



FreeTV
Australia

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(Inq into Obesity)

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**Submission by
Free TV Australia Limited**

House of Representatives Standing
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Inquiry into Obesity in Australia

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Executive Summary

- Free TV acknowledges and appreciates increasing community concern in relation to obesity levels in Australia.
- Commercial free to air broadcasters have been actively engaged with this issue. Through the broadcast of positive messages in programming and free air time for community service announcements, broadcasters have been and will continue to be part of the solution.
- Broadcasters' ability to be involved in this way is made possible through the advertiser funded model for commercial free to air television.
- Governments of both persuasions have supported the advertiser funded model as the best way to deliver a range of social and cultural objectives via commercial free to air television.
- There is an extensive range of restrictions on both the scheduling and content of all advertising on commercial free to air television. All advertising directed to children (no matter when it is broadcast) is subject to increased regulation through the Children's Television Standards (CTS) and the Commercial Television Industry Code of Practice (the Code).
- Free TV is opposed to the imposition of advertising bans on food and beverage advertising.
- There is no evidence that further restrictions on food advertising to children will materially impact childhood obesity rates, but it is clear that bans will negatively impact broadcasters' ability to provide quality Australian children's programming.
- If, contrary to this submission, any further advertising restrictions are considered, they should apply across different platforms to ensure regulations remain relevant and do not disadvantage free to air viewers.



1 Introduction

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

Free TV welcomes the opportunity to comment on the House of Representatives Standing Committee on Health and Ageing inquiry into Obesity in Australia.

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

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

There is no evidence that further advertising restrictions will have any impact on issues such as childhood obesity. A 2007 report prepared for ACMA has concluded from a review of academic literature that there is no causal relationship between advertising and obesity.¹ The regulatory measures in place are working well and there is no evidence of a regulatory failure in relation to food advertising to children.

Calls to introduce blanket advertising bans on all food advertisements directed to children fail to take into account well-documented, multi-factorial contributors to obesity including hereditary, environmental, social and cultural factors.²

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

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

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

It is already clear from experience in the United Kingdom that food and beverage advertising restrictions will have severe adverse effects on commercial broadcasters and their capacity to provide children's programming.³

¹ Television Advertising to Children Report prepared for ACMA by Jeffrey Brand, Bond University, page 42

² Ibid, page 41

³ Following the introductions of ad bans in the UK, the regulator Ofcom has now been forced to undertake a review of children's programming and how it will be funded.



This submission addresses the following topics:

- **Section 2** examines the depth and breadth of the existing regulations on commercial free to air television
- **Section 3** examines the processes leading to the development of regulations and the complaints process underpinning the regulations
- **Section 4** discusses Free TV's view on further regulation

2 The Existing Regulations

2.1 Regulatory framework

Australia has chosen to deliver a range of social and cultural objectives through an advertiser funded model for commercial free to air television. However, in recognition of the special need to protect consumers from inaccurate information, and in particular to ensure generally that children are protected, a vast range of legislation and regulation is in place to provide those necessary protections.

These rules and regulations are summarised and presented as a flow chart at Appendix 1. The regulation set out in Part A of the flowchart applies across the board to all advertising; advertising on commercial free to air television is also subject to the regulation in Part B.

2.2 Regulation applying to all advertising

2.2.1 Trade Practices Act Cth 1974

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

Complaints about misleading and deceptive conduct are investigated by the Australian Competition and Consumer Commission (ACCC) and the complaint process is described clearly on the ACCC's website.⁴ The ACCC has a range of penalties available to it including fines, injunctions (to require withdrawal of the advertisement), corrective advertising and compliance programs.

⁴ <http://www.accc.gov.au/content/index.php/ml/ItemId/815327>



2.2.2 State food Acts

The making of health claims and nutrient content claims in food advertising are regulated by the State food Acts. These Acts are enforced by state and territory health departments and FSANZ, the Australian and New Zealand regulatory body.⁵

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

Misleading and deceptive conduct is also prohibited under the State Food Acts. The Food Standards Health Code and the Code of Practice on Nutrient Claims provide more detail in relation to claims in food advertising.

