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### Inappropriate food marketing

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## Inappropriate food marketing

### Abstract

The Preventative Taskforce has identified inappropriate food marketing to children as a national policy priority, and is seeking to provide an informed policy approach to guide government action in this area. This project has formulated a set of policy options and recommendations regarding inappropriate food marketing in Australia. The policy options and recommendations have been developed on the basis of an analysis of international evidence, including Australian and international research studies and case studies of policy initiatives. The policy options and recommendations address the potential roles and responsibilities of national government, and take account of the roles of industry groups, non-government organisations and consumers.

### Keywords

marketing, food, inappropriate

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**The University of Sydney**



**CONSULTANCY REPORT ON  
INAPPROPRIATE FOOD MARKETING  
TO THE NATIONAL PREVENTATIVE TASKFORCE  
January 2009**

*This report has been prepared by a team from the Institute of Obesity, Nutrition and Exercise in collaboration with experts from Cancer Council NSW. We would also like to acknowledge the contribution of Professor Elizabeth Handsley, School of Law, Flinders University.*

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## **1. INTRODUCTION**

### **1.1 Purpose**

The Preventative Taskforce has identified inappropriate food marketing to children as a national policy priority, and is seeking to provide an informed policy approach to guide government action in this area.

This project has formulated a set of policy options and recommendations regarding inappropriate food marketing in Australia. The policy options and recommendations have been developed on the basis of an analysis of international evidence, including Australian and international research studies and case studies of policy initiatives. The policy options and recommendations address the potential roles and responsibilities of national government, and take account of the roles of industry groups, non-government organisations and consumers.

### **1.2 Context**

There is an accumulating body of evidence on the nature and extent of food marketing in Australia and internationally, and the negative effects of inappropriate food marketing on children's knowledge, attitudes, food preferences and consumption. The 'marketed diet' predominantly comprises energy-dense, nutrient poor foods and is not consistent with Australian dietary recommendations. It is also well established that children's current food consumption patterns do not conform to dietary guidelines, and involve an over-consumption of energy-dense nutrient poor foods; and that this contributes to high rates of overweight and obesity in Australian children.

In recent times, there has been vigorous discussion regarding appropriate policy responses to this problem. There has been significant policy advocacy from health and consumer groups. At the same time, industry has been actively involved in promoting new self-regulatory approaches and developing company pledges. As part of the process of revising the Children's Television Standards (CTS), the Australian Communications and Media Authority (ACMA) considered this issue, but has indicated that it is unlikely to make any significant changes in its regulation. A recent Senate Inquiry into the Marketing of Junk Foods to Children similarly considered the issue, but did not recommend a policy response, other than to refer it for further investigation to the Preventative Task Force.

## 2. SYNTHESIS OF RECENT EVIDENCE

### 2.1 The nature and extent of food marketing to children

The most authoritative and comprehensive reviews of studies on the nature and extent of food marketing to children have been conducted in the UK, initially in 2003 (1), updated in 2006 (2) and in 2008 (unpublished). This work reviewed studies on the extent and nature of food marketing to children from over 25 countries. These reviews and updates indicate that children are exposed to high levels of food advertising and marketing, and that the advertised diet is dramatically different to recommended diets, as it predominantly promotes energy-dense, nutrient poor foods. This is consistent with findings from the work conducted by the Institute of Medicine in the USA (3).

While most work has focused on television advertising, more recent studies have found high levels of advertising across other media. Research indicates that food marketers are responding to pressures to reduce TV advertising by increasingly using print and new technologies, such as the internet, mobile phone text messaging and email to target children (4). These other non-broadcast media are often used by children without parental supervision, making them more difficult for parents to monitor and control (5).

It is important to recognise that this broad marketing communications activity has to be set within the full mix of marketing tools deployed by food companies to encourage consumption of their products – including pricing, distribution and product development. In fact, food marketing is generally understood to encompass:

- **Broadcast media** including television, cinema and radio
- **New technology** including the internet and SMS/text messaging
- **Print media** including magazines and newspapers
- **Promotions** including premium offers, celebrity endorsements, the use of cartoon characters, health and nutrient claims, and product placements
- **Places** including school canteens and vending machines, sporting events, supermarkets
- **Price** where products are sold at cheaper prices to make them more available and appealing to young people
- **Packaging** that is appealing to children
- **Product expansion** by selling multiple variations of a product, for example size and flavour variations
- **Public relations and sponsorships** by sponsoring television programs, sporting events, fund-raising and establishing or donating money to charity

There is a substantial and accumulating body of Australian research on food marketing patterns, including studies related to television, magazines, the Internet, outdoor settings and point-of-sale (see Table 1). This research indicates that food marketing is pervasive, and that children are exposed to high levels in each of these media throughout daily life. The research consistently shows that the content of food marketing directed at children is predominantly for unhealthy foods.

**Table 1: Australian research on children's exposure to food marketing**

Media type	Exposure
Television	Chapman et al. How much food advertising is there on Australian television? <i>Health Promot Int.</i> 2006 [6] Kelly et al. Television food advertising to children: the extent and nature of exposure. <i>Public Health Nutr.</i> 2007 [7] Hattersley et al. Food advertising on Sydney commercial television: The extent and nature of children's exposure 2006-2007. NSW Centre for Overweight and Obesity [8] Zuppa et al. Television food advertising: counterproductive to children's health? A content analysis using the Australian Guide to Healthy Eating. <i>Nutrition and Dietetics.</i> 2003 [9]
Internet	Kelly et al. Internet food marketing on popular children's websites and food product websites in Australia. <i>Public Health Nutr.</i> 2008 [10] CHOICE. Food marketing: Child's Play? Australian Consumers Association 2006 [12]
Print media	Kelly and Chapman. Food references and marketing to children in Australian magazines: a content analysis. <i>Health Promot Int.</i> 2007 [11]
Place	Chapman K, Nicholas P, Banovic, D, Supramaniam R. The extent and nature of food promotion directed to children in Australian supermarkets. <i>Health Promot Int.</i> 2006 [13] Dixon H, Scully M, Parkinson K. Pester power: snackfoods displayed at supermarket checkouts in Melbourne, Australia. <i>Health Promot J Austr.</i> 2006 [14] Kelly B, Cretikos M, Rogers K, King L. The commercial food landscape: outdoor food advertising around primary schools in Australia. <i>Australian and New Zealand Journal of Public Health.</i> 2008 [15]
Price	×
Packaging	Kelly B, Hughes C, Chapman K, Louie J, Dixon H, King L. On behalf of a Collaboration of Public Health and Consumer Research Groups. Front-of-Pack Food Labelling: Traffic Light Labelling Gets the Green Light. Cancer Council 2008 [16]
Product expansion	×
Public relations and sponsorships	×

× = no studies available

Advertisements are designed to be persuasive, and thus research on the messaging and content of food advertisements has been conducted to understand how they influence children's food preferences. Studies show that food and beverages are frequently associated with fun, happiness and activity in advertisements targeted to children (17,18). Some advertisements also use symbolic messages, such as anti-adult themes (19).

## 2.2 TV viewing patterns and other available information on the times and sites of children's exposure

### *Free to air TV*

The information on the extent of food marketing to children within Australia indicates that there are high levels of exposure within the current regulatory systems, indicating that the current system does not effectively limit children's exposure.

While free to air television is more regulated than other media (see Table 2), there is significant information showing how ineffective the current arrangements are in minimizing children's exposure to inappropriate food advertising. For example, in relation to free to air television, the current CTS (20) regulate advertising broadcast immediately before, during and after 'C' programs, which are specially-designated shows that are broadcast in fulfillment of a quota (not all shows that might be considered as children's shows) and prohibit advertising during specifically designated 'P' programs. These program quotas occur within designated C time bands (7-8am and 4-8:30pm weekdays; 7am-8:30pm weekends and holidays) and P time bands (7am-4:30pm). Therefore, there is substantial scope for food advertisements to be broadcast during a C time band, but not immediately before, during or after a designated C or P program, and thus, not subject to the CTS.

Furthermore, much of children's TV viewing occurs outside of C time bands. A key weakness in this current approach is that the scheduled times when regulations apply do not reflect children's actual viewing patterns:

- OzTAM ratings data indicates that child audience numbers are low at the times C and P programming is usually broadcast (C: 16:00-16:30; P: 9-9:30 and 15:30-16:00).
- OzTAM ratings data for the period January-June 2006 indicates that the most popular weekday viewing period for children aged 5-12 years is 18:00-22:00; and for children aged 0-4 years is 17:00-21:00, peaking at 19:00-20:00 (average child audience numbers of 500,000).
- Many of the programs most popular with children 12 -17 years are broadcast outside of C time bands, and therefore not subject to CTS restrictions. In 2006, such programs included *NCIS*, *Desperate Housewives*, *Lost* and *Prison Break*.

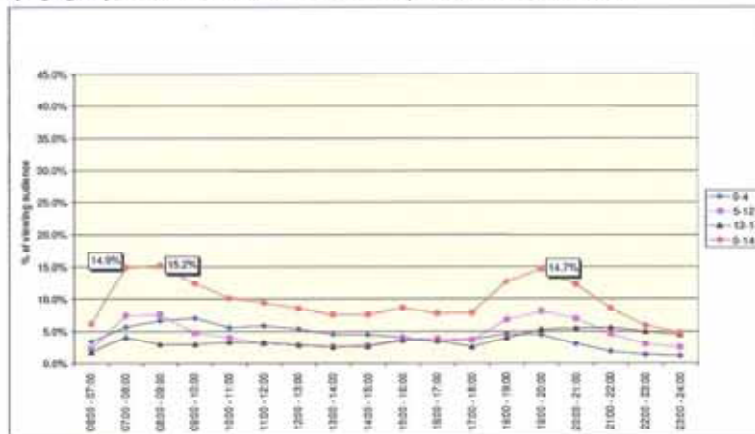
Figures 1 and 2 present the OzTAM data prepared for ACMA in its recent review (21). They illustrate the points noted above.

Thus, even if the regulations were expanded from C periods to C time bands, they still would not catch the vast bulk of children's actual viewing. Children are being exposed to high volumes of broadcasting and advertising not regulated by the CTS. Any regulatory system must take account of this. To effectively reduce children's exposure to inappropriate food advertising, any restrictions would need to apply at those times when large numbers of children are viewing. To be effective, any restrictions need to be aimed at children's actual viewing times.



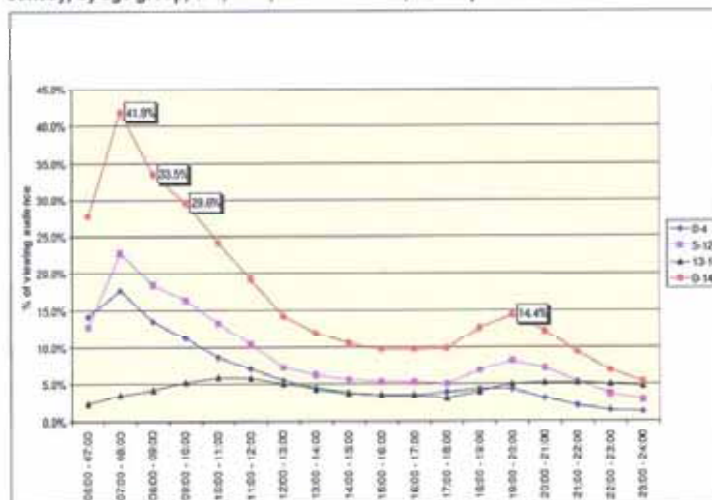
**Figure 1: Children's TV viewing patterns (weekdays) by age group (21)**

**Figure 2.6: Commercial television viewing – percentage of viewing audience (Monday–Friday) by age group, 0–4, 5–12, 13–17 and 0–14 for the period, January–June 2006**



**Figure 2: Children's viewing patterns (weekends) by age group (21)**

**Figure 2.8: Commercial television viewing – percentage of viewing audience (Saturday–Sunday) by age group, 0–4, 5–12, 13–17 and 0–14, January–June 2006**



