AUSTRALIAN COUNCIL ON CHILDREN AND THE MEDIA
PO Box 1240, Glenelg South SA 5045
ABN: 16 005 214 531
Phone: (08) 8376 2111 **Fax:** (08) 8376 2122

Web: www.childrenandmedia.org.au E-mail: info@childrenandmedia.org.au

10 June 2020

SUBMISSION TO THE REVIEW OF THE AANA FOOD AND BEVERAGE ADVERTISING AND MARKETING COMMUNICATIONS CODE

Thank you for the opportunity to provide a submission to the review of the AANA Food and Beverage Advertising and Marketing Communications Code.

The Australian Council on Children and the Media (ACCM) is a peak not-for-profit national community organisation whose mission is to support families, industry and decision makers in building and maintaining a media environment that fosters the health, safety and wellbeing of Australian children.

ACCM membership includes ECA (Early Childhood Australia), ACSSO (Australian Council of State Schools Organisations), APPA (Australian Primary School Principals Association), AHISA (Association of Heads of Independent Schools Australia), AEU (Australian Education Union), Parenting Research Centre, Council of Mothers' Union in Australia, SAPPA (South Australian Primary Principals Association), and other state-based organisations and individuals.

ACCM's core activities include the collection and review of research and information about the impact of media use on children's development, and advocacy for the needs and interests of children in relation to media use.

This submission has been written by our President, Professor Elizabeth Handsley, our Hon CEO, Barbara Biggins OAM, and Dr Liesel Spencer of the School of Law, Western Sydney University.

Introduction: ACCM's platform and experience

The Australian Council on Children and the Media (ACCM) welcomes the opportunity to participate in this review of the Code. As the peak body representing children's and families' interests in relation to media use, we have a longstanding engagement with the AANA Codes and their operation, and a consequent awareness of their limitations.

ACCM has also participated in previous reviews of the AANA Codes.

This submission, like all of ACCM's contributions to public debate, is informed by international norms relating to the rights of the child and by child development knowledge.

Relevant Rights of the Child

The UN Convention on the Rights of the Child (CROC) has been ratified by all members of the United Nations except the US, the highest level of acceptance of any international agreement. It is also very widely accepted in Australian public discourse as representing an appropriate set of principles for government to follow when making decisions about children. The UN Committee on the Rights of the Child monitors how countries are meeting their obligations under the CROC and its Optional Protocols, and requires the government of each country, including Australia, to make five-yearly reports on how children are faring and what it is doing to protect children's rights. The National Children's Commissioner coordinates the preparation of those reports in Australia.

The provisions of article 17, in particular, can and should guide the development of advertising regulation. That article provides:

> States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.
>
> To this end, States Parties shall:
>
> (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
>
> (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
>
> (c) Encourage the production and dissemination of children's books;
>
> (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
>
> (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 29 provides, in relevant part:

> 1. States Parties agree that the education of the child shall be directed to:
>
> (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
>
> (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
>
> (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

> (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
>
> (e) The development of respect for the natural environment.

Article 13 reads as follows:

> 1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
>
> 2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
>
> (a) For respect of the rights or reputations of others; or
>
> (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

And article 18 states, in relevant part:

> 1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
>
> 2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

Also relevant to the FBAMCC is article 24 which protects 'the right of the child to the enjoyment of the highest attainable standard of health'.

It is true that, as a non-state actor, the AANA is not bound by the CROC. However, if the AANA Codes are to be seen as an alternative to government regulation, they should as far as possibly conform to these obligations. From the above formal statements of Australia's international obligations, we draw the following propositions relevant to content advertising regulation:

1. Some media content is of 'social and cultural benefit' to children, but some is 'injurious to [their] well-being'.

2. Children's freedom to access content can appropriately be limited for the sake of public health.

3. Parents should be supported in their task of raising children and protecting their rights.

Moreover, there are more recent documents that do seek to impose human rights obligations on businesses, notably the *Children's Rights and Business Principles*. These provide, among other things, that businesses should 'use marketing and advertising that respect and support children's rights' (Principle 6); and 'reinforce

government and community efforts to protect and fulfil children's rights' (Principle 10).