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

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

2.2.3 AANA Codes

The Australian Association of National Advertisers (AANA), the peak advertising industry body, has developed a number of codes (the AANA Codes)⁶. These include:

- AANA Code of Ethics
- Advertising to Children Code
- Alcohol Beverages Advertising Code
- Motor Vehicle Advertising Code
- Therapeutics Goods Code
- Weight Management Code of Practice

⁵ <http://www.foodstandards.gov.au/>

⁶ http://www.aana.com.au/3_self_regulation/3_1_self_reg.html



- ICC Framework for responsible food and beverage communications

The advertising industry-regulation system is managed through the Advertising Standards Bureau and funded through a voluntary levy administered by the Australian Advertising Standards Council Ltd. Complaints about advertising are determined by the Advertising Standards Board and the Advertising Claims Board. The Advertising Standards Board (ASB) is made up of a representative cross-section of the community, providing a free public complaints resolution service. It considers complaints about any form of published or broadcast advertising in relation to issues including:

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

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

- truth
- accuracy and
- legality of advertising.

The AANA Advertiser Code of Ethics and the AANA Code for Advertising to Children provide that advertisement shall not be misleading or deceptive.⁷

The AANA Code for Advertising to Children provides that advertisements to children which include to or refer to a premium should not create a false or misleading impression in the minds of children about the nature or content of the advertised product.⁸

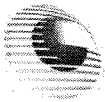
Although the AANA Codes are voluntary and form part of a self regulatory system, there is complete compliance by advertisers with ASB decisions.

2.3 Regulation of advertising on commercial free to air television

In addition to the regulation described above, all advertising on commercial free to air television is regulation through the *Broadcasting Services Act 1992 (BSA)* by the Code and the CTS in the case of children's programming.

⁷ Clause 1.2 AANA Advertiser Code of Ethics and clause 2.1.1 of the AANA Code for Advertising to Children

⁸ Clause 2.8 AANA Code for Advertising to Children



2.3.1 Key policy principles applying to the regulation of television content

The policy parameters for the regulation of broadcasting content are addressed through two pieces of primary legislation: *Classification (Publications, Films and Computer Games) Act 1995* and the BSA.

Programs shown on commercial free to air television are regulated through a set of classification rules based on the overarching policy principles set down in the *Classification (Publications, Films and Computer Games) Act 1995* and National Classification Code:

- Adults should be able to read, hear and see what they want;
- Minors should be protected from material likely to harm or disturb them;
- Everyone should be protected from exposure to unsolicited material that they find offensive;
- The need to take account of concerns about depictions that could condone or incite violence, and the portrayal of persons in a demeaning manner.

The policy objectives set down in the *Broadcasting Services Act 1992* include several which are relevant to the regulation of broadcasting content. Those objects are set out in section 3:

- To provide a regulatory environment that will facilitate the development of a broadcasting industry in Australia that is efficient, competitive and responsive to audience needs;
- To encourage providers of broadcasting services to respect community standards in the provision of program material;
- To encourage the provision of means for addressing complaints about broadcasting services; and
- To ensure that providers of broadcasting services place a high priority on the protection of children from exposure to program material which may be harmful to them.

The model set out under the *Broadcasting Services Act 1992* for the regulation of content is a co-regulatory model. Under the co-regulatory model, minimum standards and mandatory requirements are set down in legislation, with more detailed operational parameters addressed through industry codes of practice, which are registered by ACMA (addressed in more detail below).

This is consistent with the underlying policy principles of the broadcasting regulatory framework, and communications regulation more widely.



The Explanatory Memorandum to the 1992 legislation explained that the co-regulatory approach is intended to:

establish general rules for the industry which are clear, stable and predictable; to establish minimum requirements expected of industry participants, to introduce flexibility into the regime to enable responsiveness to changing circumstances.⁹

The co-regulatory model aligns with international best practice in communications regulation and enables public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens on providers of broadcasting services.