**Table 2: Existing Australian regulations for different marketing media and their perceived limitations<sup>1</sup>**

Marketing media	Existing statutory regulations	Existing industry self-regulation and guidelines
<b>Free-to-air television</b>	<p><b>Australian Communications and Media Authority – Children’s Television Standards (CTS)</b>  The current CTS predominately focuses on avoiding misleading advertising. It does not address unfair advertising, including the marketing of unhealthy food to children.</p> <p>These regulations apply during ‘C’ programs, which are typically broadcast between 16:00 and 16:30 daily.</p> <p>CTS16 specifies addresses advertising repetition (although research indicates this clause is frequently breached without sanction).</p> <p>The proposed CTS 2008 include additional restrictions on the use of promotional characters and specifications to ensure premium offers are depicted as incidental to the advertised food product; with these restrictions proposed for ‘C’ programs.</p> <p><i>Critique:</i>  - Lack of an adequate monitoring and compliance system. The current system relies on complaints from the public to monitor compliance with standards. Due to this ineffective monitoring system, several research studies have found serious and repeated breaches of the current standards  - Limitations do not apply when largest numbers of children are viewing  - Minimal restrictions on use of persuasive techniques</p>	<p><b>Free TV - Commercial Television Industry Code of Practice</b>  This code contains only one provision dealing with food advertising to children. That is, ads directed to children for food or beverages should not encourage or promote “unhealthy eating or drinking habits”, defined as “excessive or compulsive consumption of food and/or beverages”.</p> <p><i>Critique:</i>  - As the portrayal of excessive or compulsive food consumption by children is uncommon in marketing campaigns, the impact of this code on restricting children’s exposure to unhealthy food marketing is likely to be minimal.</p> <p>- This code does not restrict the volume of unhealthy food advertising to children, the types of foods that may be advertised or the range of techniques used to target children</p>
	<p><b>Australian Competition and Consumer Commission (ACCC) - Trade Practices Act</b>  This act stipulates that advertising must not mislead or deceive consumers.</p>	<p><b>Australian Association of National Advertisers (AANA) - Food and Beverages Advertising and Marketing Communications Code</b>  This code does not restrict the volume or timing of unhealthy food advertising to children, and does not restrict persuasive marketing techniques used to target children.</p>

<sup>1</sup> This table adapted from Cancer Council NSW report.

Marketing media	Existing statutory regulations	Existing industry self-regulation and guidelines
		<p><b>Australian Food and Grocery Council (AFGC) - Responsible Children's Marketing Initiative</b>  This code commenced in January 2008, with member organisations of the AFGC voluntarily committing to this initiative.</p> <p><i>Critique:</i></p> <ul style="list-style-type: none"> <li>- Not all food companies will be signatories to the code</li> <li>- The initiative does not generally apply to peak children's viewing times, with restrictions based on the proportion of the total program audience that are children</li> <li>- No significant deterrents to ensure food companies will comply with the industry's code and it is unclear what nutrient criteria will be used to define healthy and unhealthy foods.</li> <li>- Restrictions will not include all forms of persuasive marketing techniques to children, such as the use of spokes characters</li> </ul>
<b>Pay television</b>	Nil specific to food marketing.	<p><b>AANA - Food and Beverages Advertising and Marketing Communications Code</b>  (As above)</p> <p><b>Australian Subscription Television and Radio Association (ASTRA) - Subscription Broadcast Television Code of Practice</b>  This code contains one clause relating to advertising to children. Subscription television broadcasters must also comply with the AANA Food and Beverages Advertising and Marketing Communications Code.</p> <p><b>Australian Food and Grocery Council (AFGC) - Responsible Children's Marketing Initiative</b>  (As above)</p>
<b>Radio</b>	<p><b>Broadcasting Services (commercial radio advertising) Standard 2000</b>  Nil specific to food marketing.</p>	<p><b>ASTRA</b>  (As above)</p> <p><b>Commercial Radio Australia – Commercial Radio Codes of Practice</b>  Nil specific to food marketing.</p> <p><b>AFGC - Responsible Children's Marketing Initiative</b>  (As above)</p>

Marketing media	Existing statutory regulations	Existing industry self-regulation and guidelines
Internet	<b>SPAM Act</b> This act prohibits unsolicited commercial electronic messages. If food companies obtain personal information from children and use it for direct marketing to children without parents' consent, this may breach the Spam Act.	<b>AANA - Food and Beverages Advertising &amp; Marketing Communications Code</b> This code does not cover food marketing on food companies' own websites, only paid advertising on third-party websites.
		<b>AFGC - Responsible Children's Marketing Initiative</b> This code does not cover food marketing on food companies' own websites, only paid advertising on third-party websites.
Magazines / print	Nil specific to food marketing.	<b>AANA - Food and Beverages Advertising &amp; Marketing Communications Code</b> This code only makes broad statements about misleading and deceptive advertisements, and does not apply to communications that are for entertainment or education purposes. Therefore, this code does not cover editorial content and product placements.
		<b>Australian Publishers' Bureau</b> Provides guidelines on misleading advertising.
		<b>AFGC - Responsible Children's Marketing Initiative</b> (As above)
Labelling	<b>Food Standards Australia New Zealand (FSANZ) – Food Standards Code</b> This code governs food labelling and the use of nutrition and health claims.	<b>Australian Food &amp; Grocery Council - Code of Practice on Nutrition Claims (CoPONC)</b> A voluntary code of practice for nutrient content claims.
	<b>ACCC - Trade Practices Act</b> (As above)	<b>AFGC</b> AFGC recommended its members adopt Percentage Daily Intake as the preferred front of pack labeling system. However, this has not been uniformly adopted by all food companies, and independent research indicates this system performs poorly with consumers.
Packaging	<b>FSANZ – Food Standards Code</b> (As above)	<b>The Australasian Promotion Marketing Association</b> This association has some guidelines for food packaging targeting children, including that promotions directed at or likely to attract children should not take advantage of their natural credulity or lack of experience, and children should not be eligible for promotions where prizes may cause problems between parents and children unless parents give written permission for the child to enter. Prizes that are unsuitable for children should not be offered in promotions addressed to them.
	<b>ACCC Trade Practices Act</b> This act protects consumers from misleading and deceptive conduct.	

<b>Marketing media</b>	<b>Existing statutory regulations</b>	<b>Existing industry self-regulation and guidelines</b>
<b>Point of sale</b>	<b>ACCC Trade Practices Act</b> (As above)	Individual supermarket policies may exist to limit the number of checkouts with unhealthy food items on display
<b>Sponsorship</b> (Sporting clubs and schools)	<p>Nil specific to food marketing. Note that while Australian legislation prohibits tobacco sponsorship of sports through the Tobacco Advertising Prohibition Regulations, and other industry regulations limit the promotion of alcohol at events targeting children and adolescents, no regulation exists that restrict the promotion of unhealthy food products to children through sports sponsorship.</p> <p>Globally no regulations, including both statutory and industry self-regulation, are in place that restrict food company sponsorship of children's sport.</p>	<p>Department of Education Policies relating to school sponsorship do NOT make any provisions against sponsorship by unhealthy food companies.</p> <p>Internal sporting club policies may exist to limit sponsorship by unhealthy food companies. Note that sponsorship is not included in the AANA definition of an advertising medium.</p>
<b>Outdoor signage</b>	<b>FSANZ – Food Standards Code</b> (As above)	<b>Outdoor Advertising Association</b> Nil specific to food marketing.
	<b>ACCC Trade Practices Act</b> (As above)	<b>Local government policies</b> Nil specific to food marketing.
	<b>State Government Outdoor Advertising</b> Nil specific to food marketing.	
<b>Cinema</b>	Nil specific to food marketing.	<b>AANA - Food and Beverages Advertising &amp; Marketing Communications Code</b> (As above)
		<b>AFGC - Responsible Children's Marketing Initiative</b> (As above)

The scheduling of restrictions is a key limitation on the effectiveness of self-regulatory measures as well. For example, the Australian Food and Grocery Council's (AFGC) new Responsible Children's Marketing Initiative (22), as discussed further in Appendix A, is framed to address '*marketing communications to children under 12*', and does not publicly promote any specific timing for the application of codes. However, individual company action plans (for example, Nestle, Coca-Cola, Pepsico, Cereal Partners Worldwide, Cadbury) have interpreted this as '*where the audience is predominantly children*'. Theoretically, this can only be determined retrospectively. But more significantly, the stated ban is destined to have no effect whatsoever on children's exposure to television food advertising, as there are no time slots across weekdays or across weekends when children 0 to 14 years comprise the majority of the overall viewing audience across commercial channels (see Figures 2.6 and 2.8 for January to June 2006). This does not exclude the possibility that the audience for specific programs (on particular channels and particular days) may be predominantly children, but it does mean that this is a very limited occurrence. This is further illustrated when considering the most popular programs viewed by children. For example, of the top 50 rating programs for people aged 0-4 years in the period January to June 2006, 5 were on commercial channels. Of these only 1 program would be likely to have a majority of children as viewers, with the other 4 comprising 3 versions of *The Biggest Loser* and *Australia's Funniest Home Video Show*.

The application of self-regulatory bans to times when children are a majority of the audience could be considered misleading, given the statements of principle in company action plans. For example, Coca-Cola states "*Coco-Cola South Pacific will undertake no direct targeting of children under 12 years in any media for any brand messaging. This applies to all media and all beverages*" (23).

The UK regulations have been critiqued on a similar basis: while they are based on children as a proportion of the audience, they do not apply at times when the largest absolute numbers of children are watching. Thus, a large number of children have considerable exposure to food marketing on TV (24), despite new advertising restrictions aimed specifically to limit such exposure.

#### *Pay TV*

In the case of Pay TV, the specific channels with the largest numbers of children viewers are, in fact, children's channels as illustrated in Figures 3 and 4 (OzTAM)<sup>2</sup>. The patterns of children's viewing across weekdays and weekends for these channels are illustrated in Figures 5 and 6 below.

#### *Internet*

Australian research on internet food marketing looked at 324 websites that attracted an audience of greater than 1.5% of the target population of Australian children aged 2-16 years (which equates to over 30,000 children), with some websites reaching up to 85% of the potential audience<sup>3</sup> (10). Information on internet traffic was sourced from commercial net ratings, and would need to be further explored to set appropriate criteria for determining where restrictions might apply. Any criteria would need to recognise that this form of media changes very quickly, so that sites that are mainstream in 2009 were only emerging in 2006 (e.g. Facebook). While food product websites attract much lower numbers of children, the same study also examined food advertising on a sample of these websites.

<sup>2</sup> Unpublished data purchased from OzTAM by NSW Physical Activity, Nutrition and Obesity Research Group (PANORG), University of Sydney.

<sup>3</sup> The most popular websites at this time, in 2006, were versions of Google and NineMSN.

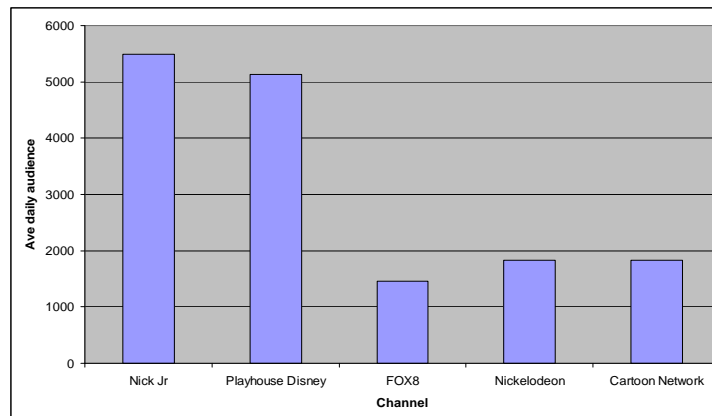
### *Magazines*

Similarly, readership and circulation data has been used as a basis for identifying magazines popular with children, in order to examine the extent they carry food marketing communications (11). Interestingly, magazines' food references comprise editorial, product placements and recipes, as well as advertisements and product or brand-related competitions. Further exploration of circulation and audience data may be required to determine appropriate print media where restrictions might apply.

