact Assessment: Food Advertising to Children*, 22 February 2007.

³⁴ Office of Communications (OfCom). *Changes in the nature and balance of television food advertising to children: A review of HFSS advertising restrictions*. United Kingdom. 17 December 2008.

classification period in the knowledge that they will not be exposed to potentially harmful material, including advertising for unhealthy foods.

6.2.3 The content of advertisements

In the OPC's view, a general prohibition against advertising of unhealthy food applying during children's viewing periods (as described above) would be the most effective measure for minimising children's exposure to this advertising. However, a general prohibition should be supplemented by advertising content restrictions, on unhealthy food advertising that is directed to children, including the use of premium offers and give-aways, competitions, and promotion or endorsement of products by characters or personalities that are appealing to or popular with children. These techniques are likely to be particularly effective for influencing children to engage in peer power, and to choose and consume advertised products. In the OPC's view, use of these techniques is also unfair and unethical, since they encourage children to desire products for reasons unrelated to the products' attributes, and because younger children cannot interpret advertising critically.

Ratings data commissioned for the Australian Communications and Media Authority's Review of the Children's Television Standards³⁵ indicate that high numbers of children watch commercial free-to-air television at all times of day from 6.30am until about 9.30pm. Children should be protected at all times from advertising techniques that are designed to target them, and that unfairly influence them to desire unhealthy foods.

6.2.4 Restricting unhealthy food advertisements 'directed to children'

One approach to restricting the content of unhealthy food advertisements would be to prevent the broadcast of all unhealthy food advertisements that are 'directed to children'. To cover the types of advertising techniques most commonly used to target children the definition of 'directed to children' would need to be sufficiently broad to encapsulate advertising that is not only designed specifically for children but this is also likely to be popular with or appeal to them.

An advertisement should be considered to be 'directed to children' if any of the factors, such as the following, indicate that the advertisement is intended for or likely to appeal to children:

- The age of people (actors or presenters) in the advertisement (particularly whether the advertisement featured children who appeared to be younger than 16).
- Personalities or characters featured in the advertisement, for example:
 - personalities or characters popular with children or appealing to children;
 - personalities or characters from children's media (television programs, books, films, comics, magazines, computer games etc); or
 - cartoon or fantasy characters.
- Any offers of premiums, competitions, prizes or other benefits promoted in the advertisement that would be likely to interest children.
- Any activities featured in the advertisement that would be likely to interest children, for example, sports, games, competitions, quizzes, quests or challenges.
- The presentation or design of the advertisement, for example, use of:
 - imagery or graphics likely to appeal to or interest children, for example, cartoons, bold graphics, or images or pictures of children, animals, toys or balloons;
 - colours likely to appeal to children;
 - music or songs likely to appeal to children;
 - production techniques or technical effects likely to appeal to or interest children, such as animation, repetition, fast cutting; and/or
 - language intended or suitable for children, or spoken by or directly to children.
- The content of the advertisement, for example, themes, plots or concepts likely to interest or appeal to children, such as fantasy, magic, adventure, fun, play, suspense, heroism, school, peer relationships, peer admiration, sporting success or youth culture.

³⁵ Australian Communications and Media Authority. *Children's viewing patterns on commercial, free-to-air and subscription television: report analysing audience and ratings data for 2001, 2005 and 2006*. May 2007, Canberra: ACMA.

- The nature of the product advertised – whether it is intended for children, likely to appeal to children, usually promoted to children, or typically consumed by children.
- The likely audience for the advertisement (based on the time when, and the program during or adjacent to which, the advertisement is broadcast).

[These are the same as the factors recommended above (in section 6.1.1 of this submission) for deciding whether an advertisement is ‘directed to children’ for the purposes of 6.20 and 6.23 of the CTICP.]

6.2.5 Specific content restrictions

Another approach to regulating the content of unhealthy food advertisements would be for restrictions to apply to specific types of techniques used to target children, as supplements to a general time-based restriction on unhealthy food advertising. This was the approach taken to advertising content restrictions introduced last year in the UK by Ofcom (as outlined in appendix 3 to the Consultation Paper). The content restrictions included prohibitions against use of licensed characters, celebrities, promotional offers and health claims in TV advertisements for high fat, sugar or salt (HFSS) foods targeted at children, and supplemented general scheduling restrictions on HFSS advertising during programs specifically made for children or of particular appeal to children.

