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## Media, public health and law: A lawyer's primer on the food advertising debate

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*Recent years have seen the intensification around the world of debate about the regulation of food advertising to children, against the backdrop of a marked increase in levels of overweight and obesity among children. This article is intended to introduce lawyers to that debate and to facilitate their participation in the debate, particularly in relation to television. It is timely to do so because of the Australian Communications and Media Authority's current review of the Children's Television Standards.*

*The article sets out some information about the obesity levels in children, the nature of television food advertising and the evidence that exists to link childhood obesity with that advertising; describes and analyses the means by which food advertising on television is currently regulated in Australia and overseas; and draws attention to some of the misconceptions that the authors have noted in contributions to the debate. Finally the authors put forward a public health analysis of the issue, noting in particular the dangers in framing the issue as one of 'parental responsibility'.*

In recent years public pressure has been building, both in Australia and overseas, to introduce new restrictions on television food advertising to children. The proponents of such measures see them as an important part of the response to the childhood obesity epidemic. However others put forward a range of reasons why further restrictions would be ineffective or undesirable.

Clearly this is a fascinating political debate, but it is also a legal one. Just how effective are the current regulations, and what is the case for changing them? What changes are most likely to have the desired effect? What can we learn from other jurisdictions?

With the Children's Television Standards currently under review, this is an ideal time for lawyers to join in the debate. This article aims to provide the tools to do so by helping to understand the scientific basis and political contours of the debate, explaining the current regulations, analysing the fault lines in them and setting out some matters for further consideration.

The article begins by exploring the debate surrounding the issue of whether there is in fact a causal link between food advertising and childhood obesity. To place the debate in context we then discuss the nature of the obesity problem, the types of food advertised on television, the costs of obesity to society and sources of international recognition for the application of special rules governing advertising to children.

Once the context of the debate is more clearly understood one can analyse

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the current Australian regulations applying to television food advertising to children, including their fault lines, pertinent issues in the current debate, such as the Howard Government's approach to regulation, and lessons that can be gleaned from other jurisdictions.

### **Food advertising and childhood obesity: debating the causal link**

The debate about food advertising gains some of its urgency from a perception that the advertising of food to children is linked to the prevalence of childhood obesity. There is now a sufficient body of knowledge to allow one to conclude that such a link exists.

The first step in answering the question of the causal link is to recognise the firmly established fact that young children have limited capacity to process advertising in an appropriate way.<sup>1</sup> The ability to discriminate between programming and advertising emerges between the ages of 4 years and 8 years,<sup>2</sup> while children are unlikely to develop an understanding of advertising's persuasive intent prior to 8 years of age.<sup>3</sup> For example, a study by Robertson and Rossiter that investigated the ability of children in a range of age brackets to evaluate and respond to advertising concluded that '64.8% of 6-7 year old children reported "trusting all commercials" compared with only 7.4% of 10-11 year olds'.<sup>4</sup> The ability to critically reflect on advertising usually develops between the ages of 8 years and 12 years<sup>5</sup> and, consequently, children younger than this are likely to be more vulnerable to manipulation by commercial advertising.

All participants in the food advertising debate recognise that obesity is a multifactorial problem. It is influenced by factors such as physical activity, education, school curriculum, genetics, town planning, diet, technology and time spent in sedentary activities such as playing computer games or watching television.<sup>6</sup> Due to the myriad of factors influencing obesity it is difficult to 'prove' a direct causal link between any one factor, such as food advertising, and obesity rates.

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1 G Hastings, M Stead, L McDermott, A Forsyth, A MacKintosh, M Rayer, C Godfrey, M Caraher and K Angus, *Review of Research on the Effects of Food Promotion to Children*, Food Standards Agency, 2003, pp 33-6.

2 Ibid, p 35.

3 D John, 'Through the eyes of a child: Children's Knowledge and Understanding of Advertising' in M C Macklin and L Carlson (Eds), *Advertising to Children — Concepts and Controversies*, Sage Publications Inc, Thousands Oaks, CA, 1999, Ch 1.

4 T Robertson and J Rossiter, 'Children and commercial persuasion: an attribution theory analysis' (1974) 1 *Jnl of Consumer Research* 13-20 as cited in Hastings et al, above n 1, p 35.

5 M Story and S French, 'Food Advertising and Marketing Directed at Children and adolescents in the US' (2004) 1 *International Jnl of Behavioural Nutrition and Physical Activity* 3 at 6.

6 R Eckersley, 'Losing the battle of the bulge: causes and consequences of increasing obesity' (2001) 174 *The Medical Jnl of Australia* 590 at 591; B Young, 'Does food advertising make children obese?' (2003) *Advertising and Marketing to Children* 19 at 24; World Health Organisation, 'Obesity: preventing and managing the global epidemic', *Report of the World Health Organisation on obesity*, Geneva, 1997; A Magarey, L Daniels and T Boulton, 'Prevalence of overweight and obesity in Australian children and adolescents: reassessment of 1985 and 1995 data against new standard international definitions' (2001) 174 *Medical*

Difficulties of proof stem also from the nature of scientific research. The results of experiments conducted under controlled conditions can be questioned because they do not reflect conditions in the 'real world'. They seek to isolate one set of contributing factors to what we all know is a complex issue. However the alternative, surveys, are inherently flawed because they rely on self-reporting which is not necessarily reliable.<sup>7</sup> This is especially the case if they aim to capture behaviour over a long period in the past when memories are bound to have faded. Yet because obesity tends to set in over a period of time, studies on its causes must attempt these historical reconstructions.

However, scientific research has yielded at least one key finding in this area. Recent studies have found a direct correlation between exposure to food advertisements and the food preferences of children.<sup>8</sup> Research also confirms that the majority of foods advertised on television during periods when children are likely to be watching are high in sugar and fat (see below). If preferences are a predictor of actual consumption, then, it is not unreasonable to conclude that television advertising leads children to consume more food of low nutritional value, which is often calorie dense and contains high levels of sugar and fat, than they would otherwise do. On this view, the daily calorie intake of children is being inflated without corresponding increases in opportunities for physical activity. In public health parlance, this is referred to as an 'obesogenic' environment.

There remain voices which claim that this is insufficient evidence.<sup>9</sup> One key factor in whether one finds the evidence convincing is how confident one is of the capacity of parents and carers to counteract the effects of advertising on children's preferences. Certainly, the fact that children *prefer* the advertised food does not automatically mean they *consume* the advertised food. However there are a range of views on how effective parents and carers are, or can be expected to be, in their 'gate-keeping' role.