2.3.2 CTS and the Code

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

The objectives of CTS are identified in the Explanatory Memorandum as being:

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

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

The BSA provides guidance on matters to be covered in Codes of Practice including the broadcasting time devoted to advertising, methods of complaint handling and reporting to ACMA on complaints¹⁰. The Code is required by the BSA to take into account community attitudes in relation to a range of matters including any matters which are of concern to the community.¹¹ The role of assessing community standards in relation to broadcasting content is assigned to ACMA, based on relevant research.¹²

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

⁹ Explanatory Memorandum to the BSA

¹⁰ Section 123(2) BSA

¹¹ Section 123(3) BSA

¹² Section 123(1) BSA



The Code provides a regulatory framework for television viewing more broadly and focuses on regulating the content of programming and advertising as a whole. Importantly the Code places hourly restrictions on the amount of advertising and other non program matter which may be broadcast.

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

The current framework for the regulation of broadcasting content includes a comprehensive suite of protections for the viewer, from requirements for content pre-assessment, display of classification symbols, provision of consumer advice, scheduling restrictions, complaints-handling procedures and strong regulatory enforcement mechanisms.

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

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

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

Classification System

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

ACMA research indicates a high level of familiarity with the classification system.¹³

Limits on advertising

The Code imposes restrictions on the amount of advertising scheduled in all programs across the viewing day. The Code aims to balance the interests of viewers in uncluttered program presentation and the commercial interests of advertisers and broadcasters in setting these limits.¹⁴ The average amount of non program matter

¹³ ACMA report Reality Television Review p 66 - 67

¹⁴ Clause 5.1.1 Commercial Television Industry Code of Practice



permitted in each hour schedule ranges from 13 minutes to 15 minutes.

In P and C periods¹⁵, the limits imposed by the CTS apply as follows:

- no commercials are permitted to be broadcast in any P period; and
- each 30 minutes of a C period may contain no more than 5 minutes of commercials.¹⁶

Content Restrictions – Advertisements directed to children

In addition to scheduling restrictions, the CTS and the Code contain a range of content restrictions on advertisements in C periods. The Code extends the CTS provisions to all advertisements directed to children.¹⁷ This means that any advertisement which is directed to children irrespective of the time of the day it is broadcast is subject to the content restrictions in the CTS.

The Code provides guidance in the form of an Advisory Note on when an advertisement is directed to children.¹⁸ This Advisory Note was included in the 2004 review of the Code and is based on a previous ABA decision.¹⁹ Advertisements which have child appeal, which include child themes, music, characters, and which use child language will be regarded as directed to children. These ads must comply with the CTS no matter what time of the day they are shown.

Content Restrictions - special care and judgment

All advertisements directed to children must exercise special care and judgment.²⁰ Only advertisements which satisfy the G classification requirements and comply with the CTS can be broadcast during a C period or in breaks immediately before or after a C or P program.

Content Restrictions – undue pressure

The CTS and Code prohibit advertisements directed to children which are designed to put undue pressure on children to ask their parents or other people to purchase an advertised product or service.²¹ An advertisement which merely encourages a child to request that their parent purchase the product will not be undue pressure. Tone, placement, frequency or content of the pressure are all relevant. For example an advertisement which suggested that parents who buy the advertised product love their children more, would not be permitted by the CTS.

¹⁵ P and C periods as defined in the Children's Television Standards are those periods nominated by a network during which they will broadcast P and C programs respectively.

¹⁶ Clause 5.8 Commercial Television Code of Practice; CTS 13 and CTS 14.

¹⁷ Clause 6.20 Commercial Television Industry Code of Practice.

¹⁸ Advisory Note "Commercials or Community Service Announcements Directed to Children" Commercial Television Industry Code of Practice.

¹⁹ ABA Investigation "Agro's Cartoon Connection", November 1996

²⁰ Clause 6.2 Commercial Television Code of Practice.