The OPC would recommend that specific content restrictions should include restrictions applying to the following types of techniques used in unhealthy food advertising to children.

Promotion or endorsement of products by personalities and characters

The OPC recommends that the broadcast of an unhealthy food advertisement (as defined above) that features a personality or character which is popular with or appealing to children should be prohibited.

The OPC believes use of personalities or characters popular with or appealing to children in advertising is particularly effective for influencing children to prefer, pester parents for, and consume unhealthy foods.

Children are likely to trust, admire and/or aspire to be like, popular characters or personalities. Therefore, promotion by or association with a respected personality creates positive associations with a brand or product, and may lead children to ascribe certain values to the product. For example, promotion of a product by a well-known sportsperson may lead children to believe that consumption of the product enhances sporting performance, or endorsement by a popular culture personality may lead children to believe a product is socially desirable. Use of sporting personalities in advertisements for unhealthy food or beverages also strengthens the association created by advertisers between exercise and the consumption of unhealthy food and beverages.³⁶ Advertisers commonly use fictional characters, for example film, book, TV and cartoon characters, to associate products with fun, fantasy, happiness, adventure and popular culture.

An article in the advertising industry magazine, *AdNews*, entitled, ‘Kids listen to Celebrities’, stated:

‘For most children and teens, to see the face of an identity they respect, either real or fictional – endorsing a product is enough motivation for them to purchase it, or to influence their parents to purchase it for them.’³⁷

Research shows that use of characters in television advertising is effective for attracting children’s attention (particularly younger children in early stages of cognitive development), helping children connect with products, creating positive associations with brands and products, and improving children’s long-term product and brand memory, and that use of characters increases in effectiveness as children develop cognitively.³⁸

³⁶ Hoek, J. & Gendall, P. Advertising and obesity: a behavioural perspective. *Journal of Health and Communication*, 2006, 11, 409-423.

³⁷ Cubito, A. Kids Listen to Celebrities. *AdNews*, 7 April 2006, page 27.

³⁸ Brand, J.E. *Television advertising to children: A review of contemporary research on the influence of television advertising directed to children*. Prepared for the Australian Communications and Media Authority, May 2007, pages 24-26.

In addition, the OPC believes use of these personalities or characters to promote unhealthy foods to children is unfair and unethical because children cannot understand the persuasive purpose of these promotions or interpret them critically, and as a result, take personalities' or characters' endorsement of products at face value.

There is strong concern among Australian parents about the use of characters or personalities in unhealthy food advertising. As identified above, a recent national survey found that 91% of consumers believe the use of popular personalities or characters should be regulated, with half in favour of stopping it all together.³⁹

Premiums and giveaways

The OPC recommends that the broadcast of an unhealthy food advertisement (as defined above) that features or refers to a premium, if the premium would be likely to appeal to children, should be prohibited.

'Premium' should be defined as any separate or additional good, service, prize, voucher or other benefit, or any chance to become entitled to receive any good, service, prize, voucher or other benefit, that is offered or supplied on condition of, or in connection with, purchase of a food or beverage. This should include any good that is not a food or beverage item offered or supplied with a food or beverage item as part of a single product. This should also include free product give-aways and entry to competitions.

Research indicates that promotion of free toys and give-aways is the most common strategy for advertising food to children.⁴⁰ This strategy is of concern to the OPC because it encourages children to pester parents to buy advertised products,⁴¹ and may encourage repeat purchase and over-consumption of advertised products.

Use of premiums to promote unhealthy foods to children is also unfair and unethical as it influences children to desire and request advertised products for reasons unrelated to the product's characteristics. As noted in the literature review commissioned as part of ACMA's Children's Television Review, 'the premium drives children's preferences, rather than the appeal or characteristics of the food', and children's 'desire for the premium may overshadow the desire for the underlying product.'⁴²

Promotion of premiums in food advertisements targeting children often dominates promotion of the main product advertised.⁴³ Very young children (aged 2-6 years) can only process a single dimension of an advertisement at a time, and consequently may only be able to process the offer of a premium in an advertisement if it dominates references to the main product.⁴⁴