If it is difficult to prove a direct causal link between food advertising and childhood obesity, it is even harder to quantify the extent of any such link, either in the abstract or relative to other factors. Some participants in the debate take the view that declining levels of physical activity are a more serious problem, and increasing those levels will be far more effective. Recent research, however, suggests that changes in physical activity levels have not been great over the period in which the childhood obesity epidemic has set in.<sup>10</sup>

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*Jnl of Australia* 561 at 563, 564; C Ebbeling, D Pawlak, and D Ludwig, 'Childhood obesity: public-health crisis, common sense cure' (2002) 260 *The Lancet* 473 at 475–9.

7 S Livingstone, *A Commentary on the Research Evidence Regarding the Effects of Food Promotion on Children*, Prepared for the Research Department of the Office of Communications, 2004, pp 1–32, at pp 14–15.

8 Hastings et al, above n 1, p 182; Livingstone, above n 7, p 18.

9 S Kline, 'Sedentary Lifestyle or Fast Food Culture? Lessons from the Battle of the Bulge', 2004 Seminar on Children as Consumers: Public Policies, Moral Dilemmas, Academic Perspectives, 20 February 2004, Royal Society, London, p 12; B Young, P Webley, M Hetherington and S Zeedyk, *The role of television advertising in children's food choice*, Report commissioned by the Ministry of Agriculture, Fisheries and Food, 1996, p 1; Young, above n 6, at 26.

10 S Nathan, E Develin, N Grove and A Zwi, 'An Australian childhood obesity summit: the role

Quantification concerns lead also to the ‘proportionality’ argument, centring on the impossibility of quantifying the correlation relative to that of other factors: to some, this impossibility means that it is illegitimate to tighten the regulation of television food advertising to children.<sup>11</sup> They argue that regulation must be ‘proportional’ to the harm caused and that in the absence of quantification we cannot be sure that any regulation measure is proportional and therefore appropriate or fair.

Irrespective of the view one takes on these matters, it cannot be denied that the debate on food advertising and childhood obesity is a live one, and in need of informed contributions. One kind of information that is needed is the exact nature of the obesity epidemic, which we now address.

### The obesity problem

Childhood obesity is a major health problem for Australia and many other nations around the world with 25% of Australian children currently overweight or obese.<sup>12</sup> A recent report by the International Obesity Task Force concluded that the proportion of school aged children in the United States and many European countries who are overweight and obese has risen above 25% and that 0.5% is being added to the prevalence rates each year.<sup>13</sup>

A 2001 study by Magarey, Daniels and Boulton highlighted just how startling the increase in Australia’s rates of childhood obesity has been over the past 20 years.<sup>14</sup> The study analysed Body Mass Index data from 8492 school aged children in 1985 and compared it with similar data from 2962 children in 1995. The study concluded that in the 7–15 year age bracket, 9.3% of boys and 10.6% of girls were overweight and a further 1.4% of boys and 1.2% of girls were obese in 1985. This can be compared with the 1995 results which concluded that for children in the same age bracket 15.3% of boys and 16% of girls were overweight and a further 4.7% of boys and 5.5% of girls were obese.<sup>15</sup>

Recent obesity figures suggest that these rates have skyrocketed to a point where approximately 25% of Australian children are obese.<sup>16</sup>

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of data and evidence in “public” policy making’ (2005) 2 *Australia and New Zealand Health Policy Jnl* 17–27; E Waters and L Baur, ‘Childhood obesity: modernity’s scourge’ (2003) 178 *The Medical Jnl of Australia* 422–3.

11 The report produced by the Office of Communications in the United Kingdom published in 2004 concluded that television advertising had a ‘modest, direct effect on children’s food choices’. The report also uses the terminology ‘proportionate intervention’ in its conclusion. The use of such rhetoric in the report is likely to have stimulated the ‘proportionality’ argument, see Ofcom, *Childhood Obesity — Food Advertising in Context*, July 2004, p 180.

12 Australasian Society for the Study of Obesity, ‘Fact Sheet — Obesity in Australian Children: Definition and Prevalence’ 2005, at <[http://www.asso.org.au/freestyler/gui/files/factsheet\\_children\\_prevalence.pdf](http://www.asso.org.au/freestyler/gui/files/factsheet_children_prevalence.pdf)> (accessed 4 July 2006).

13 T Lobstein, L Baur and R Uauy, ‘Obesity in children and young people: a crisis in public health — Report to the World Health Organisation by the International Obesity Task Force’ (2004) 5(1) *Obesity Review* 5–104.

14 Magarey et al, above n 6, at 561–4.

15 *Ibid*, at 562–3.

16 Australasian Society for the Study of Obesity, above n 12.

## The advertised diet — is it healthy?

A 1996 survey of advertising to children in 13 countries reported that Australia had the highest number of television food advertisements per hour.<sup>17</sup> The majority of foods advertised during children's television viewing times are high in fat and sugar and conflict with current recommendations for a healthy diet.<sup>18</sup>

A 2005 Australian study by Neville, Thomas and Bauman analysed 390 hours of Australian advertisements broadcast during children's viewing hours over 15 television stations to determine the proportion of food advertisements and the proportion of those advertisements promoting foods high in fat and/or sugar.<sup>19</sup> The study also analysed 346 hours of advertisements for confectionery and fast food restaurants broadcast on three Sydney commercial television stations to determine whether these types of advertisements were more likely to be advertised during children's programs.

The study concluded that half of all food advertisements promoted food that was high in fat and/or sugar.<sup>20</sup> Confectionery advertisements were three times more likely to be broadcast during children's programs than during adult programs and fast food restaurants were twice as likely to be advertised during children's programs, with fruit and vegetables being the least advertised food.<sup>21</sup> These results suggest that foods high in fat and/or sugar are being promoted to children at a rate that is inconsistent with healthy eating guidelines.<sup>22</sup>

## The health risks and costs for society

Overweight children are at increased risk of becoming overweight adults and of experiencing health problems associated with adult obesity such as diabetes, raised blood fats and high blood pressure.<sup>23</sup> Even if obese children subsequently lose weight during adulthood, research suggests that mortality rates are higher among adults who have been obese as adolescents.<sup>24</sup>

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17 S Dibb, *A spoonful of sugar — television advertising aimed at children: an international comparative survey*, *Consumers International*, United Kingdom, November 1996, p 22.