The Code should be developed with all this in mind. ACCM would suggest that the above information tends to indicate that children have a right to be protected from at least some forms of food advertising, due to the role such advertising plays in increasing children's preference for, and consumption of, non-core foods and, in turn, in childhood overweight and obesity.

This submission begins with some detailed observations on issues at various levels of generality, which we have termed 'big-picture', 'systemic' and 'particular'. It then goes on to give brief responses to each of the questions in the Discussion Paper.

Big-picture issues

Self-regulation: an inappropriate and ineffective tool to regulate marketing of food and beverages to children

ACCM submits that self-regulation is not the most appropriate and effective means of regulating the advertising of food and beverages to children, and that greater state intervention and oversight are justified. Other high-income countries (United Kingdom, Ireland, South Korea) have adopted either co-regulatory schemes or statutory schemes to constrain the marketing of unhealthy food to children.[1] ACCM's position is that it would be better for Australia to follow these examples from other jurisdictions, and adopt a scheme of statutory regulation of the marketing of food and beverages to children. However, as the political obstacles to stronger regulation persist,[2] this submission makes pragmatic recommendations as to how the system of self-regulation can be improved.[3] The overall stance of ACCM remains, however, that statutory regulation of food and beverage marketing to children should be introduced in Australia in place of the current system of self-regulation.

---

[1] Advertising Standards Authority Committee of Advertising Practice, 'Broadcast Code' <https://www.asa.org.uk/codes-and-rulings/advertising-codes/broadcast-code.html>; Broadcasting Authority of Ireland, 'Codes & Standards', *Broadcasting Authority of Ireland* <https://www.bai.ie/en/codes-standards/>; Ministry of Food and Drug Safety, 'Promoting Healthy Diets and Safe Food Consumption', *National Institute of Food and Drug Safety Evaluation, South Korea* <https://www.mfds.go.kr/eng/wpge/m_13/de011004l001.do>.

[2] Belinda Reeve, 'Self-Regulation of Food Advertising to Children: An Effective Tool for Improving the Food Marketing Environment?' (2019) 42(2) *Monash University Law Review* 419, 425–426 ('Self-Regulation of Food Advertising to Children').

[3] ACCM notes that a number of public health organisations are boycotting this review process, refusing to make submissions on the basis that self-regulation has persistently failed to deliver outcomes. These organisations also wish to avoid a situation where the AANA refers to having consulted with them, when they have little hope that any such consultation will make any difference.

From 1 July 2020 AANA will have responsibility for both the Food and Beverages Advertising Code (F&B Code) and the two schemes currently administered by the Australian Food and Grocery Council (AFGC), the Responsible Children's Marketing Initiative (RCMI) and the Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (QSRI). This discussion of whether self-regulation is an effective and appropriate mode of regulating the advertising of food and beverages to children draws on literature evaluating these initiatives.

Smithers et al in a systematic review found inherent problems in self-regulation of food marketing to children, [4] including lower effectiveness of self-regulatory codes for modifying the actions of non-signatories to the code;[5] and that the self-regulatory codes permit a large volume of 'non-core' food advertising to children during both peak children's viewing times and at other times (indicating advertisers are aware children watch significant amounts of advertisements outside 'children's hours').[6]

King et al concur that a significant shortcoming of self-regulatory codes is that the conduct of non-signatories includes more advertising of non-core foods during children's viewing hours, and the continued prevalence of advertisements marketing non-core foods by both signatories and non-signatories during peak children's viewing times. [7] In other words, the code is opt-in and therefore does not cover all advertisers; and even in the case of signatories, does not prevent extensive marketing of non-core foods to children both overall and during peak children's viewing hours.

Hebden et al found that the introduction of the QSRI did not change children's exposure to unhealthy fast food advertisements, and that the inadequacies of the self-regulation model indicate a need for government regulatory intervention. [8]

Roberts et al measured compliance with mandatory and voluntary regulation and found extensive breaches of both; further, they found errors in the AFGC's compliance report and flaws in the reporting systems under the self-regulatory

---

[4] Lisa Smithers, John Lynch and Tracy Merlin, *Television Marketing of Unhealthy Food and Beverages to Children in Australia: A Review of Published Evidence from 2009* (Australian National Preventative Health Agency, 2012) 55.

[5] Ibid 39.

[6] Ibid 36.