### *Outdoor sites*

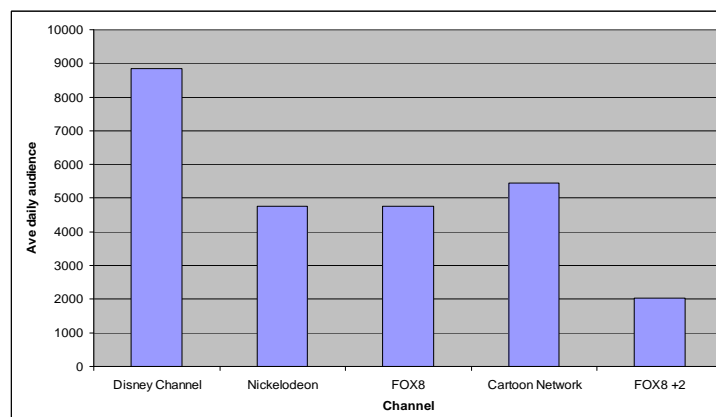
Australian research on outdoor advertising examined areas within 250m and 500m of schools within low and high density suburbs of Sydney. Further exploration of appropriate criteria for limiting or banning food advertisements in order to limit the extent of children's exposure would be required. This would need to take account of places around early childhood services and other children's settings (such as parks), as well as schools.

**Figure 3: Average daily audience of top 5 Pay TV channels for children aged 0-4 years**



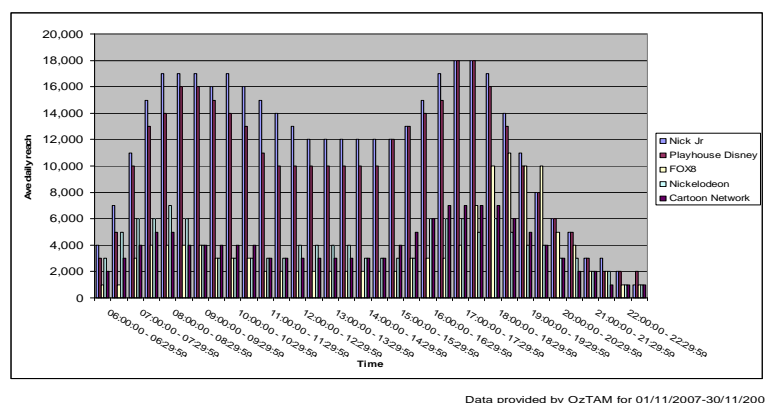
Data provided by OzTAM for 01/11/2007-30/11/2008

**Figure 4: Average daily audience of top 5 Pay TV channels for children aged 5-12 years**

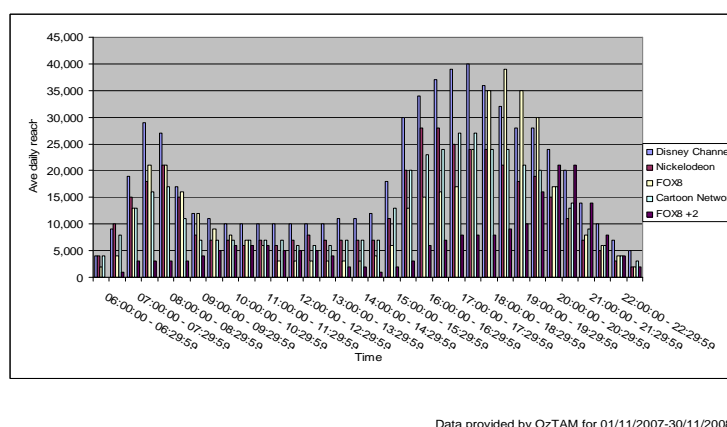


Data provided by OzTAM for 01/11/2007-30/11/2008

**Figure 5: Average daily reach of top 5 Pay TV channels viewed by children aged 0-4 years on weekdays**



**Figure 6: Average daily reach of top 5 Pay TV channels viewed by children aged 5-12 years on weekdays**



## 2.3 The effects of food marketing on children

Authoritative and rigorous systematic reviews were conducted by Hastings et al in 2003 (1), and updated in 2006 (2) and 2008 (unpublished), and the Institute of Medicine (3). These reviews examine the effects of food marketing, as well as the nature and extent of food marketing.

The evidence shows that TV advertising has an independent effect on food preferences and consumption. Poor diet, in turn, influences risk of obesity and other non-communicable diseases. Note that the available research studies have predominantly focused on marketing to younger children (mostly on primary school aged children).

While there have been other reviews, many have been non-systematic, and some are methodologically flawed or limited (such as the Brand review commissioned by ACMA (25) and critiqued in submissions to ACMA (26)).



A number of recent studies (published since the ACMA review) support the evidence that children's food-related awareness and behaviours are associated with exposure to television commercials:

- In a Dutch study, Buijzen et al 2008 found that exposure to food advertising in children aged 4 to 12 years old was positively associated with their consumption of advertised brands and also with consumption of energy-dense products. This study showed that food advertising is likely to affect children's brand choice as well as their consumption of other energy-dense foods (27).
- In a US study of third and fourth grade children's awareness of beer advertising, Collins et al 2005 found that although advertisements may not deliberately target children and youth, some advertisements may lead to high product awareness in children and youth. In this study, researchers found high levels of awareness for a beer commercial featuring an animated animal amongst third and fourth graders (28).
- In an Australian study of fifth and sixth grade children, Dixon et al 2007 found television exposure was positively associated with more positive attitudes towards unhealthy food and higher self-reported frequency of consumption of unhealthy food among children (29).

Evidence is also accumulating that indicates that the relationship between food marketing and dietary behaviours is in fact causal.

A key point of debate has been whether or not the impact of marketing on food consumption is significant (ACMA made the judgement that as the effect of advertising on consumption was small, it was not significant) (26). In fact, small influences can be significant when they affect a large population, are ongoing and cumulative. It is important to note that food marketing has as much impact on food consumption as any other single factor, and is amenable to change (30,31).

### **3. SUMMARY OF REGULATORY APPROACHES**

#### **3.1 Existing Australian regulatory approaches**

Table 2 presents a summary of existing Australian regulations in relation to different marketing media, including both statutory regulations and industry self-regulation and guidelines.

It is important to note that recent Australian studies on the nature and extent of children's exposure to food marketing have occurred in the context of this current regulatory system. While the introduction of the AFGC industry initiative from 2009 might be expected to change this environment to some degree, the extent of change in children's exposure is not known (see Appendix A).

The current mixed regulatory system in Australia for television food advertising to children does not provide a coordinated system, but a rather complex and confusing arrangement, with inefficiencies in terms of enforcement, monitoring and complaints.

By way of comparison, Appendix B includes brief notes on the approaches to the regulation of tobacco and alcohol marketing in Australia. The bans on television advertisements for tobacco were phased in between 1973 and 1976. A more comprehensive approach was adopted through the *Tobacco Advertising Prohibition Act* (TAPA) in 1992 and came into effect in July 1993 (32).

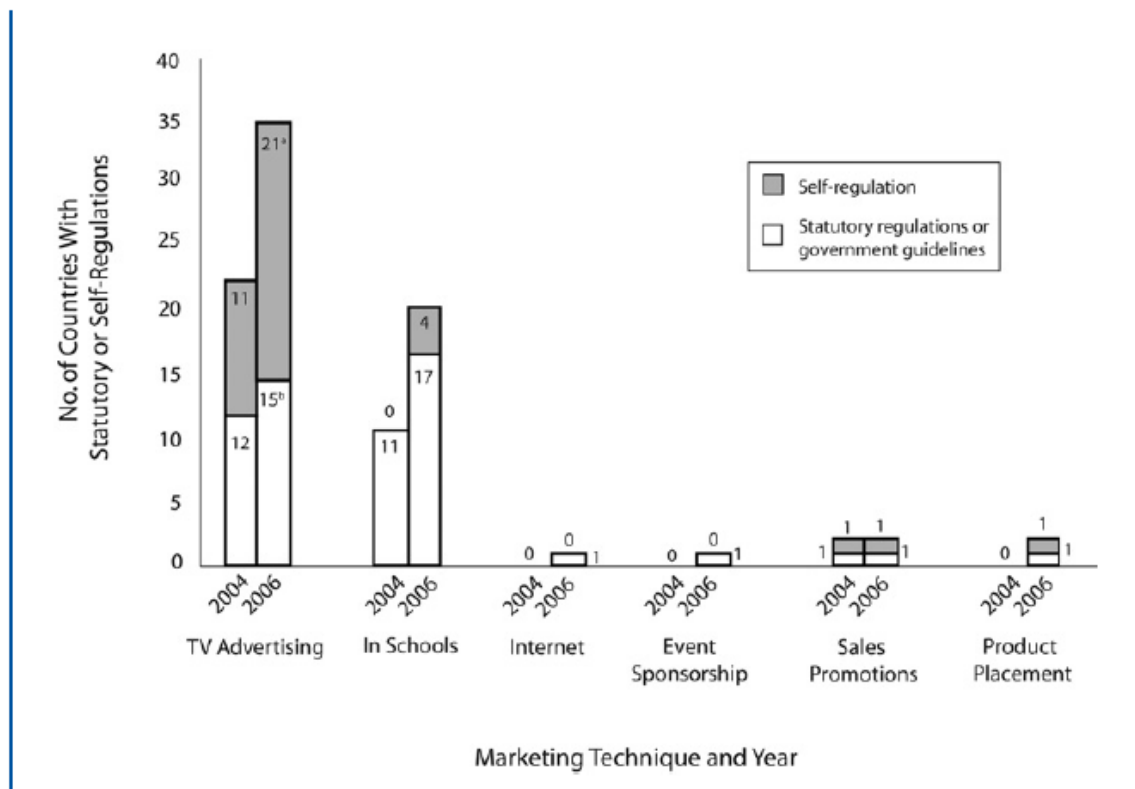
In the case of alcohol marketing, there is a mix of statutory regulation and an industry code of practice for TV advertisements (which does not, however, cover sponsorships or product placement), and self-regulation for all other channels of marketing (33). The industry self-regulation takes the form of the Alcoholic Beverages Advertising Code (ABAC). This illustrates some of the weaknesses of self-regulation: the restrictions are limited and do not cover all companies, media channels or specific marketing techniques (33), and thus are less effective than they might otherwise be. There are also barriers for making effective community complaints and complicated complaint processes.

#### **3.2 International regulatory approaches**

Since 2004 WHO has commissioned and published two reports on the global regulatory environment on food marketing to children (34,35), and are currently developing policy guidelines for member states. Member states are expected to be consulted regarding draft recommendations and guidelines during 2009.

Figure 7 shows the number of countries with statutory or self-regulation in relation to specific media in 2004 and 2006. While further countries had new statutory or guideline proposals by 2006, the adoption and implementation of such approaches was proving to be very slow (36). Self regulatory initiatives have been introduced in many countries in recent years, and tend to be adopted more quickly. Hawkes (2007) notes that no firm conclusions about the effectiveness or ineffectiveness of statutory or self-regulation can be drawn so far, as there have been no rigorous restrictions or adequate evaluations (36).

**Figure 7: Number of countries with statutory and self-regulations by media (36)**



The restriction of advertising to children on television has been a long-standing policy in Sweden (since 1991), Norway (since 1992), and in all media in Quebec, Canada (since 1980). In all of these countries, the ban is enforced by a government agency. To date no systematic evaluation of the impacts of these bans on children's exposure to unhealthy food marketing or on childhood obesity has been undertaken, and the nature of broadcasting in many of these jurisdictions has meant that children remain exposed to unrestricted television food advertising via satellite channels (36). For example, in Sweden, advertising restrictions only apply to broadcasting that originates in Sweden, and not that which originates in other European Union member states. Similarly, despite advertising bans, children in Quebec remain exposed to cross-border advertising from the United States. Furthermore, advertising bans in Quebec are conditional, where advertising is permitted during or adjacent to children's programs where the advertisement is directed to the whole family, parents or adults. However, research has shown that French-speaking children living in Montreal, Quebec, who do not watch television broadcast from the United States, have a lower consumption of sugary breakfast cereals, when compared to English-speaking children (37). That is, English-speaking children continued to be exposed to unhealthy food advertisements for sugary breakfast cereals, and thus their consumption of these food products remained high. Research also indicates that children in Quebec have the lowest prevalence of obesity across all Canadian provinces, and the second lowest prevalence of overweight (significantly lower than the Canadian average) (38). Importantly, this regulation has not resulted in a reduction in the quantity or diversity of children's television programs.

In 2008 in the UK, the Office of Communications (Ofcom) introduced restrictions on the scheduling of television advertising of food and drink products to children (39).