18 A Hill and K Radimer, 'A content analysis of food advertisements in television for Australian children' (1997) 54 *Aust Jnl of Nutrition and Dietetics* 174 at 179–81; J Zuppa, H Morton and K Mehta, 'Television food advertising: counterproductive to children's health? A content analysis using the Australian Guide to Healthy Eating' (2003) 60 *Nutrition and Dietetics* 78; K Chapman, P Nicholas and R Supramaniam, 'How much food advertising is there on Australian television?' (2006) 21 *Health Promotion International* 172.

19 L Neville, M Thomas and A Bauman, 'Food advertising on Australian television: the extent of children's exposure' (2005) 20(2) *Health Promotion International* 105–111.

20 *Ibid*, at 109.

21 *Ibid*, at 105, 109.

22 See also M Lewis and A Hill, 'Food advertising on British children's television: a content analysis and experimental study with nine year olds' (1998) 22 *International Jnl of Obesity* 206 at 210–11; Hastings et al, above n 1, pp 84–5.

23 T Lobstein and S Dibb, 'Evidence of a possible link between obesogenic food advertising and child overweight' (2006) 6 *Obesity Reviews* 203 at 203; World Health Organisation, above n 6.

24 A Must, P Jacques, G Dallal, C Bajema and W Dietz, 'Long term morbidity and mortality of overweight adolescents — A follow up of the Harvard Growth Study of 1922 to 1935' (1992) 327 *New England Jnl of Medicine* 1350 at 1354.

In addition to the physical health problems associated with obesity, research confirms that obese children are likely to be discriminated against by their peers.<sup>25</sup> Obese children are likely to develop a negative self-image that persists into adulthood.<sup>26</sup> The mental and physical problems associated with obesity are costs borne by the community at large through increasing healthcare costs and productivity losses for example.<sup>27</sup> The economic cost of obesity may be another reason for the Australian government to further regulate advertising in order to promote public health.

### International recognition that children require special protection

There are a variety of sources of international law that acknowledge children's vulnerability and credulity, and the resulting need for special rules and laws to protect their interests. For example, the need to protect the rights of children is enshrined in the Convention on the Rights of the Child adopted by the United Nations in 1989.<sup>28</sup> Articles 17 and 36 are of specific relevance to the issue of regulating children's television food advertisements. Article 17 encourages countries to develop appropriate guidelines for the protection of children from information which may be 'injurious to [their] well-being' and Art 36 of the Convention directs countries to 'protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare'.<sup>29</sup>

The International Chamber of Commerce (ICC) International Code of Advertising Practice<sup>30</sup> is a set of general guidelines for advertisers when advertising to children. The Code recognises that special rules should apply when advertising to children as they are more susceptible to exploitation as a 'class of consumers' and states that amongst other things, '[a]dvertisements should not exploit the inexperience or credulity of children and young people'.<sup>31</sup>

It is clear that a plausible case can be made to support the view that advertising foods of low nutritional value to children is likely to negatively affect a child's diet. It is also clear that childhood obesity is a serious and increasing problem in Australian society which results in economic and social costs borne not just by the individuals concerned but by society at large. Notwithstanding these facts, foods high in fat and/or sugar are being heavily promoted to children. It is now necessary to consider the current Australian regulatory system prior to more closely analysing some of its faults and pertinent issues within the debate such as the Federal Government's attitude

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25 W Dietz, 'Health Consequences of Obesity in Youth: Childhood Predictors of Adult Disease' (1998) 101 *Pediatrics* 518 at 518.

26 *Ibid.*, at 519.

27 C Hayne, P Moran and M Ford, 'Regulating Environments to Reduce Obesity' (2004) 25 *Jnl of Public Health Policy* 319 at 391.

28 United Nations Convention on the Rights of the Child (1989).

29 *Ibid.*, Art 36.

30 International Chamber of Commerce, *ICC International Code of Advertising Practice 1997*, at <[http://www.iccwbo.org/home/statements\\_rules/rules/1997/advercod.asp](http://www.iccwbo.org/home/statements_rules/rules/1997/advercod.asp)> (accessed 14 April 2006).

31 *Ibid.*, Art 14.

towards regulation and lessons to be noted from the regulatory experience in other jurisdictions.

### The current Australian regulatory system

Discussion in this section will focus on free-to-air television. It needs to be recognised that increasingly sophisticated means of promoting food to children are being developed in other media, including websites, computer games and packaging,<sup>32</sup> but free-to-air television is still the primary source of advertising messages to children, especially young children.<sup>33</sup>

Australia presently has a system of co-regulation in the area of advertising to children on television. Regulatory responsibility is divided between the Australian Communications and Media Authority (ACMA) and the stations themselves, based on a Code developed by the industry body Free TV Australia (FTVA). Regulations that relate specifically to children's advertisements broadcast on commercial television in Australia are contained in the Broadcasting Services Act 1992 (Cth), the Children's Television Standards (CTS), the Commercial Television Industry Code of Practice (CTICP), the AANA Code of Ethics and the AANA Code of Advertising to Children.

The Broadcasting Services Act provides for certain matters to be directly regulated by ACMA, for example, the application of quotas for Australian content and children's content. Other matters are governed by the CTICP developed by FTVA in consultation with the public and registered with ACMA.<sup>34</sup> The CTICP adopts the first two of the AANA Codes mentioned above for application to commercial television broadcasters; and all three Codes are administered by the Advertising Standards Board, an industry body.

A system such as this, which contains elements of self-regulation by industry, is seen by many as a desirable means of streamlining regulation and avoiding government intervention in industry practices. On the other hand, government regulation of the commercial television industry is seen as justified in light of the power enjoyed by the industry, and the protection from competition that the government provides to members of the industry.

ACMA's predecessor, the Australian Broadcasting Authority (ABA), developed the CTS in 1984, and the federal regulatory body, currently ACMA, has responsibility for enforcing them.<sup>35</sup> The CTS reflect a recognition by parliament that children require special consideration in areas such as advertising and that extra care must be taken to ensure that material is not presented to them in a misleading or deceptive manner. As mentioned above, ACMA is currently reviewing the Standards.

The CTS define two types of children's programs — P programs for pre-school children and C programs for children aged up to 14. Both are further defined by their high-quality and the licensees must show a certain

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32 'Food Marketing: Child's Play?', *CHOICE*, June 2006, p 12.

33 T Olds, K Ridley and J Dollman, 'Screenyboppers and extreme screenies: the place of screen time in the time budgets of 10–13 year old Australian children' (2006) 30 *Australian and New Zealand Jnl of Public Health* 137.