[7] Lesley King et al, 'Industry Self Regulation of Television Food Advertising: Responsible or Responsive?' (2011) 6(2–2) *International Journal of Pediatric Obesity* e390 ('Industry Self Regulation of Television Food Advertising').

[8] Lana A Hebden et al, 'Advertising of Fast Food to Children on Australian Television: The Impact of Industry Self-Regulation' (2011) 195(1) *The Medical Journal of Australia* 20 ('Advertising of Fast Food to Children on Australian Television').

systems.[9] Given that 'a critical mechanism for effective self-regulation is reporting on compliance levels', unreliable reporting indicates self-regulation is ineffective.

Problems with reporting on compliance are relevant to the question posed in the discussion paper:

> *Both of the AFGC's initiatives have a range of compliance requirements, in relation to which signatories have agreed to report annually and publicly[6]. Given that all relevant advertisers, not just signatories, now need to meet the requirements of the initiatives, is a compliance regime required? If so, what should it look like?*

ACCM takes the view that breaches of the codes should be a mandatory inclusion in the annual reports of signatories and non-signatories. As the code is voluntary, this would require government intervention.

Reeve observes that lack of external stakeholder consultation in the development and administration of the self-regulatory codes is problematic, and points to industry's motives being to 'appease' rather than 'meaningfully address' community concerns.[10] Reeve further points to the negative experience of external public health stakeholders retained as 'independent experts' in the RCMI process, as evidence that even with the inclusion of external stakeholders a self-regulatory system is not as effective as direct government regulatory intervention in food advertising to children.[11]

Tangcharoensathien et al found a pattern across low- to high-income countries, that the junk food industry uses similar tactics to those deployed by the tobacco industry in marketing their unhealthy products and resisting state regulation aimed at reducing consumption. That pattern of tactics includes '[interfering] with the legislative process to prevent the adoption of control measures; [using] front groups to act on their behalf; [questioning] the evidence of their product harm and the effectiveness of interventions; and [aiming] to appear responsible in the eyes of the public, journalists and policy-makers'.[12]

These tactics might be described as 'active resistance'. Reeve also notes what might be described as 'passive resistance' following an independent review of the RCMI and QSRI commissioned by the AFGC in 2012. The response to the review

---

[9] Michele Roberts et al, 'Compliance with Children's Television Food Advertising Regulations in Australia' (2012) 12 *BMC Public Health* 846.

[10] Belinda Reeve, 'Private Governance, Public Purpose? Assessing Transparency and Accountability in Self-Regulation of Food Advertising to Children' (2013) 10(2) *Journal of Bioethical Inquiry* 149, 159 ('Private Governance, Public Purpose?').

[11] Ibid 160.

[12] Viroj Tangcharoensathien et al, 'Addressing NCDs: Challenges From Industry Market Promotion and Interferences' (2019) 8(5) *International Journal of Health Policy and Management* 256 ('Addressing NCDs').

failed to incorporate significant recommendations which 'would have involved a significant compromise, such as the adoption of sanctions'.[13]

ACCM's position is that this passive and active industry opposition continues to obstruct stronger regulation of food and beverage advertising to children, despite the body of peer-reviewed research indicating inherent problems with self-regulation in this area. Such obstruction is contrary to the *Children's Rights and Business Principles*, which state a responsibility to '[r]einforce government and community efforts to protect and fulfil children's rights'[14] – including the right to health and to protection from media content that is injurious to their wellbeing.[15]

Complaints about food and beverage advertising compared to complaints about sex and violence[16]

ACCM argues that the relatively low level of complaints about food and beverage advertising in contrast with the relatively high level of complaints about matters such as 'sex, sexuality and nudity' and 'violence' cannot be taken as indicative of public satisfaction with food and beverage advertising. The difference in complaint levels rather indicates that consumers do not draw a clear distinction between which age groups unhealthy food advertising can appropriately be viewed by, or targeted to. It is not that consumers don't understand that unhealthy foods such as cheeseburgers and sugar sweetened beverages make children overweight, but that they don't view it as a different sort of problem for adults and children. Non-core foods are not illegal or immoral for children to consume. In contrast, there is a clear delineation between age groups for whom it is appropriate to view sexualised or violent content. It is not such a problem if adults are viewing that sort of content, whereas it is a significant problem if children are doing so. Public consciousness and morality object far more strongly to children viewing sex and violence, than unhealthy food products. That should not be taken as satisfaction or endorsement of food and beverage advertising. Stronger objection to problem A does not conversely prove satisfaction with problem B.