Advertisements for food and beverage products that are high fat, sugar and salt, as defined by the UK Food Standards Agency's nutrient profiling scheme, are precluded from being shown in or around programs specifically designed for children or of appeal to children less than 16 years of age, and on dedicated children's channels. These restrictions apply equally to program sponsorship by high fat, sugar and salt food and drink products. Revised advertising content rules also apply to all food and drink advertising to children irrespective of when it is broadcast. Key elements of these content rules include a prohibition on the use of licensed characters, celebrities, promotional offers and health claims in advertisements for high fat, sugar and salt products targeted at pre-school or primary school-aged children. In the UK, scheduling restrictions for food and beverage advertisements are based on program appeal to children, such that regulations only apply during programs that have a child audience composition at least 20% higher than that which exists in the general population. This regulatory requirement is based on children's viewing statistics. Moreover, programs with a small total audience, of which a high relative proportion are children, would be covered by the regulations, whereas a program that enjoys a large total viewing audience, with higher absolute numbers of children viewing but a relatively lower proportion of children compared to adults, would not be covered. This regulatory approach appears to be based on an assumption that if there is a larger number of adults viewing a program, this will reduce the impact of advertising on children. There is no evidence to support such an assumption.

There are two recent reports on the operation of the UK restrictions (4, 40new reference), which can inform policy development on this issue. In 2007/8, the Ofcom review found that children saw 35% less HFSS advertisements overall, including 29% less in the time period 6-9 pm. Interestingly, over this period there had been an increase in households with access to digital TV, and children were exposed to 7% more HFSS advertisements on digital channels than previously (40). At the same time, a study conducted by the UK Department of Health examined advertising expenditure across different media channels and found that child-themed advertising expenditure from 2003 to 2007 had decreased for television, but increased for print, radio, cinema and internet advertising (4). The Ofcom review also reported on shifts in advertising expenditure, both in terms of products (with some reductions in food and drink advertising expenditure but increases in other products) and from commercial to digital channels (40).

Consumers International, a consumer organisation spanning 155 countries and including over 220 member organisations, has also developed recommendations for an International Code on Marketing of Foods and Non-Alcoholic Beverages to Children (41). This code specifies a ban on radio or television advertisements promoting unhealthy food between 6:00am and 9:00pm; a restriction on unhealthy food marketing using new media (including the internet and SMS messaging); restrictions on the promotion of unhealthy food in schools; and the prohibition on the inclusion of free gifts, toys or collectible items which appeal to children and the use of celebrities, cartoon characters, competitions or free gifts to market unhealthy food. This code has also been endorsed by the International Obesity Taskforce and the International Association for the Study of Obesity (see Attachment C).

## **4. POLICY ELEMENTS**

Policy on food marketing should consider and encompass the objectives of the policy, and how these objectives might be achieved. The *how* (or policy approach) involves defining the role of government in relation to industry and consumers, and the specifications for a number of key 'regulatory axes' (42). These regulatory axes are the core variables that specify what the policy would cover and how it would operate. The specifications of these variables determine whether food advertising is regulated stringently, or minimally. The key potential regulatory axes (media covered, timing and placement, advertising content, types of foods and definition of children) are discussed in separate sections below.

Thus, any policy should address the following elements, each of which is discussed below:

1. Policy objectives
2. Roles and responsibilities of government, industry and consumer agencies
3. The range of marketing media covered by regulations
4. Restrictions related to scheduling, placement, frequency and volume
5. Restrictions related to the content of advertisements
6. The types of foods precluded from advertising to children and the food classification system used to determine these foods
7. The definition of 'children' used
8. Monitoring and enforcement

### **4.1 Policy objectives**

The overall aim of any policy on food marketing should be to reduce and minimise the negative impacts of the marketing of energy-dense, nutrient poor foods on children.

To achieve this aim, there are, logically, two key objectives which public policy must directly pursue:

- reduce children's overall exposure to marketing of energy-dense, nutrient poor foods
- curtail the use of specific persuasive marketing techniques in the marketing of energy-dense, nutrient poor foods (that is, minimise the persuasiveness of the message in terms of its content and design)

### **4.2 Roles and responsibilities**

Government, industry groups and consumers are all important stakeholders in relation to food marketing, with different perspectives and roles within any regulatory system. Governments have a clear leadership role, particularly in relation to the protection of children, protecting public health, overseeing broadcast and non-broadcast information environments and balancing the operation of free markets in the public interest. In the case of food marketing to children, government can provide leadership through statutory regulation or through non-binding policies. The different governance approaches are described in Table 3.

In fact, there are strong discrepancies between the type of policy approach and role of government favoured by health and consumer groups and that preferred by the food and advertising industries. Industry seeks a predominantly self-regulatory approach and consumer organisations argue for government statutory regulation.

For example, the International Association of Consumer Food Organisations (IACFO) argues that industry self-regulation is inherently problematic, as such regulations are unlikely to consider the compound effects of advertising, have insufficient sanctions or address the very *raison d'être* of marketing itself, which is to create desire for the product and has been likened to “foxes guarding the hen-house” (43,44). Similarly, the self-regulatory processes in the US have been severely criticized in their failure to take a public interest perspective, as well as flawed in terms of its capacity for monitoring and enforcement (45). Others suggest that this is unsurprising, given industry’s primary and mandated interest in optimising profit (46).

Statutory regulation has the benefit of being independent, and operating with explicit requirements and accountability directly linked to the public interest. Opponents to statutory regulation, including the food and advertising industries, claim that self-regulation is faster, more cost-effective and more flexible (47). Proponents of self-regulations also argue that it facilitates the establishment of proactive and preventative stances and promotes compliance rather than encourages evasion (47).

While self-regulation can be based on the same guiding principles as statutory regulation, in that advertising should not be deceptive or misleading, it typically takes the form of ethical guidelines or codes of practice which may be vague and unenforceable. Self-regulation is seen as operating within the International Chamber of Commerce (ICC) codes of practice, which specify that advertising should be legal, decent, honest and truthful, advertisements should not contain any statement or visual presentation which directly or by implication, omission, ambiguity or exaggerated claim is likely to mislead the consumer, and advertisements should be clearly distinguishable from the medium in which they are embedded (48).

Co-regulation can range from simple endorsement of industry self regulation, to providing legislative backing to privately defined rules, when there is less than 100% participation by companies, or when industry lacks sufficient sanctions to ensure compliance (thus bordering on traditional statutory regulation) (49).

Whatever mix of roles and responsibilities, regulations relating to food marketing to children should aim to work harmoniously as a whole, avoid consumer confusion and operate rigorously and effectively. To meet these criteria, any co-regulatory system should ensure that there is cohesion between government and industry regulations and that these different facets merge together seamlessly. As apparent from Table 2, the current mixed system in Australia for television food advertising to children does not provide such a harmonious system, but rather provides a complex and confusing arrangement, with ineffective and inefficient methods for enforcement, monitoring and complaints.

**Table 3: Primary forms of regulation for food marketing to children (adapted from Hawkes 2007) (36)**

Regulation type	Description
Statutory regulation	<p>Rules enshrined in laws or statutes.</p> <p>Development, promulgation, and enforcement are the responsibility of a government or mandated body.</p> <p>Can be used to implement restrictions or prohibitions to prohibit the quantity or content of specified forms of advertising through specified media.</p>
Government guidelines	<p>Guidelines issued or implemented by a government or mandated body.</p> <p>Have no legal backing.</p>
Self-regulation	<p>Regulation that is led, funded, and administered by the relevant industries.</p> <p>Basic elements include a code of practice that governs marketing content, and a process for the establishment, review, and application of this code. This may be the development of a self-regulatory organisation, established by the advertising and media industries.</p> <p>Participation is voluntary.</p>
Co-regulation [42]	<p>A consistent and linked form comprising both statutory and self-regulation. Self-regulation exists within the framework of a government mandate.</p> <p>While the term is used in different ways, strictly speaking a co-regulatory system means that industry participation is mandated.</p>
Mixed forms	<p>This term is used to distinguish approaches that involve a mix of statutory regulation and self-regulation, but where they exist alongside each other, but are not formally linked.</p>

### 4.3 Options for marketing media covered by regulations

As described above, food marketers use a broad range of media to promote unhealthy food to children. Options for media that could be covered by regulations include:

- **Broadcast media** including television, cinema and radio
- **New technology** including the internet and SMS/text messaging
- **Print media** including magazines and newspapers
- **Non-broadcast media** including outdoor locations, schools, sporting facilities and commercial locations, including supermarkets
- **Public relations and sponsorships** by sponsoring television programs, sporting events, fund-raising and establishing or donating money to charity
- **Packaging** that is appealing to children

Industry marketing expenditure data can also be used to assess the spread of marketing media used by food marketers. While such Australian data is limited, data collected and collated by the US Federal Trade Commission (2008) on expenditure

by 44 major food companies indicates that \$1,618,600,000 was spent on direct advertising of food and beverages to children and adolescents, with \$870 million spent on food marketing directed to children under 12 years. This covers expenditure across a wide range of marketing communication forms and media. While TV was still dominant, and traditional media (TV, radio, print) accounted for 53% of expenditure, use of new media was apparent although relatively small in terms of expenditure (50). In the United Kingdom, a recent analysis of advertising expenditure for all media channels indicate that the annual child-themed expenditure for radio, cinema and Internet advertising increased by 11% from £2.03 million to £2.26 million from 2003 to 2007, and a 42% increase for print media (£4.7 million to £6.7 million). Meanwhile, television child-themed advertising expenditure had decreased consistently over this time, as a result of TV advertising restrictions (4).

It is important to note that if regulations do not cover all media, marketing is likely to become concentrated in those media that are not covered, or not as heavily restricted. Lessons from tobacco control (see Appendix B) indicate that while initial regulations successfully banned tobacco advertising from television, radio and billboards, tobacco companies subsequently channelled their advertising budgets into other forms of marketing, including: guerrilla marketing (also known as “buzz” or “viral” marketing), events and venue promotions; affinity marketing, point of sale, packaging, Internet, direct marketing and the use of premiums/ value-added promotions (51). These other forms of marketing have sought to undermine the success of the Tobacco Advertising Prohibition Act (TAPA). Public health groups recommend improvements to TAPA to address the myriad of residual marketing techniques (51).

#### **4.4 Options for regulations to reduce the extent of exposure**

In addition to the options related to the range and types of media covered by regulations, there are two further major considerations for regulations relating to the coverage of food marketing to children, namely:

- the scheduling and/or placement of advertisements
- the frequency and volume of advertisements

A description of each of these potential regulatory components is provided below.

##### ***Restrictions based on scheduling***

Options for regulations based on the scheduling of food advertisements relate specifically to broadcast media and refer to the time periods when restrictions apply.

The effectiveness of any scheduling based restriction will be highly variable, depending on the time period covered and the absolute audience size during those periods. For example, the current CTS and some company action plans within the new AFGC self-regulatory initiative proposals involve restrictions scheduled during specifically designated children’s programs (or a sub-set thereof).

In relation to free-to-air TV, scheduling restrictions that apply to periods with largest child audience size in absolute terms are optimal for reducing exposure. If the restrictions are based on children as a proportion of the audience, they will have a substantially smaller effect on children’s exposure. Similarly, to be effective, any program-based prohibition, whereby advertising restrictions were effective during children’s programming, would need to apply to programs that a significant number of children actually watch.



For free-to-air TV the options include:

- program classification-based, whereby food advertising bans could apply to all P, C, G, and PG programs. The efficacy of a prohibition based on program classification would depend on it extending to PG programs, for which Australian television audience measurement data (OzTAM) indicate are also frequently watched by children. This is particularly relevant as there is an increase in PG time zones under the Commercial TV Code of Practice.
- time-based, applied to children's peak viewing times, when a significant number of children make up the viewing audience. Children's viewing times appear to remain relatively stable over time and can be based on average annual viewing patterns. This option would provide clear guidance and certainty to broadcasters as to when they can or cannot broadcast food advertisements, and would enable members of the public to easily identify food advertisements in breach of the ban.

For Pay TV, the viewing patterns suggest that the most appropriate restrictions would be applied to the channels with highest child audience numbers and scheduled across all times.

### ***Restrictions based on placement***

Options for regulations based on the placement of food advertisements relate specifically to non-broadcast media and refer to the sites where restrictions apply, such as magazines, as well as outdoor locations near schools, sites within schools, sporting venues, point-of-sale, etc.