New research in Australia has found that the use of premium offers and promotional characters is concentrated in food advertisements targeting children and that the majority of these advertisements are for unhealthy foods (chocolate, confectionary and fast food restaurant meals).⁴⁵ This research also reveals that the proportion of food advertisements that use premium offers and promotional characters is significantly higher during children's peak viewing times than at other times.⁴⁶

There is strong concern among Australian parents about the use of premiums in food advertising to children. As identified above, a recent national survey found that 91% of consumers believe the

³⁹ Morley B, Martin J and Dixon H. *Obesity prevention policy initiatives: consumer acceptability*. Centre for Behavioural Research in Cancer, The Cancer Council Victoria. December 2008.

⁴⁰ Hill, J.M., & Radimer, K.L. (1997). *A content analysis of food advertisements in television for Australian children*. *Australian Journal of Nutrition and Dietetics*, 54, 174-181.

⁴¹ Hastings G, Stead M, McDermott L, Forsyth A, MacKintosh A.M, Rayner M., Godfrey C, Caraher M & Angus K. *Review of Research on the Effects of Food Promotion to Children*. Final Report to the UK Food Standards Agency. 2003, University of Strathclyde Centre for Social Marketing: Strathclyde.

⁴² Brand, J.E. *Television Advertising to Children: A review of contemporary research on the influence of television advertising directed to children*, prepared for ACMA, May 2007, page 27.

⁴³ Morton, H., Stanton, R., Zuppa, J., & Mehta, K. 2005, Food advertising and broadcasting legislation - a case of system failure, *Nutrition and Dietetics*, vol. 62, pp. 26-32.

⁴⁴ Brand, J.E. *Television Advertising to Children: A review of contemporary research on the influence of television advertising directed to children*, prepared for ACMA, May 2007, page 27.

⁴⁵ Kelly, B., et al (2008) Persuasive food marketing to children: use of cartoons and competition in Australian commercial television advertisement. *Health Promotion International*, 5.

⁴⁶ *Ibid.*

government should regulate the use of toys and giveaways to market unhealthy food and drink to children, with 55% believing the practice should be stopped completely.⁴⁷

The OPC believes the use of any premiums that are appealing to children in advertisements for unhealthy food should be prohibited.

Competitions

The OPC believes competitions are essentially premiums – they are an incidental benefit (the chance to win a prize) offered with purchase of a product. They are also likely to have a similar influence on children as toys or give-aways offered with food or beverage products. They are likely to influence children to engage in pester power, encourage repeat purchase of the advertised products, and may influence children to over-consume the advertised products.

Accordingly, the OPC believes use of competitions to advertise unhealthy food to children should be prohibited as part of restrictions preventing the use of premiums likely to appeal to children in unhealthy food advertisements (as described above). ‘Premium’ should be defined broadly to include entry to competitions.

Peer pressure

Advertisements targeting children are often designed to create the impression that having or consuming a product is ‘cool’ or socially desirable and will impress children’s peers, in order to tap into peer pressure and children’s desire for social acceptance.

The OPC recommends that unhealthy food advertisements that are intended or likely to lead a child to believe that possession or consumption of the advertised product would lead to social success or peer approval should be prohibited.

7 Conclusion

The OPC thanks Free TV Australia for the opportunity to comment on its proposed CTICP.

As discussed in this submission, the commercial television industry has a responsibility to ensure that children are protected from advertising that may be harmful to them. The OPC does not believe that food advertising to children is the sole cause of the overweight and obesity problem, or that effective regulation of food advertising alone would provide the solution. However, it does believe that the adoption of the recommendations outlined above would be the most appropriate and effective way for Free TV Australia to protect children from the possible harmful effects of food advertising, and would be an important first step in dealing with food marketing to children. It would also be an effective strategy for improving children’s diets, as part of a broad multi-strategic approach to dealing with the overweight and obesity epidemic.

Please contact Nicole Antonopoulos, Legal Policy Adviser to the OPC, on (03) 9635 5612 or at nicole.antonopoulos@cancervic.org.au if you have any queries about this submission or require further information.

25 September 2009

⁴⁷ Morley B, Martin J and Dixon H. *Obesity prevention policy initiatives: consumer acceptability*. Centre for Behavioural Research in Cancer, The Cancer Council Victoria. December 2008.