Foods of nutritional value other than fresh fruit and vegetables[17]

ACCM would be concerned that the exempting 'certain other products with known nutritional benefits … from the additional requirement to promote good dietary

---

[13] Reeve, above note 2, 449.

[14] UNICEF *Children's Rights and Business Principles*, Principle 10.

[15] *UN Convention on the Rights of the Child*, Articles 24 and 17.

[16] See *Discussion Paper*, 5-7.

[17] Ibid, 10.

habits and physical activity' could create unacceptable scope for the food industry to use labelling and certification schemes to avoid complying with this requirement. For example, the high-sugar powdered chocolate milk additive product 'Milo' previously used the Health Stars Rating System to classify the product as having a 4.5/5 star rating, by including low-fat milk in the nutritional composition of a product serve, calculating the nutritional composition based on a smaller serve of Milo powder than consumers generally used per glass, and assuming that consumers would not formulate the product for consumption in other ways such as eating it straight from the tin or combining it with ice-cream or full-fat milk.[18]

Further, a processed food item, for example breakfast cereal, can include ingredients which have some 'known nutritional benefits' (such as dietary fibre) whilst also having significant quantities of unhealthy ingredients (such as added sugars). The AANA 'does not endorse any particular nutrition criteria' which leaves it open to advertisers to select a nutrition criteria or rating system which does not account for variances in how a product is served (such as Milo) or does not account for unhealthy ingredients added to an otherwise healthy product (such as sugary breakfast cereal). Under the kind of rule being proposed here, non-core food products like Milo and sugary breakfast cereals could be exempted from the requirement to promote good dietary habits and physical activity, because they have some 'known nutritional benefits' (e.g. the calcium and protein from low-fat milk, the dietary fibre from cereals). 'Known nutritional benefits' as a test for exemption does not adequately safeguard against products which also contain unhealthy ingredients meeting the exemption criteria.

ACCM also queries whether staple foods such as 'legumes, milk, mushrooms and tinned vegetables', in forms unaltered by the addition of unhealthy ingredients such as salt, sugar and fat, are ever the subject (or ever likely to be the subject) of advertisements targeting child consumers. Creating unnecessary exemptions as canvassed by this question in the Discussion Paper would allow unhealthy foods to exploit a loophole in regulation, with no material benefit to the advertising practices of producers of legumes and mushrooms. Inclusion of unnecessary complex rules and exemptions also serves to obfuscate genuine problems with the scope and enforceability of the self-regulatory codes. It is confusing for the public to understand overly-complex regulatory instruments, which also makes it harder for the public to identify and lodge complaints about breaches of those instruments.

---

[18] Esther Han, 'Nestle Wipes "4.5" Health Star Rating off Flagship Milo Product', *The Sydney Morning Herald* (online at 1 March 2018) <https://www.smh.com.au/healthcare/nestle-wipes-4-5-health-star-rating-off-flagship-milo-product-20180301-p4z295.html>.

Systemic issues

One-stop shop / amalgamation of Code and Initiatives

ACCM is very much in favour of a one-stop shop for complaints about advertising. For this reason it sees a significant benefit in the fact that the AANA Codes have such broad coverage of a variety of media.[19] However, the same logic can and should extend to other matters, for example the variety of sources of rules and guidance. In this aspect, too, there should be a one-stop shop, meaning that ideally all Codes, Initiatives and Practice Notes should be amalgamated into a single document.

In a system that involves no official monitoring but relies on members of the public to notice breaches and complain, it is important to support well-informed decisions about whether it is worth one's time to pursue a complaint and how to frame any complaint that one might make. To this end, it is best if people are able to go to one document for the relevant information. As the documents making up the scheme are instruments intended for public use without legal advice, the information should be as accessible, manageable and comprehensible as possible. A single document would help to achieve this, and in turn to make the AANA system clearer and more effective.

Therefore ACCM submits that separate codes for food and beverages, advertising to children, etc should abandoned in favour of a single code. Certainly the industry Initiatives on food and beverages should be amalgamated with the FBAMCC.