The actual specifications for placement restrictions will vary according to the media. For Internet, restrictions should be applied to sites that are most popular with children in the defined age range, as well as food product sites. For print media, restrictions should be applied to placement of advertisements in popular as well as designated children's magazines, as a minimum. In relation to event sponsorship, regulatory restrictions should be applied to all children's events, including sporting and recreation events.

As there has been less research on food marketing communications on these media, it is not possible to estimate the differential effects of alternative placement options. Some further research and modelling of policy options will be required.

Across the different media, the options for reducing the extent of children's exposure by restricting food advertising for scheduled times or designated places can be organised according to the following categories (arranged from most to least stringent):

- all times or relevant placements
- times and locations most popular or frequented by children in the target age range
- times or places where media communications are specifically targeted to children in the target age range
- times or places which are designated as children's times, programs or places

### ***Restrictions based on volume and frequency***

Volume<sup>4</sup> based restrictions could be applied to a broad range of marketing media.

In relation to television food advertising, some degree of volume based restrictions are currently in place through the Children's Television Standards, which allow a maximum of 10 to 13 minutes advertising time per hour during 'C' programs. However, this does not specifically relate to food advertisements, and has not thus far shown any capacity to keep a limit on the proportion of ads that are for food and beverages. Similarly, the CTS limit the repetition of advertisements (less than 2) within a given (30 minute) period, although this is not fully effective in reducing children's exposure to repeated advertisements (52).

Volume based restrictions could also be applied to radio and cinema advertising as well as non broadcast media, including on the Internet, print media and sponsorship, whereby the volume of unhealthy food advertising permitted was limited. For example, the volume of unhealthy food advertising in children's magazines could be limited to a certain number per magazine or for a certain number of pages.

### **4.5 Options related to the content of marketing**

To minimise the persuasiveness of marketing messages, restrictions related to content and design can be applied. These may be of two kinds:

- curtailing the use of specific persuasive marketing techniques, advertisements designed to appeal to children and the use of children in advertisements
- applying counterbalancing messages

Content restrictions could be applied across the full spectrum of marketing media.

The following techniques are currently used to appeal to children and could potentially be curtailed through regulation:

- Premium offers, such as competitions, give-aways and rebates
- Promotional characters, including celebrities, sports figures, licensed cartoon characters and proprietary characters/spokes characters
- Manipulation of children through peer pressure, by using techniques to make children think consumption of products is socially desirable or will attract peer admiration or acceptance
- Association of unhealthy products with improved energy levels, performance, strength, skill or abilities
- Appeals to children's imagination and emotions through use of fantasy characters and scenes and association of food products with fun, happiness, and adventure
- Food shaped, coloured and packaged in ways designed to appeal to children
- Use of catchy jingles, animation and special effects
- 'Advergames' (computer games incorporating the food brand)
- Nutrition content claims and health claims
- Sponsorship of materials, products, people, events, projects, cultural, artistic or sporting activities or places popular with children or with a significant child audience

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<sup>4</sup> TV based research indicates that frequency and volume (frequency x duration) are proportional.

While the current Children's Television Standards make provisions to protect children from some of these persuasive marketing techniques (the use of premium offers and promotional characters) in television food advertisements during 'C' and 'P' programs (and ACMA proposes to strengthen these at those times), the use of these techniques during television broadcast periods when high numbers of children are watching and for all other media is unrestricted.

Prohibition of food advertisements using these persuasive techniques would assist in reducing the impact of food advertising on children. Similarly, prohibiting the inclusion of children and adolescents in food advertisements is likely to reduce the appeal of, and association with, these advertisements for this age group.

Restrictions based on individual food advertisements intended for or directed to children, or likely to appeal to children, have been used in regulatory models in Quebec, Norway and Sweden, and also under the Commercial Television Industry Code of Practice. Whether or not an advertisement is directed to children or likely to appeal to children could be determined by reference to factors such as:

- the content and manner of presentation of the advertisement
- the nature of the product advertised

While it is possible to define specific criteria to distinguish food advertisements which correspond with these factors (e.g. the Commercial Television Industry Code of Practice document includes a separate Advisory Note listing seven considerations for determining to whom an advertisement is directed for the purpose of that code), even with these criteria such a prohibition would be difficult to interpret and identify instances of breaches, particularly for members of the public. Restrictions based on a list of criteria to be balanced (rather than clear rules of exclusion and inclusion) may also be easier to circumvent, for example, by designing food advertisements which contain elements that would appeal to children, but are nevertheless ostensibly addressed to adults. There have already been examples of such advertisements on Australian television, such as a campaign for a highly sugared breakfast cereal featuring a popular children's entertainer, but addressing parents.

#### *Counterbalancing content*

Additionally, counter-advertising is a potential strategy to mitigate some of the negative impact of unhealthy food advertising and raise awareness about healthy food choices (53). In this instance, counter-advertising may take the form of mandatory advertisements promoting healthy nutrition and physical activity behaviours to be broadcast alongside all advertisements for unhealthy food products, or a proportion thereof. Australian research has sought to explore the effects of counter-advertising by testing the placement of healthy television food advertisements alongside unhealthy advertisements on children's dietary knowledge, attitudes and intentions (53). This research indicates that broadcasting healthy food advertisements alongside unhealthy food advertisements does not weaken the impact of unhealthy food advertising in promoting unhealthy foods (53), and in fact may be confusing.

Finally, the inclusion of health warnings on unhealthy food advertisements has been proposed as a way to raise public awareness of the nutritional quality of advertised foods. Such a scheme has been introduced in the Irish Republic and France, with onscreen messages highlighting that unhealthy food should be eaten in moderation and as part of a balanced diet, and the importance of fruit and vegetables and physical activity. These counter-advertisements are funded by industry. However,

health and consumer organisations have claimed that the messages will be ignored or go unnoticed, with a study on 700 consumers by a French consumer group showing that half of respondents failed to notice the advertisement's warning message (54).

#### **4.6 Options for defining restricted food products**

One option for determining the food and beverage products to be covered by regulation is to consider a prohibition on *all* food and beverage advertising (excluding non-commercial promotion of healthy eating). This approach would overcome the difficulty and complexity in defining 'unhealthy' food and beverages, and improve comprehensibility of regulations for members of the public, who may otherwise have difficulty understanding which food products a ban applies to (this is particularly important in the case of a complaints monitoring system).

However, while this approach would reduce the potential for the food industry to exploit or circumvent a ban on unhealthy food and beverage advertising (for example, fast food chains could advertise 'healthy options' to children in order to promote brand recognition), it may stifle incentives for industry to modify existing food products and introduce new product lines which may be considered healthier alternatives, and thus are permitted to be advertised. Further, this option would preclude the opportunity to positively influence children's dietary habits through the promotion of healthy foods.

Alternatively, regulations may apply only to those food products considered to be unhealthy, based on a nutrient profiling system. Nutrient profiling refers to a range of different mechanisms for classifying foods according to their nutritional value. Ofcom in the UK recently applied such a food classification in determining those products ineligible to advertise to children (39). This nutrient profiling system uses a scoring system to rate the overall nutrients in a food product. Research from New Zealand, which applied the Ofcom nutrient profiling system to television food advertisements, showed that the tool could easily be translated to examining television food advertisements in that country and clearly identify high fat, sugar and/or salt products (55). This study assessed four weeks of television data broadcast between 3:30pm and 6:30pm daily on one popular children's free-to-air commercial television channel. The authors found that 66% of all food advertisements were classified as for HFSS products, according to the UK nutrient profiling tool. These results are consistent with previous research from New Zealand and Australia, which has identified a similar proportion of unhealthy food advertising using different food classification systems.

Similarly, in Australia Food Standards Australia New Zealand (FSANZ) has developed a nutrient profiling model, based on an adaptation of the Ofcom system, which considers both positive and negative nutritional characteristics; including energy, saturated fat, sugar, sodium, protein, fibre, and fruit and vegetable content, respectively. While this tool has been developed by FSANZ for the classification of foods permitted to use health claims on food, it was originally developed to classify foods as healthy and unhealthy for the purpose of television advertising restrictions. Additionally, modifications made to this tool by FSANZ have substantially improved the tool's specificity in identifying healthy and unhealthy foods (56).

Alternative nutrition profiling systems have also been devised both in Australia and internationally, such as the National Heart Foundation Tick program and the Swedish Keyhole System; however, none of these other systems have been specifically designed to classify foods for food marketing restrictions.

A further option for defining the types of food products that should be prohibited from being marketed to children includes those food and beverage products intended for children, marketed as suitable for children and/or likely to appeal to children (57). The advantage of this prohibition is that it would apply to advertisements for children's products that are broadcast during supposed 'adult' viewing times or 'adult' programs when a significant number of children are in fact likely to be watching television. Flaws with this option include, firstly, the actual number of foods considered to be solely for children may be quite small, as most foods are eaten by both adults and children. In fact, many food and beverage products intended for adults would be likely to appeal to children, and promotion of products as 'adult' may actually increase their appeal to children. Secondly, there would be a difficulty in distinguishing between products for adults and children, and a resulting potential for advertisers to take advantage of the blurring of this distinction.

It is critical to have clear food classification criteria that provide certainty to all parties (especially consumers) as to what is and is not allowed.

#### **4.7 Options regarding the age definition of children**

The definition of a child, as used in regulatory frameworks and for research purposes varies considerably between and within countries. Table 5 outlines the age definition for a child in different countries. According to the International Obesity Taskforce's Sydney Principles (58), the usual age for the classification of a child in relation to food marketing is 13 years. The CTS refer to children under 14 years, as this is the group that the C quotas are supposed to cater to. The Australian Food and Grocery Council's Responsible Children's Marketing Initiative applies to children less than 12 years of age. By contrast, the United Nations Convention on the Rights of the Child defines a child as less than 18 years of age (59).

**Table 4: The definition of the age of a child in different countries (59)**

<b>Country/Area</b>	<b>Age (years)</b>
Australia	14
Canada	12
Quebec	12 or 13
China, Hong Kong Special Administrative Region	15
Fiji	15
Finland	12
Germany	14
Netherlands	12
Norway	12
Republic of Korea	13
Sweden	12
United Kingdom	16

Research indicates that before four or five years, children regard advertising as simply entertainment, while between four and seven years, children begin to be able to distinguish advertising from programs. By the age of eight, the majority of children have grasped the persuasive intention of marketing, however it is only after children are eleven or twelve years that they can articulate a critical understanding of advertising (54). However, Livingstone and colleagues (2004), in their review of the promotional effects of marketing on children's choices, identified clear existing evidence of media effects among six to twelve year olds and, even more so among teenagers (31). As children age they become more developed cognitively, including

higher media literacy, but they do not necessarily acquire a greater ability to resist or defend themselves against advertising messages (54). Hence, they argue that all age groups are affected by advertising, as different persuasion processes operate at different ages and because each age group is targeted by age-specific forms of marketing (55). Based on the findings of this review, Ofcom in the UK developed television food advertising regulations which define children as less than 16 years of age.

#### **4.8 Options for monitoring and enforcement**

Any regulatory system requires monitoring and enforcement. Enforcement actions might include sanctions such as financial penalties, public disclosure, or revoking membership from an industry body. Enforcement is generally based on information from a monitoring system or complaints.

Self-regulatory systems involve monitoring and enforcement through companies themselves or self-regulatory industry organisations. The alternative is for governments to take responsibility for enforcement, either directly or indirectly, through establishing a specialised agency.

While complaint systems cannot substitute for a monitoring system, they do provide a potentially important avenue for public input regarding compliance and concerns. Unfortunately, the potential of complaint systems is rarely realised in the area of food marketing, as the systems themselves are so complicated and poorly understood that they effectively discourage comment and complaint.