²¹ CTS 18 and CTS 19 Children's Television Standards



Content Restrictions – truth and accuracy

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

- no advertisement may mislead or deceive children²²;
- advertisements must accurately represent the advertised product or service²³;
- claims in advertisements must not be ambiguous²⁴;
- advertisements directed to children for food products must not contain any misleading or incorrect information about the nutritional value of that product²⁵

Content Restrictions – premium offers

The CTS prohibits advertisements for products with premium offers from stimulating any unreasonable expectation of the product or service offered. Any reference to the premium must be incidental to the main product and any conditions which must be met before obtaining the premium must be clearly presented.²⁶

Content Restrictions – product placement in programs mainly directed to children

The CTS provides that hosts or other regular presenters or characters in a C or P program must not sell or promote products or services.²⁷

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

Material within a C or P program and in breaks before and after such programs cannot contain an endorsement of a product by a principal personality or character from a C or P program which features the personality of character (a) not being currently broadcast in the service area, and (b) has not been broadcast within the preceding 12 months.²⁸

Content Restrictions – food and beverage advertising

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

- “6.23 Advertisements directed to children for food and/or beverages:*
- 6.23.1 Should not encourage or promote an inactive lifestyle;*

²² CTS 17 Children's Television Standards

²³ CTS 19(1) Children's Television Standards

²⁴ CTS 19(2) Children's Television Standards

²⁵ CTS 19(6) Children's Television Standards, Clause 6.23 Code of Practice and AANA Code Clause 2.10.1

²⁶ CTS 20(2) Children's Television Standards. The AANA Code contains a similar provision,

²⁷ Clause 6.24 Commercial Television Code of Practice

²⁸ CTS 22 Children's Television Standards



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

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

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

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

3 The regulations provide appropriate community safeguards

3.1 Overview

The advertising restrictions contained in the CTS and the Code are working effectively to ensure that advertising messages directed to children are appropriate.

The vast range of regulation described above delivers a range of regulatory levers that ensure children's interests are protected. In fact Australia has been at the forefront of developing this range of regulatory protections on commercial free to air television over the last twenty years.²⁹

It should be noted that the existing regulatory framework already imposes a significant cost on broadcasters. Further restrictions on advertising to children on commercial free to air television will undermine the broadcasters' ability to provide quality children's programming free to air.

Given the accelerating fragmentation of the child audience, a focus on commercial free to air television does not make sense. The current regulatory framework means that alternative advertising platforms such as pay TV and the internet are increasingly attractive to advertisers. These platforms are not regulated to the same extent as commercial free to air television.

Any review of advertising directed to children must apply across different platforms to ensure regulations remain relevant and do not disadvantage free to air viewers.

Children are availing themselves of a wide range of these alternative screen time activities that are subject to fewer regulatory protections:

- Pay TV is not subject to the same level of advertising restrictions as commercial free to air television

²⁹ Baker & McKenzie, Comparative Review of the Regulation of Television Food Advertising to Children, 2007. For a copy of the report see Appendix 3.



- The internet is subject to content restrictions in relation to R, X and RC rated material, but again faces no obligations to restrict advertising targeting children.

3.2 Compliance with existing regulations

Broadcasters have always acknowledged the need to take special care when advertising to children and place a premium on ensuring that the regulations are observed in the spirit as well as the letter of the law.

The industry's commitment to the regulations is evident through:

- the extension of the provisions under the CTS to ALL advertising directed to children through the Code;
- the lack of any breaches of the advertising restrictions over the past eleven years;
- the extremely low level of complaints about alleged breaches of the CTS or the Code; and
- a rigorous acceptance process for C classified advertisements.

The CTS advertising restrictions only apply to C and P programs. The Code takes this further by saying that all "advertising directed to children must comply with the CTS".³⁰

The number of complaints about advertising to children is also extremely low. There is no evidence from the complaints reported quarterly to ACMA, and its predecessor the Australian Broadcasting Authority (ABA), that this has been an area of concern for parents or viewers.

The annual Code complaints reports demonstrate that viewers take a personal interest in what is shown on television and are keen to make their concerns known in relation to a wide range of issues.

3.3 The Code and CTS Review and complaints process and enforcement – robust and transparent

3.3.1 Review process for Code and CTS

There is built into the regulatory arrangements for broadcasting content, an existing process for ensuring the ongoing adequacy of the Code. Free TV supports this process as the most appropriate means of ensuring that community expectations regarding broadcasting content continue to be met.