For the same reasons ACCM also questions the continuing utility of Practice Notes. There should be little need for these if the Code is properly drafted, so that the intent and meaning of the various provisions are clear on the face of the public document. On the other hand, if Practice Notes are retained, they should cover all of the Code, including any new parts introduced as a result of the amalgamation of the Code and the Initiatives.

Having a single code with no Practice Notes would also limit the risk of inconsistencies. In particular, one would not expect to find a situation where the Practice Notes soften the apparent strictness of the provision itself.

As noted, ACCM supports the amalgamation of the FBAMCC with the RCMI and the QSRI. However, this should not be allowed to become a 'race to the bottom' where the least restrictive provisions from specific current documents are applied across the board. This submission picks up relevant matters elsewhere, arguing consistently for the measures that will maximise the protection of children's interest in healthy development.

---

[19] However ACCM does consider that the coverage should be even broader, and in particular that the definition of advertising should include packaging, labelling and in-store promotions: see below under 'Exclusion of labels and packaging'.

In particular, ACCM supports a move away from the use of nutrition criteria, or alternatively, if such are to be applied, that they be uniform and independently set. There should be no scope for food and beverage companies to set their own criteria. Experts should have an input not just into the determination of products' nutritional composition, but into the setting of any criteria.

The Discussion Paper refers to the implications of the AFGC Initiatives for advertising during 'C and P rated TV programmes and movies, regardless of the time it is shown and the makeup of the audience'.[20] In response to these observations, ACCM points out that no advertising at all is allowed during P programmes, and C programmes are generally on at the same times every week, which are well outside prime-time viewing. Because of this scheduling and the nature of the programming, it is very unlikely that many adults would be in the audience in any case. ACCM further notes that C and P quotas have been suspended, and the commercial free-to-air television industry has been campaigning to have them scrapped completely. Therefore the impact of advertising regulation during these quotas is not a strong foundation for any arguments about how the rules should apply.

The Discussion Paper goes on to state:

> In the Free-to-air television space, food or beverages advertisements that feature products that are a less healthy choice will not be placed in a children's show. TV advertisements for less healthy foods are given a "W" rating which means such food and drinks cannot be advertised during P and C programs or G programs principally directed to children.[21]

ACCM is unable to find any reference to 'less healthy foods' in the FreeTV *ClearAds Manual*, either in the section on advertising to children or in the W category notes. Presumably the above is referencing CTS 32(7) of the Children's TV Standards which apply only to the 5 hrs per week of C classified programs which screen only on the networks' secondary services. In any case the use of this phrase is meaningless in a Code purporting to set out clear guidance for advertisers.

Definition of child

ACCM believes that the age of 18 would be justifiable, considering that this is the cut-off used in the *UN Convention on the Rights of the Child*, and that we know adolescents are still developing their executive functioning and impulse control. At the same time, we recognise that such an age cutoff would put the Code out of step with other regulations aiming to protect the child media user.

---

[20] *Discussion Paper*, 10.

[21] *Discussion Paper*, 6.

The current cutoff of 14 years has the attraction that it is in line with that in the *Children's Television Standards*, which in turn lines up with the transition from primary school to high school, which is widely recognised in our society as marking the change from childhood to adolescence. (Of course many children start high school before the age of 14, but that is the age at which we can be confident all will have made the transition.)

Prevailing community standards / objectivity

ACCM is a long-standing critic of the use of 'community standards' in regulatory systems that intend to protect children's interests and healthy development. Child development is the subject of scientific research, and measures to protect children should be based on evidence drawing from this research. The common beliefs and values of the community are no substitute for this; and it must be noted that sometime the two stand in direct opposition to each other. ACCM notes that the Code's definition of 'Prevailing Community Standards' (PCSs) requires that certain official, evidence-based documents be taken into account, but there is still a good deal of room for subjective opinions and values to be brought in.

ACCM finds this ironic, considering the stringent standards the Discussion Paper states for evidence regarding the link between food advertising and adverse health outcomes. If scientific evidence is important in this context, surely it is also important in matters such as whether a 'limit … on the extent to which an average child within the target audience might regard the advertising or marketing communication being for a featured ingredient or premium rather than the product itself' is reasonable (Practice Note for Section 3.6).