Monitoring information can also be used for policy evaluation and to guide policy refinement. Specifications for what is monitored should correspond with the policy specifications and objectives. It may be particularly important for government to set the requirements for monitoring, as industry self regulatory organisations can be narrow and selective in what they monitor and report (e.g. focus on the number of complaints only, as illustrated by (60)):

Any monitoring system should incorporate indicators related to:

- complaints
- compliance
- children's total exposure to food marketing by media type (for example based on audience data)
- sales data for specific products and product types

Thus the monitoring system might involve one or more of the following:

- a set of government specifications and requirements
- a system for government to commission and/ or collect information
- a system for government to request or require industry data
- a system of pre-clearance, where advertisement content is checked by an independent authority prior to release
- a complaint system
- public disclosure of information on food marketing patterns
- links to a system of sanctions and enforcement

## 4.9 Implications

In the light of current patterns of food marketing in Australia and internationally, the limitations of existing policy approaches, and analyses of policy objectives and options, the following implications can be drawn:

- *Need for policy*  
Any regulatory system to address inappropriate food marketing requires a cohesive policy framework, which enables clear assessment, analysis and monitoring of the wide range of ad hoc initiatives, and changes in patterns.
- *Statutory approach*  
Significant changes in the extent and nature of food marketing are only likely to occur within a statutory framework or through rigorous specifications within a co-regulatory system
- *Role of government*  
Government alone can take a lead role in terms of a policy framework, monitoring and enforcement
- *Types of foods covered*  
There is a 'compelling logic' to restricting advertising specifically for foods that are not necessary or recommended as part of a nutritious diet, rather than limiting advertisements for all foods. The application of restrictions for particular foods, such as foods high in sugar, fat and/or salt, must be based on a food classification system. This approach has the advantage of providing incentives for the production of healthier food products.
- *Threshold for achieving policy aims*  
While incremental systems which progressively incorporate a wider range of media and revised set of restrictions based on scheduling, placement and content are possible, it is critical that any initial system be designed to effectively reduce children's exposure to inappropriate food marketing and curtail the use of appealing and persuasive advertisement content. For example, policy restrictions could start with Free-to-air TV, Pay TV, radio, cinema, internet and outdoor ads and later be applied to other media such as point-of-sale and sponsorship.
- *Regulatory axes*  
The key regulatory axes required to reduce the extent of children's exposure to food marketing vary according to the type of media (see Table 5). Specifications related to the types of foods covered and the definition of children can be consistent across different media.
- *Specifications*  
The specification of criteria in relation to each potential regulatory axis is fundamental in determining the stringency of any regulations. The use of criteria that are clear and meaningful is preferable to specifications that are vague and open to interpretation.
- *Options for reducing extent of exposure*  
Across the different media, the options for reducing the extent of children's exposure by restricting food advertising for scheduled times or designated

places can be organised according to the following categories (arranged from most to least stringent):

- all times or relevant placements
  - times and locations most popular or frequented by children in the target age range
  - times or places where media communications are specifically targeted to children in the target age range
  - times or places which are designated as children's times, programs or places
- *Need to curtail a wide range of persuasive marketing techniques which form the content of marketing*  
Food marketing employs a wide range of marketing techniques to engage and persuade children. Policy options need to take account of the power of these techniques and curtail them, if they are to effectively reduce the negative impact of food marketing on children. Counterbalancing, where information on nutrition or food content is provided, is unlikely to reduce the power of persuasive techniques and may, in fact, be confusing. It is unlikely that curtailing the use of a small set of selected persuasive techniques alone, without significant restrictions in the extent of exposure to food marketing, would have significant impact.
  - *Testing a potentially effective and accountable system*  
A system that is potentially effective in achieving specific policy objectives, or that is accountable through an independent monitoring and enforcement system, has not been tested within Australia to date.

**Table 5: Key specifications required for reducing the restriction of food advertising by media**

	<b>Regulatory axis</b>					
				Reducing extent of exposure		
<b>Media</b>	Food	Age	Curtail persuasive techniques	Scheduled times	Placement (channels, Places)	Volume/frequency
Free to air TV	x	x	x	x		x
Pay TV	x	x	x		x	x
Internet	x	x	x		x	x
Outdoor ads	x	x	x	x	x	x
Radio	x	x	x	x	x	x
Cinema	x	x	x	x	x	x
Magazines and print	x	x	x		x	x
Point of sale	x	x	x		x	x

x denotes applicable axes for each form of media



## 5. POLICY OPTIONS

The following options are formulated for limiting advertisements for specified 'high fat, high sugar, high salt foods', as defined by a standard food classification system. As apparent from Table 5, a standard food classification system can form the basis of restrictions across all types of media.

### 5.1 Option 1, a comprehensive regulatory approach through statutory regulation

This option would cover all forms of marketing, across all media channels, at all times and locations, and require statutory regulation. This option would be similar to the Tobacco Advertising Prohibition Act, as well as the proposal on policy for inappropriate food marketing developed by Consumers International (see Appendix C).

#### *Advantages:*

- comprehensive and optimally effective in reducing children's exposure
- highly efficient, as it clearly defines and limits what is covered
- consistency across media
- simple to monitor; Government can provide or arrange independent oversight and monitoring of the system, as well as enforcement
- applicable to a full set of food and retail companies, rather than a self-selected set of food companies. Uniform standards for all industry groups creates a level marketplace and an inclusive approach
- could be implemented incrementally

#### *Disadvantages*

- potential for lost income to marketing and media industries (although the estimates in relation to TV prepared for ACMA's review are unlikely (21))
- effectiveness will depend on specifications in terms of foods covered

### 5.2 Option 2, Partial restrictions through statutory regulations

This proposed approach would involve statutory regulation which specifies a set of partial, selective restrictions, in relation to one or more of the following regulatory axes:

- types of media covered
- scheduling and location of advertisements
- the volume and frequency of advertisements
- the content of advertisements and use of specific techniques

A proposed version of option 2, with specifications in relation to the above factors, is presented in Table 6.

#### *Advantages*

- more politically palatable
- applicable to a full set of food and retail companies, rather than a self-selected set of food companies which occurs through self-regulation. Uniform standards for all industry groups creates a level marketplace and an inclusive approach
- provides an incremental approach, where restrictions are progressively applied to a wider set of media; can be progressively refined

- government can provide or arrange independent oversight and monitoring of the system, as well as enforcement
- could have substantial effects in reducing exposure and negative impacts of food marketing, if it involves rigorous restrictions across a wide range of media, broad time periods and locations, and for a clear set of designated foods
- industry is unlikely to adopt a rigorous set of partial restrictions unless they are compelled through statutory regulation

#### *Disadvantages*

- ineffective versions of partial restrictions are a risk. The impact of partial restrictions is highly variable and depends on the extent of those restrictions, with potential effects ranging from minimal to substantial
- industry may implement compensatory marketing, whereby food marketing increases on those media not covered by the regulations, as has been documented in the UK, with increases in food marketing in print media (4). This means that children's overall exposure may NOT be reduced
- could require more complicated monitoring, if the specifications involved multiple criteria
- could be complicated to administer and enforce, due to the wide range of definitions involved.

**Table 6: Proposed specifications for option 2**

<i>Objectives</i>	Specifically to reduce children's exposure to inappropriate food marketing
<i>Roles and responsibilities</i>	Statutory legal framework, with specified roles and expectations for industry
<i>Media covered</i>	Stage 1: Free-to-air TV, Pay TV, radio, cinema, Internet, outdoor ads, and school and early childhood settings  Stage 2: Children's magazines; point-of-sale; sponsorships; children's sports settings
<i>Restrictions related to timing, placement and content</i>	
Scheduling (broadcast and non-broadcast media)	Cinema: Ban for all G, PG films TV, Pay TV: Ban for 7.00 – 8.30 am and 4 - 9 pm weekdays, and 7 am - 9 pm weekends and school holidays  Internet: No product placement in editorial or entertainment content on websites popular with children (with audience over 1.5% of children in defined age range). No product placement in entertainment content on food company websites.
Placement (non-broadcast media)	Schools, early childhood and children's sports settings: complete ban in these locations Outdoor ads: ban within 500m of all schools and early childhood services  Magazines: Complete ban for all child targeted magazines and magazines popular with children.  Point-of-sale; no point of sale promotions of designated foods using premium offers, cartoon characters, licensed characters, celebrities and sports persons in retail settings and food service settings  Sponsorships: No sponsorships by designated products or brands for children's sporting, recreational or cultural events, or television programs during restricted broadcasting periods.
Frequency/volume	Internet: Restrict repetition of advertisements of designated products on third party websites to a maximum of once per website.
Restrictions related to marketing content	Ban use of: Premium offers; cartoon characters, licensed characters, celebrities; sports persons, children; jingles for inappropriate food advertisements for any media.  Internet: Increased children's privacy protection and age blocks to prevent disclosure of private information (for use in future marketing). Ban use of branded downloadable items, such as screen savers and games on food company websites.
<i>Foods covered</i>	Standard food classification system
<i>Child age</i>	Under 16 years
<i>Monitoring</i>	Government agency
<i>Enforcement</i>	Explicit statutory system

### 5.3 A formal co-regulatory approach, with partial restrictions

This proposed approach involves the promulgation of a government policy framework that is embedded in statutory regulation, and where the minimum requirements for self-regulatory actions for industry groups were specified. The specifications could

describe the division between what the government controls and what is left to industry. This approach involves implementing partial restrictions (along the lines discussed in 4.2 and section 3 above), but where government sets the minimum standards for industry and is responsible for the monitoring system.

In practice, this would only differ from 4.2 above if industry adopted more rigorous restrictions than the minimum defined by statutory regulation.

#### *Advantages*

- government's role focuses on independent oversight, monitoring and enforcement

#### *Disadvantages*

- requires extensive monitoring
- may be ineffective, if it permits high exposure of children to advertising

### **5.4 Other options**

Of course, logically, there are other potential options, such as the introduction of a broader set of partial restrictions without a prescriptive government policy framework; or the continuation of the status quo (a mixed regulatory system).

Many of the characteristics of the status quo option can be gleaned from recent Australian studies on the nature and extent of food marketing. It is recognised that from January 1 2009 the status quo is 'new', with the introduction of the AFGC initiative. While it will be important to independently evaluate this initiative, it is unlikely to have a major effect on children's exposure to food marketing and specific persuasive techniques, as it will only affect a small proportion of food marketing. A critique of this policy is included in Attachment A.

## **6. RECOMMENDATIONS**

1. The Federal Government take a lead role by developing a specific food marketing policy framework and embedding this in statutory regulation.
2. The government policy framework should cover:
  - (i) policy objectives,
  - (ii) specifications regarding the types of foods covered and other features of food marketing encompassed by policy,
  - (iii) specific immediate targets for change in terms of the extent and content of advertisements for energy-dense, nutrient poor foods;
  - (iv) an independent monitoring and enforcement system as a minimum;
  - (v) a review process and options for incremental policy development.
3. The specifications should seek to adopt and implement an optimal system (option 1). However, there is scope for progressive implementation, so that an initial stage could be based on a rigorous formulation of option 2, as described in Table 6, with significant restrictions in terms of scheduling, timing and content, and a uniform food classification system, applicable across a subset of media and with an independent monitoring system.
4. The Preventative Taskforce seek advice from FSANZ regarding an appropriate food classification system that can provide a suitable basis for policy on inappropriate food marketing.
5. The Preventative Taskforce arrange for a detailed exploration of options regarding the criteria to be applied to times and places when any food marketing restrictions or bans might apply, in the case of those media where there are few Australian studies (outdoor locations, internet sites, magazines and print, radio and cinema), with the key reference point being the extent to which they reduce the extent of children's exposure to food marketing.
6. The Federal Government collaborate with other government bodies to arrange an independent one year evaluation of the AFGC initiative.