34 CTICP, 2004, Part A, p 2.

35 Broadcasting Services Act 1992 (Cth) s 122.



minimum number of hours each year of each type of program. It needs to be noted that there is a substantial amount of children's programming that is neither P nor C. The CTS apply to all P and C programs and to advertisement breaks before, during and immediately after P or C programs.<sup>36</sup> CTS 13 provides that no advertisements may be broadcast during P periods, and during C periods only advertisements that also meet certain criteria of the CTS may be broadcast.<sup>37</sup> P and C 'periods' are the periods nominated by licensees during which they will show P or C programs, as the case may be.

There is room for some confusion over the application of the CTS to broadcasting generally as distinct from C periods (see below). This article proceeds on the assumption that the CTS apply only to C periods. The only clear exception would be CTS 17 on misleading or deceptive advertising, which states: 'nothing in these standards is to be taken to limit the obligation imposed by this standard.'

If the advertising restrictions are limited to C periods, the difference between C periods and C programs needs to be noted. The fact that advertising restrictions only apply to C periods means that these regulations only apply to the programming that is broadcast in fulfilment of the quota obligation. If a licensee were to broadcast a C program in excess of those requirements, the CTS would not apply.<sup>38</sup> Nor, once again, do the CTS apply to children's programming that is not classified as a C program.

The only Standard referring to food is CTS 19(6):

An advertisement for a food product may not contain any misleading or incorrect information about the nutritional value of that product.

CTS 20(2) is also of special interest from the point of view of food advertising:

A premium offer should not stimulate any unreasonable expectation of the product or service advertised. If a premium is offered, then:

- (a) any reference to the premium must be incidental to the main product or service advertised; and
- (b) any conditions which must be met before obtaining the premium must be clearly presented.

The CTICP applies to all broadcasts, and adopts some of the CTS in relation to 'commercials or community service announcements directed to children'.<sup>39</sup> It also incorporates certain further restrictions on 'Advertisements to Children'. This expression is found in the Australian Association of National Advertisers Code for Advertising to Children, which is incorporated into the CTICP as an Appendix. 'Advertisements to Children' are defined as:

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<sup>36</sup> Children's Television Standards 2005 CTS 1(2).

<sup>37</sup> The CTS applied by CTS 13 are 10 and 17-23.

<sup>38</sup> Somewhat bizarrely, the restrictions would also apply to any non-C programming that happened to be broadcast during a period that had been earmarked for C. Displacement of C programming is permitted in limited circumstances: CTS 3(1)(i).

<sup>39</sup> Commercial Television Industry Code of Practice s 6.20. The CTS adopted are those relating to misleading and deceptive advertising, pressure in advertisements, clear presentation, disclaimers and premium offers and competitions.

Advertisements which, having regard to the theme, visuals and language used, are directed primarily to [children 14 years old or younger] and are for [goods, services and facilities which are targeted towards and have principle [sic] appeal to Children].<sup>40</sup>

The AANA Code contains provisions on such advertisements, relating to factual presentation, safety, social values, parental authority, price, qualifying statements, competitions, premiums and alcohol. Of primary interest for these purposes is a further provision on food and beverages:

2.10.1 Advertisements to Children for food and/or beverages:

- (a) should not encourage or promote an inactive lifestyle combined with unhealthy eating or drinking habits; and
- (b) must not contain any misleading or incorrect information about the nutritional value of that Product.

The CTICP also contains cl 6.23, which constitutes a variation on 2.10.1:

Advertisements directed to children for food and/or beverages:

- 6.23.1 should not encourage or [expressly endorse] [not engaging in any or much physical activity as a way of life];
- 6.23.2 should not encourage or [expressly endorse] [excessive or compulsive consumption of food and/or beverages];
- 6.23.3 must not contain any misleading or incorrect information about the nutritional value of the product.

Note that this clause restricts advertisements on the basis of how they deal with *either* physical activity *or* eating habits, whereas the AANA counterpart requires both criteria to be met before an advertisement will be held to fall foul of it.

The CTICP also incorporates an Advisory Note 'to provide guidance on the factors licensees will consider in assessing *who a commercial is directed to* for the purpose of applying cl 6.23'.<sup>41</sup> The factors are:

- the nature of the product or service, and the persons most likely to be interested in that product or service . . .;
- the theme of the commercial . . .;
- the 'story line' and the approach taken in selling the product or service . . .;
- the visuals used in the commercial . . .;
- the language of the commercial . . .;
- the age of actors appearing in the commercial . . .; and
- the target audience of the commercial . . .

Clause 6.24 contains certain provisions which, while not limited in their application to food and beverages, limit the ways in which those products can be promoted:

In any program mainly directed to children:

- 6.24.1 the host or any other regular presenter or character in the program must not sell or promote products or services; and

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40 Commercial Television Industry Code of Practice, App 2 (Australian Association of National Advertisers Code for Advertising to Children) s 1.

41 The Advisory Note appears at the end of FTVA's official publication containing the Code, p 64.

- 6.24.2 products that have names or packaging featuring the host or any other regular presenter or character in the program must not be recommended or promoted within the program;
- 6.24.3 material in the program which recommends or promotes products or services must be presented as discrete segments, and its sponsorship must be advised to viewers in a way that will be clear to them; and
- 6.24.4 references to prizes for competitions must be brief.

Neither ACMA nor FTVA does any monitoring of commercial television for breaches of either the CTS or the CTICP. The system relies entirely on consumers to identify apparent breaches.

Television viewers who believe an advertisement breaches the CTS can complain directly to ACMA which will contact the licensee for comment. The ACMA website states that a response from the licensee may take in excess of three months and a decision by ACMA may take in excess of five months. Pursuant to the Broadcasting Services Act, ACMA has the power to impose a condition on a broadcaster requiring it to comply with the CTS.

For apparent breaches of the CTICP, complaints must be made first, within 30 days, to the licensee concerned. The complaint must be in writing and must clearly identify the material broadcast, the nature of the complaint and the identity of the complainant. A licensee then has 60 days to respond to the complainant.<sup>42</sup> In the event that the complainant does not receive a response within 60 days or is unsatisfied with the response, then the complainant can request that ACMA investigate the matter.<sup>43</sup>

A further avenue of complaint exists, to the Advertising Standards Bureau, for apparent breaches of the AANA Code. In addition to the general Code of Ethics and the Code on Advertising to Children discussed above, the Australian Association of National Advertisers (AANA) introduced a Food and Beverages Advertising and Marketing Communications Code as of 1 November 2006. All three Codes are administered by the Advertising Standards Bureau and complaints about breaches of their provisions are determined by the Advertising Standards Board.<sup>44</sup> The Advertising Standards Board has the power only to seek voluntary compliance from advertisers and has no legal authority to issue court proceedings or impose monetary fines on advertisers who fail to comply with the Code.