ACCM notes further the irony of the stringent standard for evidence on health outcomes when the Practice Note for Section 2.3 states that 'the Community Panel will rely on substantiation provided by the advertiser and/ or appropriate expert or professional advice as to whether [health or nutrition] claims can be properly supported by scientific evidence meeting the requirements of the Food Standards Code' – in other words the Community Panel might rely *only* on information provided by the advertiser. There is no equivalent statement applying stringent criteria to that information.

The question of PCSs should be viewed in the broader context of the respective roles of objectivity and subjectivity in the AANA system. The general pattern seems to be that we take into account the subjective intent of the makers of advertising (which allows them to avoid application of the provisions), but we hold consumers to a standard of reasonableness (which makes the provisions more exacting on complainants). Taking the second of these first, at numerous points the provisions of the Code and the Practice Note use the expression 'acting reasonably' when looking at advertising from a consumer point of view, in the sense of considering the impact of the advertising on the consumer's thoughts or attitudes. In using this

concept, the documents introduce on objective standard. Yet when considering whether advertising is prohibited, the system persistently considers the (subjective) intent of the advertiser, for example with frequent references to the 'target' audience for an advertisement – as distinct from the objective fact of who actually sees it. As ACCM submits elsewhere, these uses of subjective intent in relation to advertisers should be removed, and all provisions of the Code should be based on objective assessments – evidence-based wherever possible.

All of the above approaches stand in stark contrast to that taken by the *Australian Consumer Law*. The key provision, s 18, outlaws 'misleading or deceptive conduct', thereby leaving out of the equation both the corporation's state of mind (eg intent, design, target audience) and the question of whether anybody was in fact misled or deceived. Rather the ACL looks to the likely reaction of the public, or a relevant segment of the public, and that does introduce an objective analysis. But it also accepts that members of the public might be naïve or gullible,[22] and there seems to be no room for such in the AANA Codes. It seems strange that the Code, a less demanding instrument in terms of the likely consequences of a breach, should hold advertisers to a lower standard than the *ACL*.

Definition of children's advertising

Another matter on which ACCM is a long-time critic is the definition of children's advertising. Children's thoughts, attitudes and behaviour are not influenced only by advertising 'aimed' at them, or designed specifically to attract their attention. Nor are children interested only in advertising for products that are of 'primary appeal to' them. In fact there are only very few such products, because so many things that appeal to children appeal also to teenagers and/or adults.

Moreover, it is well known that children do not only watch 'children's television' during 'children's television hours', and this reduces the effectiveness of codes confining regulation to 'advertising that specifically targets children or is shown during programs that are developed for children'.[23]

If the AANA is serious about protecting children from the adverse effects of food and beverage advertising, it will shift to definitions that centre around what children will actually see, and the influence it is likely to have on them. This would mean looking at the actual audience for the relevant content, and how many children are in it (not the proportion made up of children, as the Initiatives currently do with the 35% figure, but the numbers of children, because the fact adolescents and/or adults are also watching does not necessarily mitigate the

---

[22] *Parkdale Custom Built Furniture Pty Ltd v Puxu Pty Ltd* (1982) 149 CLR 191, 199.

[23] Lisa G Smithers, Tracy L Merlin and John W Lynch, 'The Impact of Industry Self-Regulation on Television Marketing of Unhealthy Food and Beverages to Australian Children' (2013) 199(3) *The Medical Journal of Australia* 148, 149.

impact on children, especially in an online audience); and at circumstances relevant to whether children are more likely to eat inappropriate foods as a result. These may well include the nature of the advertising and the product, but the focus should be on the likely impact on the child audience, not on the intent of the advertiser or the question of whether the advertising is in some sense especially for children. As Smithers et al note, '[P]ublic health advocates are interested in reducing the unhealthy food advertisements that children see, not just those advertisements that specifically target children.'[24]

Such an approach would be consistent with the WHO recommendation that children's *exposure* to food advertising be limited.[25] The current system is not so consistent, despite the Discussion Paper's claim that '[e]xtra care is taken to ensure children *don't see* advertising that isn't appropriate for them.'[26] The Discussion Paper goes on to refer to 'children's shows', which represent only a fraction of children's actual viewing; and 'products that are a less healthy choice', which represent only a fraction of the foods that should have a very limited presence in children's diets. In other words, there are still enormous opportunities for children to 'see advertising that is inappropriate for them'.