This process provides for the Code to be reviewed every three years. As part of each review, it is the role of the regulator, ACMA, to take an evidence-based approach to assessing the adequacy of the Code.

³⁰ Commercial Television Industry Code of Practice, 6.20, Page 45



The review process commences with a detailed discussion between broadcasters and the regulator on potential areas for review under the Code.

Free TV, on behalf of the broadcasters, then develops a draft in consultation with the regulator. The draft is then approved by the regulator for release to the public for comment. Following the public consultation phase, Free TV then provides copies of all submissions to the regulator for its consideration. Discussions then continue between the regulator and Free TV in relation to the issues raised by the public, which may result in further amendments to the Code. Following that process, the regulator then considers whether to register the Code.

There are important safeguards built into the Code review process, in which ACMA is only permitted to register a Code if it is satisfied that:

- it provides adequate consumer safeguards for the matters covered by the Code;
- it is endorsed by the majority of the commercial television stations; and
- members of the public were given an adequate opportunity to comment on it.

ACMA is also conducting a review of the CTS to ensure their continued relevance and effectiveness. The review is looking at whether the current CTS are meeting their objective of promoting quality children's viewing times on free to air commercial television and providing appropriate safeguards during designated children's viewing times.

ACMA conducted research to inform the review. The research focussed on the children's viewing patterns, the importance of children's programming to the production sector and the impact of television advertising to children. The research demonstrated there was no causal link between television advertising and obesity.

The review included a public consultation period of 8 weeks during which time 76 submissions were received by ACMA.

ACMA is currently considering the submissions and will release a draft of the proposed amendments to the CTS shortly.

3.3.2 Complaints Process

The regulation of television program content is open and accessible to viewers through a well-managed and well-understood complaints process.

Complaints about the Code are required to be made directly to the broadcaster who is obligated to respond substantively within



30 working days, and must advise the complainant of their right to refer the matter to ACMA for investigation.

In practice, broadcasters often respond in a far shorter period although the precise length of time depends on the complexity of the complaint. The response must advise the complainant that if they are not satisfied with the response they can take their complaint to ACMA. However, the vast majority of complaints are resolved between the broadcaster and the viewer.

If a complaint is referred to ACMA, ACMA then conducts its own complaint review and determines independently whether or not there has been a breach of the Code.

Once a complaint is received by ACMA, the relevant licensee is provided with an opportunity to comment on the matter raised by the complainant and is often asked for a copy of the material broadcast.

ACMA is bound by the rules of procedural fairness in conducting broadcasting investigations and this largely determines the time in which investigations can be completed.

Affected licensees are provided an opportunity to comment on any proposed breach findings through the provision by ACMA of a preliminary report. Under section 180 of the BSA ACMA is obliged to allow a person whose interests may be adversely affected by publication of matter in a report to make representations in relation to the matter.

ACMA must provide a 'reasonable period, not exceeding 30 days', for comments prior to the publication of the report. Any comments received are taken into account by ACMA in deciding whether to publish the report in full.

In the event that ACMA finds a breach of the Code, any action taken will depend on the seriousness of the breach (refer to section 3.3.3 below regarding enforcement of the Codes).

Each television station must advertise the Code and the complaints process 360 times a year. The advertisement must be rotated across viewing times so that it is seen in prime time, children's programming and in sport and news and current affairs.

Commercial broadcasters provide an electronic complaints form which is available on broadcasters' websites and allows viewers to download a complaints form to fax or mail to the broadcaster.

Free TV has also established a comprehensive and easily accessed website that takes people through the complaints process and assists them to identify the appropriate station to send their complaint to.

If a broadcaster receives a telephone call about a matter covered by the Code, the broadcaster must advise the caller of the Code



complaints process. Switchboard staff are also required to record the content of complaints about matters covered by the Code, and ensure this record is circulated to key staff.

Free TV also provides a phone service to assist complainants and mails out copies of the Code to individuals and interested groups who cannot access the website.

Complaints under the CTS can be made directly to ACMA.