## Appendix A: Critique of AFGC Responsible Children's Marketing Initiative<sup>5</sup>

POLICY ELEMENT	In fact, INITIATIVE	COMMENT
<b>Objective</b>	'To provide a framework for food and beverage companies to promote healthy dietary choices and lifestyles to Australian children'	Aim is very general
<b>Roles and responsibilities</b>	Individual companies	This model of self-regulation is highly devolved, and thus promotes a high degree of variability. There is no specified role for government or consumers.
<b>Scope</b>	<p>Core principles comprise:</p> <ul style="list-style-type: none"> <li>• <i>Advertising messaging</i> Will not advertise food and beverages to children under 12 years unless the products are: healthy dietary choices consistent with government standards or are presented in the context of a healthy lifestyle which could refer to good dietary habits or physical activity</li> <li>• <i>Use of popular personalities and licensed characters</i> Will not be used in advertising primarily directed to children under 12 years, unless it is consistent with advertising messaging above and CTS requirements</li> <li>• <i>Product placement</i> Will not pay or actively seek to place products in program/editorial content of any medium primarily directed to children under 12 years, unless consistent with advertising messaging (1) above. <i>Use of products in interactive games</i> In any interactive game primarily directed to children under 12 years where the food or beverage products are incorporated in the game, the game must be consistent with advertising messaging requirements</li> <li>• <i>Advertising in schools</i> Refrain from product-related communications in primary schools, except where specifically requested by schools</li> <li>• <i>Use of premium offers</i> Will not advertise premium offers</li> </ul>	<p>The specifications are not precise regarding what is covered, and very open-ended. For example: the Coco Cola, Pepsico, Nestle and Cereal Partners Worldwide commitments each define 'targeting children under 12 years' on TV as an ACMA classified C or P program, or where predominantly or &gt;50% of the audience is under 12 years. The occasions when 0-12 year olds comprise a majority of the audience are rare and there are <u>no time slots</u> across weekdays or across weekends when children comprise the majority of the overall viewing audience across commercial channels. Specific programs (on particular channels and particular days) may have predominantly children in their audience, but this is a very limited occurrence.</p> <p>In terms of internet, the specifications refer to paid advertising on third party sites, rather than company-sponsored sites.</p>

<sup>5</sup> This table is from an unpublished report prepared by NSW Physical Activity, Nutrition and Obesity Research Group for NSW Health.

	<p>unless the reference is purely incidental, in accordance with CTS <i>Foods covered</i></p> <p>As defined by individual companies</p>	<p>The overall AFGC principles do not define foods to be covered. In the case of Kraft, the policy interprets "Sensible Solutions" foods as 'healthy foods', although these foods appear to be similar in nutritional content to other products (61).</p>
<b>Compliance and complaints</b>	<p>Complaints and compliance systems will be developed, including public reporting of compliance. A review will occur after 1 year of the program.</p>	<p>No timetable for specification of this important element</p>
<b>Monitoring</b>	<p>AFGC will monitor food and beverage advertising over the 12 months from commencement, to measure industry's response.</p>	<p>Differences between companies' commitments make monitoring difficult. For example, 1 of the 8 signatory companies is applying their own food classification system (Kraft Sensible Solutions); and two are applying the NSW School Canteen Association criteria, as a basis for determining which foods can be advertised to children under 12 years.</p>
<b>Implementation</b>	<p><i>Individual company action plans</i></p> <p>Individual companies will sign up to the initiative as a minimum (see core principles below) and publish company action plans. Company action plans to be submitted by 1 January 2009.</p>	<p>12 companies signed up by 9/3/09: Nestle, Kraft Food, Cereal Partners Worldwide, Cadbury, George Weston, Unilever Australia, Coca-Cola, Pepsico, Kelloggs, Patties Foods, Campbell Arnott's, Mars.</p>
<b>OVERALL</b>		<p><b>The framework provided by the AFGC initiative is not sufficient to enable companies to achieve the proposed aim (of promoting healthy choices and lifestyles), as illustrated by the 8 existing company action plans.</b></p>

## **APPENDIX B: Models of regulation for tobacco and alcohol advertising**

The models of marketing regulation for alcohol and tobacco products may provide some insights into possibilities for unhealthy food and beverages.

### **i. Tobacco**

While there is little available evidence on the effect of food advertising bans on children, due to a lack of published data and likely attrition of advertising bans by unrestricted cross-border broadcasting, tobacco advertising bans provide a clear precedent for the potential effects of advertising restrictions on product consumption. As part of a multi-strategy approach to tobacco control, tobacco advertising restrictions have assisted in lowering the smoking rate of Australians to one of the lowest in the world.

The ban on television advertisements for tobacco was phased in between 1973 and 1976, with very little, if any, negative economic impact. It is not possible to isolate the impact of the advertising ban on smoking prevalence rates, as advertising bans were part of a comprehensive public health approach to tobacco control. However, together with other interventions, tobacco advertising restrictions have assisted in lowering the smoking rate of Australians to one of the lowest in the world. The general consensus amongst tobacco control advocates is that advertising bans have been a major contributor to the decline in smoking prevalence. In terms of these bans, one of the main achievements was the implementation of the *Tobacco Advertising Prohibition Act (TAPA)* in 1992 (32).

Following the introduction of tobacco advertising bans, a slight acceleration occurred in the rate of decline in overall smoking prevalence. While smoking rates in females continued to increase during the phase-in period, these declined between 1976 and 1980. It is important to note that the tobacco industry and print media advertising extensively targeted women during the mid 1970s. However, smoking among women and men decreased after the television advertising ban was fully in force.

### **ii. Alcohol**

The regulations relating to advertising for alcohol are significantly different to those for tobacco. Most forms of alcohol advertising are self-regulated, with the exception of television advertising for which there is a co-regulatory system.

## **Children's Television Standards**

Firstly, alcohol advertising is subject to statutory regulations, as directed by the ACMA in the Children's Television Standards (20):

*CTS 23: Advertising of Alcoholic Drinks - directs that advertisements for alcoholic drinks may not be broadcast during a C period, nor during, nor immediately before or after, any C program or P program. Additionally no advertisement or sponsorship announcement broadcast during C programs or C or P periods, may identify or refer to a company, person or organisation whose principal activity is the manufacture, distribution or sale of alcoholic drinks.*

The Children's Television Standards note that these requirements are in addition to those of the Commercial Television Industry Code of Practice.

## **Commercial Television Code of Practice**

The *Commercial Television Industry Code of Practice* includes clause 6.7 which directs that commercials which directly advertise alcoholic drinks may only be broadcast in M, MA or AV classification periods or, if accompanying a live broadcast of a sporting event, on weekends and public holidays. Such commercials may not be broadcast during periods classified as 'C' (Children's). The definition for an alcoholic drink advertisement does not include program sponsorship announcements, commercials for a licensed restaurant or commercials for a company whose activities include the manufacture, distribution or sale of alcoholic drinks so long as attention is not drawn to an alcoholic product in order to directly promote its purchase or use.



However, channels of alcohol marketing other than television are wholly self-regulated by the advertising industry. The current system was established in 1998 when two complementary industry self-regulation codes were established, resulting in a complex regulatory system.

The AANA developed the Advertiser Code of Ethics, which applies to all forms of advertising and covers matters of taste and decency, such as discrimination, violence, portrayal of sex and inappropriate language. The Advertising Standards Board processes any complaints and breaches relating to this Code.

The other form of industry self-regulation is the Alcoholic Beverages Advertising Code (ABAC) and was developed by the alcohol industry itself. The ABAC deals with alcohol-specific issues, such as appeal to young people and alcohol consumption being linked to sporting or sexual success. This code has its own complaints management system, the ABAC Complaints Adjudication Panel.

Whilst the alcohol beverage industry would argue that the self-regulation of alcohol advertising has been effective, community and health groups have expressed concerns about the industry's ability to self-regulate. This led to a review by the National Committee for the Review of Alcohol Advertising (NCRAA) in 2003. Concerns about the self-regulatory system expressed by health and community groups and found by the NCRAA included:

- The system doesn't address public health concerns about alcohol advertising and use
- The current ABAC does not cover: product names, product packaging, internet advertisements, sponsorships, promotions, point-of-sale advertising materials
- The general public is largely unaware of the complaint resolution system and how to make complaints
- The current system is hindered by the often lengthy time taken to process complaints
- Not all members of the alcohol industry are captured under the ABAC (four major alcohol beverage industry associations represent between 95-99% of the industry) – there is a view amongst larger members that it is the smaller non-members that generally contravene the ABAC

### ***(iii) Summary***

From the tobacco and alcohol models of regulation, the essential elements of effective regulation would appear to include:

- A single piece of Federal legislation rather than multiple codes
- Legislation that covers a broad range of media channels
- Legislation that clearly defines the agent of exposure
- Effective sanctions to deter breaches

## **APPENDIX C: Consumers International and the International Obesity Taskforce recommendations for an International Code of Marketing of Foods and Non-Alcoholic Beverages to Children**

### ***Inappropriate food marketing code to children***

#### **Article 1: Aim of the code**

The aim of this code is to provide a single, comprehensive model of federal regulation to encourage the appropriate marketing of healthy foods while minimising children's exposure to the marketing of unhealthy food and beverages.

#### **Article 2: Scope of the code**

This code should be enacted by statutory regulation, and should apply to all forms of current marketing techniques as well as any novel techniques introduced in the future.

#### **Article 3: Definitions**

**3.1** "Children" refers to people under the age of 16 years old.

**3.2** The term "Brand" means any name, logo, slogan or Trademark associated with or owned by the food company.

**3.3** "Food" means any substance, whether processed, semi processed or raw, which is intended for human consumption, and includes both solid foods and beverages.

**3.4** "Food marketing" means a trade practice whose express or implied purpose is to directly or indirectly promote the sale or consumption of a food product or brand.

#### **Article 4: Inappropriate food marketing**

**4.1** Inappropriate food marketing demarcates only those food products considered to be unhealthy, and the brands associated with such foods.

**4.2** The categorisation of unhealthy foods shall be defined by nutrient profiling.

#### **Article 5: Broadcast marketing**

**5.1** Regulations pertaining to the restriction of inappropriate food marketing on broadcast media should consider the absolute number of children likely to be watching or listening to the program content. Therefore, restrictions should include a prohibition of inappropriate food advertising during children's peak television viewing times and during radio broadcast periods with a high number of child listeners.

**5.2** Television advertising restrictions should cover the broadcast periods between 7:00 to 9:00 and 16:00 to 21:00 on weekdays and 7:00 to 21:00 on weekends.

#### **Article 6: Non-broadcast marketing**

**6.1** All non-broadcast marketing techniques that are aimed at children should be prohibited under the code. In determining the media to be covered by the code, consideration should be given to (a) the overall presentation, features, content, form and manner; (b) the language, colours and images used; (c) whether children are represented; (d) the target audience of the media or place in which the promotion is seen; and (e) whether children are potential recipients of the promotion in significant numbers regardless of the target audience.

**6.2** Non-broadcast media covered by the code should include the Internet and SMS/text messaging, magazines and newspapers, food packaging to appeal to children, sponsorship and outdoor advertising in areas where children gather.

**6.3** The full range of marketing techniques should be prohibited including, but not limited to:

- Premium offers, including competitions, give-aways and rebates
- Promotional characters, including celebrities, sports figures, licensed cartoon characters and proprietary characters/spokes characters
- Repetition of food advertisements
- Manipulation of children through peer pressure, by using techniques to make children think consumption of products is socially desirable or will attract peer admiration or acceptance
- Association of unhealthy products with improved energy levels, performance, strength, skill or abilities

- Appeals to children's imagination and emotions through use of fantasy characters and scenes and association of food products with fun, happiness, and adventure
- Food shaped, coloured and packaged in ways designed to appeal to children
- Use of catchy jingles, animation and special effects
- 'Advergames' (computer games incorporating the food brand)
- Nutrition content claims and health claims
- Sponsorship of materials, products, people, events, projects, cultural, artistic or sporting activities or places popular with children or with a significant child audience

**6.4** Products that are clearly produced for consumption on special occasions (e.g. birthday cakes) may be exempted from advertising restrictions.

**6.5** Settings where children are gathered shall be free from unhealthy food advertising. Such settings should include nurseries, school grounds, preschool centres, playgrounds, family and child clinics and pediatric services, and the areas immediately surrounding these settings.

#### **Article 7: Implementation**

This code should be affected by government through the establishment of statutory legislation.

#### **Article 8: Monitoring and enforcement**

**8.1** Monitoring compliance with the code should be conducted by an independent statutory body, which has the ability to act as a consumer watchdog with the full law enforcement powers of a government body, but acting independently of both government and industry.

**8.2** The monitoring body should enforce clear and transparent monitoring and enforcement, and information regarding this and recognized breaches could be made readily available to the public, both directly and through annual reporting to Parliament.

**8.3** Any fines for breaking the code should take into account the annual turnovers of the business involved and should be an adequate disincentive.