### **Limitations of the Australian regulatory system**

Both the CTS and the CTICP place the burden on viewers to identify and pursue breaches and to make complaints about advertisements. The procedures for lodging a complaint are onerous<sup>45</sup> and might reflect unrealistic expectations about the time, knowledge, expertise and perseverance consumers have to monitor advertisements and regulatory changes and to make complaints. It is likely that the delay in having one's complaint resolved would deter some people from complaining in the first place.

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<sup>42</sup> Broadcasting Services Act s 148.

<sup>43</sup> Ibid.

<sup>44</sup> Advertising Standards Bureau, What Happens to Public Complaints, <<http://www.adstandards.com.au/pages/page21.asp>> (accessed 12 January 2007).

<sup>45</sup> Commercial Television Industry Code of Practice 2004 s 7.4.

These criticisms are compounded by the exceptionally complex and convoluted nature of the system and the rules. Of particular concern is the difficulty mentioned above in determining the scope of the CTS: do they apply to all programming, to C programs, or to C periods?

CTS 13 applies certain standards to advertising in C periods. Some of these standards are expressly limited to C periods, for example, CTS 10 (demeaning, frightening and dangerous material), CTS 22 (endorsements by characters) and CTS 23 (alcoholic drinks). Others contain no such limitation, for example, CTS 17 (misleading or deceptive advertising), CTS 18 (pressure in advertisements), CTS 19 (clear presentation), CTS 20 (disclaimers and premium offers) and CTS 21 (competitions). If the latter group of Standards really do apply to all programming and all periods, as they appear to, it is not immediately clear why CTS 13 is needed in order to apply them to C periods, unless the intention is to limit the application of all the listed Standards to C periods only.

There is also the statement in the Definitions section that the CTS as a whole apply to all C and P *programs* and to advertisement breaks before, during and immediately after C or P *programs*.<sup>46</sup> This would seem to further support the inference that the CTS do not apply to all broadcasting. At best it could indicate that the advertising restrictions apply to C programs, not to broadcasting generally. This would still represent a significant limitation in the application of the restrictions.

While the issue as to the scope of the CTS might seem trivial and technical, it has real significance when it comes to a consumer deciding to whom to complain. It needs to be asked whether some consumers simply find it too difficult to work out which rules apply, and give up.

A further difficulty is that the distinction between C periods and other children's programming is a difficult one for the average viewer to determine. A C period is defined as:

A period nominated by, or on behalf of, a licensee under CTS 3(1)(e) during which the licensee will broadcast C programs.

A C program is not necessarily in a C period, and programming during C periods is not necessarily C-classified. As best we have been able to determine, there is no publicly available means of determining what the C periods are on any given day.

It has been questioned whether ACMA has sufficient enforcement powers.<sup>47</sup> Although ACMA does have the power to suspend or cancel a licence for breaches of licence conditions, such a remedy is extreme and has been used only once since the inception of the former ABA.<sup>48</sup> Prior to recent legislative changes that came into force on 4 February 2007, ACMA lacked the power to enforce undertakings made by broadcasters, or to seek a civil monetary penalty against broadcasters for breaches of licence conditions or breaches of the regulations.

ACMA's predecessor, the ABA, exercised its power to impose conditions

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46 Children's Television Standards 2005 CTS 1(2).

47 I Ramsay, *Review of the Australian Broadcasting Authorities Enforcement Powers: Report to the Australian Broadcasting Authority*, 2005.

48 *Ibid*, p 10.

on radio broadcasting licensees after the 'Cash-for-comment' enquiry in August 2000. The ABA, amongst other things, imposed conditions on licensees requiring them to disclose commercial agreements that exist between presenters and program sponsors.<sup>49</sup>

The lack of 'middle range' sanctions available to ACMA has compromised the authority's ability to regulate commercial broadcasting in accordance with the Act, the CTS and the CTICP. These matters have recently been under review and as mentioned above, in December 2006 the Australian Parliament passed legislation to increase considerably ACMA's enforcement powers from 4 February 2007.<sup>50</sup> The legislation gives ACMA the power to give remedial directions to broadcasters who have breached a licence condition.<sup>51</sup> Compliance with the CTS is such a condition,<sup>52</sup> but compliance with the CTICP is not. However, if ACMA finds a breach of the CTICP it can make compliance with the CTICP a licence condition.<sup>53</sup> Remedial directions can be things such as requiring the implementation of 'effective administrative systems for monitoring compliance with a condition of the licence'.<sup>54</sup> Breach of a remedial direction is an offence<sup>55</sup> and would also render the broadcaster liable to a civil penalty.<sup>56</sup> An application by ACMA to the Federal Court for a civil penalty order can result in a pecuniary penalty.<sup>57</sup> ACMA's power to apply to the Federal Court to seek injunctive relief does not extend to advertising regulation but only to non-licensed broadcasts. However the authority can accept undertakings relating to compliance with the Broadcasting Services Act<sup>58</sup> (which presumably extends to the standard licence conditions including observance of the CTS), and also relating to compliance with a registered code of practice,<sup>59</sup> which would include the CTICP. Breach of such an undertaking can be remedied by an application to the Federal Court for an order to comply; to pay to the Commonwealth any financial benefit gained from the breach; to compensate a person suffering loss or damage as a result of the breach; or any other appropriate order.<sup>60</sup>

FTVA, while being the 'owner' of the CTICP, has no formal role in its enforcement. No body has any formal enforcement powers available to it under the CTICP, and compliance with the Code is purely voluntary on the part of licensees.<sup>61</sup> Only when a matter is referred to ACMA by a complainant

49 The full report of the enquiry is available on ACMA's website, see ABA, Commercial Radio Enquiry, August 2000, at <<http://www.acma.gov.au>> (accessed 30 July 2006).

50 Communications Legislation Amendment (Enforcement Powers) Act 2006; Broadcasting Services Amendment (Media Ownership) Act 2006.

51 Broadcasting Services Act s 141 (as amended by Communications Legislation Amendment (Enforcement Powers) Act 2006 (Cth)).

52 *Ibid*, Sch 2 para 7(1)(b).