3.3.3 Enforcement

ACMA is empowered under the *Broadcasting Services Act 1992* to enforce the regulatory framework for broadcasting content through a comprehensive suite of enforcement measures. These provide for proportionate responses to breaches of the framework and act as a significant deterrent. Free TV endorses ACMA's role as the arbiter of broadcasters' compliance with community standards through enforcement of the Code.

The BSA also provides that the provisions of the CTS must be complied with as part of the licence condition for commercial television broadcasters.

In relation to individual breaches of the Code, ACMA may in the first instance, impose an additional licence condition on the broadcaster, mandating compliance with the Code. Penalties apply for a breach of an additional licence condition, including remedial directions, civil penalties, criminal prosecution, suspension or cancellation of the licence, and the acceptance of enforceable undertakings.

This range of enforcement powers allows AMCA to take a considered and proportionate response to a breach of the Code.

It is important to note that ACMA may also take informal action in relation to code breaches, such as working with licensees to put in place procedures and training to ensure the code breach is not repeated.

These enforcement mechanisms are designed to provide a response to individual breaches of the Code. The BSA also provides ACMA with a means of responding where it is satisfied there is evidence that a registered code of practice is not providing appropriate community safeguards, or where no code has been developed. In these circumstances, ACMA is empowered to make a program standard. Compliance with program standards is a mandatory licence condition for commercial free to air television broadcasters.

Compliance action undertaken by licensees

The actions of broadcasters to ensure compliance with the regulatory framework should also be considered in this context. Broadcasters are strongly committed to compliance and have instituted training and



procedural requirements throughout their company organisations to minimise the potential for inadvertent breach of the Code and CTS and to ensure that complaints are handled appropriately.

Broadcasters conduct regular formal Code and CTS training sessions encompassing tailored guidance on the requirements of the Code and the complaints handling process. Switchboard staff are trained in Code issues, to ensure that callers are provided with uniform and correct advice on how to make a complaint.

Broadcasters provide their staff with copies of the Code, CTS and relevant training materials and ensure compliance issues are discussed with staff of all levels.

In the event ACMA makes a breach finding following an investigation, broadcasters will usually distribute those findings internally to relevant staff. The findings will also be used as an example during internal regulatory training sessions to ensure future compliance.

These proactive steps demonstrate broadcasters' commitment to compliance with the Code and CTS.

4 Free TV position

4.1 No Evidence that food advertising contributes to obesity

Free TV is opposed to further restriction or bans on food and beverage advertising to children.

- There is no causal link between food and beverage advertising and the increase in childhood obesity rates.
- The current regulations are a proper balance between the requirement to provide quality Australian children's programming through an advertising funded model and the need to ensure that advertising directed to children is responsibly regulated.
- The Commercial Television Industry Code of Practice has already adopted clauses specifically covering food and beverage advertising which are working.
- Further restrictions will undermine the broadcasters' ability to continue to provide quality Australian children's programming.

The ACMA report in the review of the CTS notes that "whilst research indicates a relationship between television viewing and increased Body Mass Index, overweight and obesity, the contribution of television advertising to the relationship appears inconclusive at this time".³¹

³¹ ACMA Children's Television Standards Review, Issues Paper June 2007, page 30



The literature review undertaken for ACMA by Bond University's Dr. Jeffrey Brand, *Television Advertising to Children, A review of contemporary research on the influence of television advertising directed to children*, found that:

"public health literature points to a range of multi-factorial contributors to obesity, including hereditary, environmental, social and cultural factors".³²

Dr. Brand reviewed the extensive research on the impact of television advertising on childhood obesity undertaken by the UK regulator, Ofcom in 2004. He concludes:

"Ofcom stated that it is difficult to determine the relative contribution of television advertising by comparison with all the other factors that influence children's food choice and health, and difficult to disentangle the contribution of television viewing as a factor associated with obesity".³³

The case has therefore not been made that further restrictions or advertising bans will materially affect childhood obesity rates.

As the ACMA report notes "concern about food and beverage advertising also needs to be considered in the context of the role of advertising in supporting the production of quality children's television programs."³⁴

The current regulatory mix achieves this outcome by ensuring that advertising directed to children has a range of restrictions that do not apply to general advertising on television. No case has been made that these regulations are not working.