## References

1. Hastings G, Stead M, McDermott L, Forsyth A, MacKintosh AM, Rayner M, Godfrey C, Caraher M & Angus K. *Review of the research on the effects of food promotion to children*. University of Strathclyde, Centre for Social Marketing, 22 September 2003  
(<http://www.foodstandards.gov.uk/multimedia/pdfs/foodpromotiontochildren1.pdf>).
2. 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*. Geneva, World Health Organisation, 2006.
3. Committee on Food Marketing and the Diets of Children and Youth. *Food Marketing to Children and Youth: threat or opportunity*. McGinnis M, Gootman J, and Kraak V. Washington DC, USA, Institute of Medicine of the National Academies, 2005.
4. United Kingdom Department of Health. *Changes in food and drink advertising and promotion to children: a report outlining the changes in the nature and balance of food and drink advertising and promotion to children, from January 2003 to December 2007*. UK, Department of Health, 2008.  
([http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyandGuidance/DH\\_089129](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyandGuidance/DH_089129)).
5. Food Magazine. Guerilla Marketing. *Food Magazine*, 2001; 54: 11-12.
6. Chapman K, Nicholas P, Supramaniam R. How much food advertising is there on Australian television? *Health Promot Int*. 2006; 21(3): 172-180.
7. Kelly B, Smith B, King L, Flood V, Bauman A. Television food advertising to children: the extent and nature of exposure. *Public Health Nutr*. 2007; 10(11): 1234-1240.
8. Hattersley L, Kelly B, King L. *Food advertising on Sydney commercial television: the extent and nature of children's exposure 2006-2007*. NSW Centre for Overweight and Obesity, Sydney, 13-7-2007.
9. Zuppa J, Morton H, Mehta K. Television food advertising: counterproductive to children's health? A content analysis using the Australian Guide to Healthy Eating. *Nutrition and Dietetics*. 2003; 60:78-84.
10. Kelly B, Bochynska K, Kornman K, Chapman K. Internet food marketing on popular children's websites and food product websites in Australia. *Public Health Nutr*. 2008; 11(11): 1180-1187.
11. Kelly B, Chapman K. Food references and marketing to children in Australian magazines: a content analysis. *Health Promot Int*. 2007; 22(4): 284-291.
12. CHOICE. *Food marketing: Child's Play?* Australian Consumers Association 2006. [cited 18.09.06]  
(<http://www.choice.com.au/viewArticle.aspx?id=105275&catId>)

13. Chapman K, Nicholas P, Banovic, D, Supramaniam R. The extent and nature of food promotion directed to children in Australian supermarkets. *Health Promot Int*. 2006; 21(4): 331-339.
14. Dixon H, Scully M, Parkinson K. Pester power: snackfoods displayed at supermarket checkouts in Melbourne, Australia. *Health Promot J Austr*, 2006; 17: 124-127.
15. Kelly B, Cretikos M, Rogers K, King L. The commercial food landscape: outdoor food advertising around primary schools in Australia. *Australian and New Zealand Journal of Public Health*. 2008; 32(6): 522-528.
16. Kelly B, Hughes C, Chapman K, Louie J, Dixon H, King L. On behalf of a Collaboration of Public Health and Consumer Research Groups. Front-of-Pack Food Labelling: Traffic Light Labelling Gets the Green Light. Cancer Council: Sydney 2008. (<http://www.cancercouncil.com.au/nutrition/foodlabellingreport>)
17. Connor SM. Food-related advertising on preschool television: building brand recognition in young viewers. *Pediatrics*, 2006; 118(4): 1478-1485.
18. Foltz SC, Goldberg JP, Economos C, Bell R, Meltzer R. Food advertising targeted at school-age children: a content analysis. *J Nutr Educ Behav*, 2006; **38**: 244-248.
19. Schor JB, Ford M. From tastes great to cool: children's food marketing and the rise of the symbolic. *Journal of Law, Medicine & Ethics*, 2007; 35(1): 10-21.
20. Australian Communications and Media Authority. *Children's Television Standards*. Canberra, July 2005. ([http://www.acma.gov.au/webwr/aba/contentreg/codes/television/documents/chstdvarn\\_03.pdf](http://www.acma.gov.au/webwr/aba/contentreg/codes/television/documents/chstdvarn_03.pdf))
21. Australian Communications and Media Authority. *Children's viewing patterns on commercial, free-to-air and subscription television*. Australian Communications and Media Authority, 2007.
22. Australian Food and Grocery Council. The Responsible Children's Marketing Initiative. AFGC, Canberra, 2008. (<http://www.afgc.org.au/index/cfm?id=726>).
23. Coca-Cola South Pacific. The responsible children's marketing initiative: company action plan. June 2007. (<http://www.afgc.org.au/cmsDocuments/Coca-Cola%20CAP.pdf>)
24. Which? How TV food advertising restrictions work. *Which?* 2008. (<http://www.which.co.uk/advice/how-tv-food-advertising-restrictionswork/index.jsp>).
25. Brand J. (2007) *Television advertising to children: A review of contemporary research on the influence of television advertising directed to children*. [www.acma.gov.au/webwr/\_assets/main/lib310132/tv\_advertising\_to\_children.pdf Accessed 20/1/09]
26. Australian Centre for Health Promotion and NSW Centre for Overweight and Obesity. *Response to the Australian Communication and Media Authority's*

review of the Children's Television Standards 2008.

[[www.coo.health.usyd.edu.au/gettingresearchintopractice](http://www.coo.health.usyd.edu.au/gettingresearchintopractice). Accessed 20/1/09]

27. Buijzen M, Schuurman J, Bornhof E. Associations between children's television advertising exposure and their food consumption patterns: a household diary-survey study. *Appetite*. 2008; **50**: 231-239.
28. Collins RL, Elickson PL, McCaffrey DF, Hambarsoomians K. Saturated in beer: Awareness of beer advertising in late childhood and adolescence. *Journal of Adolescent Health*, 2005; **37**: 29-36.
29. Dixon HG, Scully ML, Wakefield MA, White VM, Crawford DA. The effects of television advertisements for junk food versus nutritious food on children's food attitudes and preferences. *Soc Sci Med*. 2007; **65**(7): 1311-1323.
30. Foresight. *Tackling Obesities: Future Choices – Modelling Future Trends in Obesity & their Impact on Health*. 2<sup>nd</sup> edition. Government Office for Science, UK; 2007.
31. Livingstone S. *New research on advertising foods to children: an updated review of the literature*. Prepared for the Research Department of the Office of Communications (OFCOM), January. Published as Annex 9 to the report, Television Advertising of Food and Drink Products to Children. London: Ofcom, March 2006.
32. Commonwealth Government of Australia. Tobacco Advertising Prohibition Act, 1992. (<http://www.austlii.edu.au/au/legis/cth/consolact/tapa1992314/index.html>), 1992.
33. Jones S, Donovan R. Self-regulation of alcohol advertising: Is it working for Australia? *Journal of Public Affairs*. 2002; **2**(3): 153-165.
34. Hawkes C. Marketing food to children: the global regulatory environment. Geneva, World Health Organization, 2004. (<http://www.who.int/publications/2004/9241591579.pdf>).
35. Hawkes C. Marketing food to children: changes in the global regulatory environment 2004-2006. Geneva, World Health Organization, 2006. ([http://www.who.int/publications/2007/9789240682122\\_eng.pdf](http://www.who.int/publications/2007/9789240682122_eng.pdf)).
36. Hawkes C. Regulating and litigating in the public interest: regulating food marketing to young people worldwide: trends and policy drivers. *Am J Public Health*, 2007; **97**(11): 1962-1973.
37. Goldberg M. A quasi-experiment assessing the effectiveness of TV advertising directed to children. *Journal of Marketing Research*, 1990; **27**: 445-454.
38. Caron A. Children, advertising and television: choices in a new media environment. In: *Children and advertising: a fair game?* University of New South Wales, Sydney: Young Media Australia & New College Institute of Values Research, 1994.

39. Office of Communications. Statement on the television advertising of food and drink products to children. London, Ofcom, 22 February 2007. ([http://www.ofcom.org.uk/media/news/2007/02/nr\\_20070222](http://www.ofcom.org.uk/media/news/2007/02/nr_20070222))
40. Ofcom – Office of Communications. *Changes in the nature and balance of television food advertising to children: A review of HFSS advertising restrictions*. <http://www.ofcom.org.uk/research/tv/reports/hfssdec08/hfssdec08.pdf> accessed 19/2/09.
41. Consumers International. *Recommendations for an International Code on Marketing of Foods and Non-Alcoholic Beverages to Children*. Consumers International, London UK, 2008.
42. Handsley E, Mehta K, Coveney J, Nehmy C. Regulatory axes on food advertising to children on television. *ANZ Health Policy*, 2009; 6: 1. doi:10.1186/1743-8462-6-1.
43. International Association of Consumer Food Organisations. *Broadcasting bad health: why food marketing to children needs to be controlled*. London, International Association of Consumer Food Organisations, 2003.
44. Center for Science in the Public Interest. *Pestering parents: how food companies market obesity to children*. (<http://www.cspinet.org/new/200311101.html>). Washington DC, 2003.
45. Kelly B. To quell obesity, who should regulate food marketing to children? *Globalization and Health*, 2005; 1: 9.
46. Ludwig D, Nestle M. Can the food industry play a constructive role in the obesity epidemic? *JAMA*, 2008; 300(15): 1808-1811.
47. The World Federation of Advertisers. *Position paper: advertising and children*. Brussels, Responsible Advertising and Children, 21-2-2003.
48. International Chamber of Commerce (2006) *Consolidated code on marketing and advertising practice*. [[www.iccwbo.org/display7/doctype3/index.html](http://www.iccwbo.org/display7/doctype3/index.html) Accessed 20/1/09]
49. Scheuer A, Palzer C. Self-Regulation, Co-Regulation & Public Regulation. In: *Promote or Protect? Perspectives on Media Literacy and Media Regulations*. Yearbook 2003 Eds: C. von Feilitzen & U. Carlsson. University of Gothenburg, Sweden, Nordicom, 2003. pp 165-177. [www.nordicom.gu.se/clearinghouse.php?portal=publ&main=info\\_publ2.php&ex=92](http://www.nordicom.gu.se/clearinghouse.php?portal=publ&main=info_publ2.php&ex=92)  
<[http://www.nordicom.gu.se/clearinghouse.php?portal=publ&main=info\\_publ2.php&ex=92](http://www.nordicom.gu.se/clearinghouse.php?portal=publ&main=info_publ2.php&ex=92)>
50. United States Federal Trade Commission. (2008) *Marketing Food to Children and Adolescents: a Review of Industry Expenditures, Activities, and Self-Regulation*. <http://www.ftc.gov/os/2008/07/P064504foodmktingreport.pdf>.
51. The Cancer Council Australia. *Review of the Tobacco Advertising Prohibition Act. 2003*.

52. Kelly B, Chau J. Children's Television Sub-standards: A call for significant amendments. *Med J Aust*, 2007; 186(1): 18 (Letter).
53. Valle A. *Counter-advertising law and the democratic reconstruction of food culture to fight obesity and hunger in Canada*. Toronto, Canada, York University, 2008.
54. The Associated Press. French cracking down on junk foods ads. *MSNBC*, 2007.
55. Jenkin G, Wilson N, Hermanson N. Identifying 'unhealthy' food advertising on television: a case study applying the UK Nutrient Profile model. *Public Health Nutr*. 2008. doi: 10.1017/S1368980008003029. (Published online by Cambridge University Press 11 July 2008).
56. Food Standards Australia New Zealand. *Final assessment report for proposal P293 – nutrition health and related claims*. Food Standards Australia New Zealand, 2008.
57. Story M, French S. Food advertising and Marketing Directed at Children and Adolescents in the US. *International Journal of Behavioural Nutrition and Physical Activity*, 2004; 1(1): 3.
58. Swinburn B, Sacks G, Lobstein T, Rigby N, Baur LA, Brownell KD, Gill T, Seidell J, Kumanyika S, as the International Obesity Taskforce Working Group on Marketing to Children. The 'Sydney Principles' for reducing the commercial promotion of foods and beverages to children. *Public Health Nutrition*, 2008; 11(9): 881-886.
59. United Nations. *Convention on the rights of the child*. 1990. (<http://www2.ohchr.org/english/law/pdf/crc.pdf>)
60. Council of Better Business Bureaus. *Changing the Landscape of Food & Beverage Advertising: the Children's Food & Beverage Advertising Initiative in Action*. July-December 2007. Council of Better Business Bureaus, Inc. Arlington VA, 2008.
61. Lewin A, Lindstrom L, Nestle M. Food industry promises to address childhood obesity: preliminary evaluation. *Journal of Public Health Policy*, 2006; 27(4): 327-348.