53 *Ibid*, s 44.

54 *Ibid*, s 141(2)(a).

55 *Ibid*, s 142.

56 *Ibid*, s 142A.

57 *Ibid*, s 205F.

58 *Ibid*, s 205W(1)(a)-(c).

59 *Ibid*, s 205W(1)(d)-(f).

60 *Ibid*, ss 205X and 298.

61 Commercial Television Industry Code of Practice 2004 s 7.

do licensees become subject to remedies available to ACMA pursuant to the Broadcasting Services Act.

There are no specific provisions in the Broadcasting Services Act relating to non-compliance with the CTICP. However, some general provisions contained in the Broadcasting Services Act provide ACMA with the power to impose conditions on licences including conditions relating to compliance with the CTICP.<sup>62</sup>

Currently, the CTS ban all advertising during P periods and impose certain restrictions advertising during C periods.<sup>63</sup> However, as Carter has noted, television viewing by Australian children peaks between 7 and 8 o'clock at night, whereas C periods are typically earlier, 'suggesting the current regulations to limit children's exposure to advertising may in fact not be as effective as intended'.<sup>64</sup> The CTS are therefore limited in their effectiveness by the fact that the C period limits are too narrow and do not reflect the reality of when children are (likely to be) watching, or at least when they are likely to make up a substantial portion of the audience.

There is no requirement in the regulations for advertisers to give full information about nutrition and related matters, much less to promote healthy foods. Both the CTS and the CTICP contain provisions relating to nutritional information. For example, CTS 19(6) provides that '[a]n advertisement for a food product may not contain any misleading or incorrect information about the nutritional value of that product'.<sup>65</sup>

However, such a requirement does not refer to information that is omitted. Therefore a consumer might reasonably read it as allowing advertisers to promote foods as 'including essential vitamins and minerals' despite the fact that the product is high in fat or sugar.

Perhaps most importantly, the CTS do not address advertisers' main techniques for making food appeal to children; these, not surprisingly, do not generally relate to nutritional value. Rather, they focus on toys and giveaways, or promote food as a source of fun or social acceptance.

One might have thought that CTS 20 on premium offers (see above) would have some impact on food advertising, considering the practice of fast food chains and others to include toy giveaways with their food, and to advertise in a way that focuses, at times exclusively, on those toys. Not so, according to the response to a complaint made by the Coalition on Food Advertising to Children (CFAC) in December 2001. The broadcasters reasoned that the 'main product' advertised was the package containing the food plus the toy so no premium was offered. In November 2002, the ABA issued its ruling on the matter, supporting the broadcaster's position in relation to 'bundled products — edible & non-edible elements'. The key word in CTS 20, 'incidental', was interpreted as 'not stimulating unreasonable expectations' rather than based on the time span of the advertisement. One reason cited for the ABA's support of the broadcasters' position was the role of advertising in funding quality

62 Broadcasting Services Act ss 43, 44, 87, 92J, 99 and 120.

63 Children's Television Standards 2005 CTS 13 and CTS 14, at <<http://www.acma.gov.au>> (accessed 7 January 2007).

64 O Carter, *The weighty issue of childhood obesity and television food advertising in Australia* (2006) 17 *Health Promotion Jnl of Australia* 5 at 7. See also Olds et al, above n 33, at 137.

65 See also Commercial Television Industry Code of Practice s 6.23.3.

children's programs and the threat to this by overly restricting advertising.<sup>66</sup>

In other words, advertisements for children's food packages can focus exclusively on the toy giveaway because the 'product' is the package, and that includes the toy. Therefore the toy is not a premium, but rather a component of the product.

CFAC complained also about the emotive and suggestive language in some advertisements, exhorting children to obtain products and visit fast food restaurants on multiple occasions, for example, 'for a limited time only'; 'start collecting today'; 'collect them all and then get swapping'; 'the more tokens you collect the more times you can enter'. CFAC argued that these advertisements breached CTS 18 in that they encouraged children to put undue pressure on their parents.

The broadcasters rejected these complaints too, on the ground that the 'usual purpose of an advertisement is to encourage people to buy a product'. When CFAC took the matter to the ABA, it interpreted 'undue pressure' as harassment and therefore agreed with the broadcasters that the advertisements in question merely 'encourage' children to make purchase requests of their parents, which is permissible.<sup>67</sup>

The provisions of the CTICP and the Australian Association of National Advertisers Code for Advertising to Children on advertising of food and beverages address a kind of advertising that has rarely if ever been seen on Australian television. Food advertising does not usually promote inactive lifestyles; far more common is an image of high-calorie food associated with high levels of physical activity, to support the message that the food provides 'energy'. Nor does the typical food advertisement have time to portray excessive consumption of food, even if that were seen as a sensible selling technique. Therefore it might be asked what impact the code provisions are ever likely to have on advertising practices.

The most serious faultline in the Australian regulatory system is that associated with the limitation of child-related protections to advertisements *directed to* children. While this kind of restriction has a superficial logic and appeal, there is no reason to suggest that children respond only to advertising designed to appeal principally to them. An example is the notorious breakfast cereal advertisement in which a well-known children's entertainer tells parents (ostensibly) that the high-sugar food is a good source of nutrients such as calcium. In June 2004 CFAC complained against the broadcast of the advertisement during the 6.30–7.30 pm timeslot, arguing that it was misleading in contravention of CTS 17.<sup>68</sup> However because the broadcaster was not showing the advertisement during a C period, it was bound only by the CTICP, and this incorporates CTS 17 only for advertisements that are 'directed to' children.

The broadcaster rejected the complaint, and the ABA agreed, on the basis that the advertisement was 'directed to' adults. On balance this may have been true. However, the entertainer in question has a high profile with Australian children and therefore is of primary interest to them. Indeed it is a fair bet that

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66 K Mehta and H Morton, *Letter of complaint to Leon Atkinson-MacEwen at the ABA*, 2001.

67 *Ibid.*

68 K Mehta, *Letter of complaint to Australian Broadcasting Authority*, June 2004.

some children have used the entertainer's pronouncements as a pretext for requesting that their parents buy the product.

The current system of regulation in Australia can be criticised on a number of fronts. The system relies solely on consumers to identify and pursue breaches of the regulations, the complaint process is complex and slow and the definitions contained in the CTS are confusing and restrictive. In addition, ACMA has until recently lacked the range of enforcement powers required to effectively deal with breaches of the regulations and the regulations are preoccupied with advertisements *directed to* children rather than advertisements *that are likely to be noticed by* children.