Free TV has already addressed the issue of food and beverage advertising with the inclusion in 2004 of two new clauses in the Code. These clauses are working well.

To impose advertising bans on top of this comprehensive blanket of regulation would not be a "low" cost option as some have claimed.

There would be significant impacts on children's programming for which advertising is already limited.

It would also impact on the advertisers who would lose the ability to promote their products in the highly competitive Australian market.

This would include the major primary production sectors in Australia; meat, dairy, sugar, poultry, fruit and vegetables as well as the producers of manufactured goods.

For these reasons we believe the balance between responsible regulation and providing quality Australian children's programming is correct and does not need further restrictions.

³² Dr. Jeffrey Brand, *Television Advertising to Children, A review of contemporary research on the influence of television advertising directed to children*, 2007 page 41

³³ *Ibid* page 42

³⁴ ACMA Children's Television Standards Review, Issues Paper June 2007, page 30



4.2 Support for the status quo

The current regulation of food and beverage advertising directed to children is appropriate and the status quo should continue to apply.

The current mix of regulations under the CTS, the Code, the AANA Code of Advertising to Children and the AANA Food & Beverages Advertising and Marketing Communications Code is responsible and has resulted in very few complaints to broadcasters or the Advertising Standards Bureau (ASB).³⁵

The regulations ensure that any food and beverage advertiser wishing to advertise to children on commercial free to air television must comply with a thorough and rigorous set of rules and regulations.

During the last review of the Code, broadcasters listened to the concerns of health officials and sections of the broader community and introduced two food and beverage clauses so that the community could be assured that these matters were being addressed. The final wording of the two clauses was influenced by submissions from some state health departments to ensure that the clauses were effective.

Free TV also worked closely with the AANA who developed a Code of Advertising to Children which is included as an Annex to the Commercial Television Industry Code of Practice.

Finally, to provide transparency on the application of the advertising restrictions under the CTS and the Code, an explanatory note was included with the Code to provide guidance on when an advertisement is determined to be "directed to children". This advisory note is based on an earlier determination by the ABA.

In the three years since the introduction of these clauses there have been no breaches of the food and beverage clauses, nor have they been the subject of formal complaint.

In that time Free TV has:

- conducted seminars with advertisers in Sydney and Melbourne in conjunction with the Australian Federation of Advertisers and the AANA, to educate advertisers on the new requirements of food and beverage advertisers under the Code;
- actively supported the AANA's "Jo Lively" campaign based on the theme, "Eat Well. Play Well. Live Well." All metropolitan and regional networks provided free airtime in children's viewing times as well as across the day to support this industry-based initiative;
- actively supported the Victorian Governments "Go For Your Life" campaign and participated in the Victorian Governments' ambassador program.
- continued to actively participate in state and federal seminars and summits on childhood obesity issues; and

³⁵ In 2006, complaints about advertising to children made up just 2.5 per cent of the total complaints received by the ASB.



- undertaken to increase the healthy food and lifestyle messages in programming as diverse as *TTN*, *What's Good for You* and *The Biggest Loser*.

Since the introduction of the new clauses and the AANA Code, a number of prominent advertisers such as Arnott's and McDonald's have either reduced advertising directed to children or have withdrawn such advertising completely. Internationally, a number of companies including Kellogg's have recently announced that they will only promote healthy products to children.³⁶

There has also been a significant change in the kind of advertising directed to children.

All advertisements that appear on television are cleared through Commercials Advice. The clearance process is designed to ensure that all advertisements meet the classification requirements under the Code and, in the case of advertisements directed to children, that they meet with the requirements of the CTS and the Code.

In recent years there has been a shift away from the fast food type of advertisements to a broader range of food advertisements. A Free TV review of commercials submitted for approval to Commercials Advice in 2006 reveals that food ads represented just 10.9 per cent of 'C' classified ads. Food ads represented just 11.3 per cent of all 'G' classified ads and the majority of these ads were for supermarkets (7.3 per cent).

4.3 Further advertising restrictions in C programs would undermine funding for children's television

A discussion about imposing further restrictions on either C programs or food ads directed to children generally, cannot proceed without considering the implications for revenue streams for the associated programs.