### What can we learn from other jurisdictions?

From time to time during the debate about the regulation of food advertising and childhood obesity reference is made to other jurisdictions. We now look more closely at the lessons that can be learned from Sweden and Quebec when considering possible reform of the Australian regulatory system. The Swedish Radio and Television Act 1996 provides:

4. Commercial advertising in a television broadcast may not be designed to attract the attention of children under 12 years of age. . . .

The Quebec Consumer Protection Act 1980 provides:

248. Subject to what is provided in the regulations, no person may make use of commercial advertising directed at persons under thirteen years of age.

It should be noted that the Quebec ban extends to all advertising, not just that on television, and that neither ban is limited to food. In 1989 the Quebec ban was challenged under the Canadian Charter of Rights and Freedoms as an interference with freedom of expression; it was found that such commercial speech was constitutionally protected, but that a ban aiming to protect children was demonstrably justified in a free and democratic society, and therefore valid.<sup>69</sup>

Sometimes these jurisdictions are cited as evidence that a ban on advertising to children does not mean the end of civilisation as we know it.

Other commentators, including the Federal Health Minister Tony Abbott, have suggested that childhood obesity rates in Sweden and Quebec are evidence that food advertising is not a factor in the obesity epidemic.<sup>70</sup> This assumes that the bans in those jurisdictions are *effective* in preventing children from being exposed to food advertising.

However, this assumption can be challenged on numerous grounds. Sweden's ban is undermined at a systemic level by the European Television Without Frontiers Directive. The Directive, which applies to all countries in the European Union, provides that advertisements broadcast from one member country into another are regulated by the advertising regulations in the country from which the broadcast originates, rather than the laws of the

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69 *Irwin Toy Ltd v Quebec (Attorney-General)* [1989] 1 SCR 927.

70 T Abbott, 'A Plan to Win the Battle of the Bulge', *Sydney Morning Herald*, 10 May 2006.



receiving country.<sup>71</sup> Therefore the Swedish ban does not apply to broadcasts received in Sweden which originate from another country. Two out of the three Swedish free-to-air commercial television stations are based in the United Kingdom. The result is plentiful food advertising to children on Swedish television. Sweden's ban of television advertising aimed at children under 12 has failed to shield this class of consumer from the pressures of commercial advertising.<sup>72</sup>

In Quebec, a similar issue exists where households receive numerous TV signals from other Canadian provinces and from the United States. The Quebec Government is not so foolhardy as to try to enforce its ban against out-of-jurisdiction broadcasters.

In addition, the bans in both Sweden and Quebec are centered on the notion of advertising *directed at or designed to attract the attention of* children. These vague concepts leave considerable leeway for interpretation and creativity on the part of advertisers. In Quebec, we still see children on television asking to eat at a particular fast food chain; in Sweden we still see a cartoon-style mouse promoting cheesy snacks. This is because other elements of the advertisements tell against them being thought of as directed at children or designed to attract their attention. In the Quebec example the main 'theme' of the advertisement is the child's adult guardian's interest in meeting attractive women at the restaurant; in the Swedish example, the advertisement is in English.

A further assumption underlying the Health Minister's assertion is that the bodies charged with enforcing the bans are adequately resourced — not necessarily the case.

Moreover, there are limits to how much we could learn from any other jurisdiction's experience, if only because of the multi-factorial nature of obesity. It is not reasonable to expect any one measure to have a substantial impact, rather a combination of measures is required to counter a combination of factors. Therefore it is too simplistic to say that advertising restrictions have no role to play, based on an isolated observation relating to that one factor.

Because the claim about the failure of bans is about obesity trends over time, it would have to be based on some reliable estimate as to what the obesity rate *would have* been today if food advertising had been (even more) present in the jurisdiction. There are limits to our ability to make such an estimate. However it is entirely possible that obesity would have increased in Sweden at an even greater rate if advertising to children had not been banned.

Comparisons to neighbouring countries are of limited validity because of the multi-factorial nature of the problem; it is impossible to control all the various factors across differing cultures, environments, political climates and so on.

In any event, since there are no national obesity figures available in Sweden the Minister's conclusion that there has been 'no discernible impact on childhood obesity' might be seen as disingenuous. One would not expect to be able to discern an impact without any statistics from which to work.

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<sup>71</sup> Dibb, above n 17, pp 27–9.

<sup>72</sup> Ibid; D Ball, 'Swedish kids show difficulty in fighting fat' (2003) 2 *Wall Street Jnl* December.

Many of the same comments apply to Quebec, except that we do know that it has the second-lowest obesity rate of any Canadian province, after British Columbia. Some observers will be convinced the advertisement ban works only if the rate is the lowest, ideally the lowest by far. To others, mentally controlling for climate and opportunities for physical activity, coming second to British Columbia might seem to be impressive evidence that something is working.

Quebec and Sweden have taken a stand on the principle of fairness relating to advertisements directed at children. However it is open to debate what the experiences in those countries can tell us about the role that an effective, properly enforced ban on food advertising has to play in tackling childhood obesity.

### Food advertising in the context of public health law

Members of the current Australian Federal Government have repeatedly rejected calls to tighten up restrictions on food advertising as a means of addressing childhood obesity. Prime John Minister Howard has stated that such restrictions would amount to a 'nanny state' intervention and Health Minister Tony Abbott has rejected such restrictions in favour of the provision of more information 'to tell people what their behaviour is doing to them, over and over again in crystal-clear terms'.<sup>73</sup> These two contributions to the debate encapsulate two important forces on the anti-regulation side: the opposition to 'big government' and the call to personal responsibility.

References to the 'nanny state' are especially interesting in a time when one of the most popular recent television programs has been showing frustrated parents receiving welcome help from a professional nanny. This might prompt one to ask whether food advertising is one area where parents need that same kind of support from the government, on a broader scale. One might also contrast the 'nanny state' concern expressed in relation to the highly pervasive problem of food advertising with the interventionist approach being taken towards *Big Brother*, an individual program that is easily enough avoided by those who wish to do so, and screened for only a limited time each year. In 2006 numerous complaints and calls for the 'banning' of *Big Brother Uncut* were made by both government and consumers, with ACMA ruling that an episode of *Big Brother Uncut* breached the Commercial Television Code of Practice by containing material that was 'beyond the level of suitability for the MA (15+) classification'.<sup>74</sup> These events culminated in Channel 10 removing the program from the air. It is not immediately clear why government intervention was not equally dismissed here on 'nanny state' grounds.