As noted in the ACMA Issues paper for review of the CTS, concern about food and beverage advertising needs to be considered in the context of the "role of advertising in supporting the production of quality children's programming".

Under the CTS each licensee must provide 390 hours of pre-approved C and P programs (260 of C material and 130 hours of P material). The revenue source for C programs is advertising and P programs are fully subsidised by the networks.

Banning all food advertisements during C programs on free to air television would undermine children's television production and is not likely to address the rate of childhood obesity in Australia.

The advertising pool available for C programs is already necessarily limited. There are a number of reasons for this:

³⁶ Kellogg's Marketing to Children Practices Fact Sheet, June 2007

- The hourly limits for advertising in C programs are significantly lower than for other programs;
- There are many products which, sensibly, are not permitted to be broadcast in C programs. For example, alcohol³⁷, condoms³⁸, telephone sex line services³⁹ and ads relating to betting or gambling.⁴⁰
- Of the remaining products, many are unsuitable for broadcast because the product is not of interest to children. For example, insurance, automobiles, entertainment for a late teen or adult audience.

Advertising funds all free to air television production, however the Children's Television Report, conducted for ACMA's review of the CTS by Kate Aisbett of Entertainment Insights, found that "programming aimed at children does not have the same advertiser appeal".⁴¹

This is certainly consistent with the broadcasters' experience. Broadcasters already struggle to fill the limited advertising slots available in C programs. This lack of interest has been compounded by the fact advertisers can now reach children on other platforms which don't face the same level of regulation.

Food advertisements cover a wide range of food products and services. Losing the ability to derive any revenue from these advertisements during C time would have serious implications for the viability of quality children's programming.

Broadcasters support the comments in ACMA's Review Paper for the CTS Review that the "broader issue of childhood obesity is one that is being addressed across a number of portfolios as part of a whole-of-government approach".⁴²

4.4 Banning all food advertising (directed to children or otherwise) would undermine funding for free to air television.

It has been proposed previously that all food and beverage advertising directed to children or in programs where children (albeit a small percentage) are watching be banned. Free TV rejects this for the same reasons as those outlined above.

The BSA requires that all regulation must be proportionate and not impose unreasonable regulation on broadcasters⁴³.

There is no evidence that a ban will work as the link between advertising and obesity is unproven and tenuous.

³⁷ CTS 23 Children's Television Standards.

³⁸ CI 6.15 Commercial Television Code of Practice

³⁹ CI 6.16 Commercial Television Code of Practice

⁴⁰ CI 6.14 Commercial Television Code of Practice

⁴¹ Entertainment Insights, Children's Television Production Project, 2007 page 19

⁴² ACMA, Children's Television Standards Review, Issues Paper 2007, page 31

⁴³ Broadcasting Services Act - s4(2) "...does not impose unnecessary financial and administrative burdens on providers of broadcasting services and datacasting services."



A proposal to introduce a blanket advertising ban on all food advertisements directed to children fails to take into account the well documented range of contributors to obesity, including hereditary, environmental, social and cultural factors.

Calls for bans also fail to take into account the impact on the advertiser funded model of free to air television. This solution is often viewed as "low cost" but that is not the case as there would be significant costs associated with a ban on all food ads directed to children as evidenced in the UK.

In November 2006, Ofcom introduced a range of restrictions on the advertising of foods high in fat, salt and sugars (HFSS). The restrictions were introduced in February 2007 and were based on a nutrient profiling system that has already had to be amended to allow for the advertising of some dairy products.

More importantly it has been reported that the revenue cost to commercial free to air broadcasters is already around thirty million pounds and that ITV has cut children's programming by a similar amount.

There has been a collapse in the commissioning of original UK children's programming that has been exacerbated by the food and beverage advertising restrictions. Ofcom is currently holding a further review of children's programming and is due to make its first report later this year.

The UK example highlights that advertising bans cannot be viewed in isolation from the requirement under the CTS to provide children's programming.

Banning food and beverage advertisements in any form will not reduce levels of obesity.

APPENDIX 1