The call to personal responsibility is something of a leitmotif of our times, and it would be surprising if it did not appear here as well as in numerous other areas.<sup>75</sup> It has immense rhetorical appeal, and it is doubtful that any participant in the food advertising debate would wish to argue that individual

<sup>73</sup> Abbott, above n 70.

<sup>74</sup> ACMA, 'ACMA finds further episode of *Big Brother Uncut* breached TV Code', 21 March 2006, at <<http://www.acma.gov.au>> (accessed 30 July 2006).

<sup>75</sup> For example, in the field of tort liability and the so-called insurance crisis.

choices about lifestyle and food consumption play no part in the obesity epidemic.

Naturally it is difficult to apply the general logic of personal responsibility to young children, so in this context it has been adapted to parental responsibility. The response is often heard: parents should just say no to the advertised food when their children ask for it.<sup>76</sup> Nobody could deny that parents have an important role to play in regulating their children's diet, but recognition of that fact can lead to two contradictory responses on food advertising. One is that advertisers should direct their messages to parents, not children; this is precisely the philosophy on which the Swedish and Quebec bans are based. The other is that it is unimportant what advertisers say to children, as parents will act as the ultimate gatekeeper. The latter response leaves unanswered the question of how one might justify undermining parents' efforts to keep their children's diets healthy.

A further question to be asked about parental responsibility is whether reliance on it is fair to the children affected. With personal responsibility, there is an attractive argument that people can be relied on to take care of themselves, for if they do not, they will suffer the consequences. This cannot necessarily be extended to parents and children. We know that there is such a thing as a neglectful parent; we also know that there is such a thing as an ignorant or overstressed parent. Yet the decisions these people make have their primary impact on others who are by definition unable to take care of themselves. Therefore caution needs to be used in referring to the two forms of responsibility as if they were interchangeable.

Whether one is talking about personal or parental responsibility, limiting the responses to those which operate at the level of individual persuasion and decision-making risks losing sight of the dimensions of this problem. Individual decision-making and behaviour cannot logically lead to an epidemic. There must be some broader forces at work. Public health is a useful discipline that provides tools for analysing those forces.

One may argue that obesity is the new frontier of public health law.<sup>77</sup> Proponents of further regulation of food advertising to children suggest that the government has a duty to regulate private behaviour in the interests of promoting public health.<sup>78</sup> If obesity is being caused, even in part, by an 'obesogenic' environment, there is a clear argument for addressing elements of that environment at a systemic level.

Governments regularly manage lifestyle risks through regulation. For example, driving a car, smoking tobacco and drinking alcohol are all matters that the government regulates. Tensions exist between the state's interventions into the regulation of private behaviour and civil liberties. These have been successfully resolved in all three of the cases just cited, albeit with ongoing debates and pressures remaining on some issues.

Parallels are often drawn between food and tobacco, and certainly the two

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<sup>76</sup> See, eg, C Lumby and D Fine, *Why TV is Good for Kids*, Macmillan, Sydney, 2006, pp 154–5.

<sup>77</sup> M Mello, D Studdert and T Brennan, 'Obesity — The New Frontier of Public Health Law' (2006) 24 *The New England Jnl of Medicine* 2601–10.

<sup>78</sup> *Ibid.*, at 2601.

issues have much in common. In tobacco, as in food, concern has been focused to some extent on the manipulation of children and young people, and the banning of advertising has been seen as a way of avoiding the association of unhealthy products with health, glamour, fun and so on. Another significant similarity is that in both cases advertisers have argued that the purpose and effect of advertising is to encourage brand-switching, not to encourage higher consumption of the category of product.

However there are differences as well. On the one hand, tobacco is harmful from the first puff; the first bite of junk food will not do you any harm but rather the danger is in over-consumption. It is possible to imagine living without tobacco; not so food — even, some would argue, junk food. In these senses, arguments for restricting tobacco advertising are easier to make.

On the other hand, tobacco is not consumed at the expense of other things we need to be healthy. Junk food is. If we fill up on what nutritionists call ‘empty calories’ we miss out on the protein, micronutrients and fibre we need. This direct displacement relationship adds a level of dangerousness to food advertising that does not exist in the tobacco context.

A public health approach sees an epidemic as a public concern, to be addressed at a societal level. Advertising regulation is one means of doing so. The concern is for the individuals who are suffering, but also for the cost to society, in financial and other terms, of widespread health problems.

A public health perspective would question the amount of responsibility that average people can be expected to accept for what they consume when they are misled about the risks and benefits of consuming a particular food product.<sup>79</sup> Therefore the question needs to be asked whether the current Australian regulations prevent the communication of misleading information to consumers, and especially to children, about the kinds of food that may damage their health.

However a public health perspective would look further than the legalistic notion of deception. As mentioned it is interested in identifying the elements of an ‘obesogenic’ environment. In the case of children these would include notions of unfair manipulation, and of the overall impression given by advertising as a whole. If a food advertisement presents a child with an image of fun or social acceptance in association with a food, does it not risk exploiting that child’s inability to comprehend that the message is motivated by commercial desires, rather than a concern for the child’s happiness? If an advertisement makes a child desire a range of toys that can be collected only via multiple visits to a particular fast food restaurant over a short period of time, does this show respect for the child’s healthy development? And if the desired diet being portrayed through advertising is made up overwhelmingly of ice-cream, chocolate, lollies, soft drinks, chips and fast food, do we wonder that those items find their way into children’s diet at a higher level than health experts would recommend?

None of these examples involves any misleading or deception of children in the normal legal sense, but all deserve further consideration.

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<sup>79</sup> Kline, above n 9, at 10.

## Conclusion

ACMA is currently conducting research to inform the review of the CTS and develop an issues paper which will be released for public comment in about April 2007. Among other things, the review of the CTS will look at the scope of broadcast times that are regulated, the process for classifying programs and the current quota system.<sup>80</sup>

In this article we have laid out some information and background to the arguments in the debate over food advertising to children. In doing so we hope to have inspired lawyers and others to participate in the debate, and in particular to take an interest in the upcoming review of the Children's Television Standards. Lawyers have an important contribution to make to the debate in terms of tailoring the regulations to meet the public policy concerns that underlie them, evaluating the enforcement structures and determining what can be learned from experience in other fields, and in other countries.

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<sup>80</sup> ACMA, 'ACMA decides to review children's television standards', 21 December 2005, at <<http://www.acma.gov.au>> (accessed 30 July 2006).