In keeping with the above observations, ACCM notes Smithers et al's observation that 'it is unlikely that children only pay attention to advertisements that specifically target them or indeed are actually able to discern which advertisements target them.'[27] On this basis it is submitted that special provisions for protecting children should apply to communications containing appeals that are likely to attract children to the product. This might involve reference to their themes, visuals and language, among other things, but there should be no consideration of whether the communication specially targets children, or whether children are any more interested in the product than adolescents and/or adults would be.

For similar reasons, ACCM submits that the FBAMCC should not introduce any savings measures in relation to 'incidental' presence of food and/or beverages in advertising. We note that the example given of 'an ad for a supermarket showing a family dinner in the background'[28] is still an ad for a business whose primary reason for existence is to sell food. Therefore it should be treated as a food advertisement in any case. More generally, the suggestion of an exception for 'incidental' presence of relevant products sounds very much like a loophole to

---

[24] Ibid.

[25] WHO, *Set of Recommendations on the Marketing of Food and Non-alcoholic Beverages to Children* (2010), Recommendation 2 ('Given that the effectiveness of marketing is a function of exposure and power, the overall policy objective should be to reduce both the exposure of children to, and power of, marketing of foods high in saturated fats, *trans*-fatty acids, free sugars, or salt').

[26] *Discussion Paper*, 6 (emphasis added).

[27] Smithers, Lynch and Merlin, above note 4, 38.

[28] *Discussion Paper*, 10.

allow paid product placement. If a non-food business wishes to avoid the requirements of the FBAMCC it should be easy enough to design advertising that does so.

Another key matter in which the Code is insufficiently tailored to the needs of children is the requirement that advertising not be misleading or deceptive (Article 3.1). Any provision seeking to protect children from misleading or deceptive communications should be clearly drafted to require consideration of what would mislead or deceive a child, as distinct from an adolescent or an adult. For example, an adult might understand that the term 'fruit flavoured' does not necessarily mean the product contains fruit, or that 'ironman' foods will not make you strong. Not so with children.

As it stands, Article 3.1 is not so drafted: children are mentioned in connection with the 'particularly designed in a manner to be understood' clause, but not in the 'not be misleading or deceptive' clause(s). Naturally, any judgment about what is misleading or deceptive to children should be informed by research-based evidence about that matter, and in particular should take into account all ages and stages of child development. Ideally the provisions themselves should be designed to address directly the kinds of advertising that have been identified as misleading or deceptive to children. However, the research is always developing, so it may also be necessary to build in regular opportunities for child development experts to contribute to decisions and complaint resolution under the Code.

ACCM submits further that Section 3.1 should be broadened to cover misleading or deceptive communications generally, and not be limited to 'nutritional or health claims'. It might be said that communications that are misleading or deceptive in relation to other matters would be caught by one of the other Codes; but this provides further support for ACCM's argument above that the Codes should be amalgamated: a consumer should not need to work out the relationships between various Codes in order to determine whether it is worth complaining, and if so how to frame the complaint. In any case, the Section's drafting is unjustifiably narrow in the way that it limits its application to communications 'in relation to any nutritional or health *claims*' (emphasis added). We are aware of numerous communications that rely on an accurate statement (or claim) about one aspect of a food's nutritional profile in the context of a message that is misleading overall, for example sugary breakfast cereals that are marketed on the basis of the 'energy' they provide, or the micronutrients with which they are enriched. Communications should also be disallowed for what they <u>do not</u> say, as well as what they do say.[29] This is especially the case if the aim is to protect the child consumer.

[29] Again the Code compares unfavourably to the *ACL* in this regard: see Elizabeth Handsley and Arlen Duke, 'Protecting the child consumer from misleading advertising: A comparison of media regulation and consumer protection approaches' (2019) 26 *Competition & Consumer Law Journal* 1.

Because of children's special needs as consumers, and especially in connection to being misled or deceived, ACCM takes exception to the following kind of statement:

> *the Community Panel will form its own view on the information likely to be taken from a communication by a reasonable child of the target audience.*[30]

The Community Panel has no particular expertise about child development or how children process information, so it should not be forming its own view, rather it should be relying on advice from people who do have the relevant expertise. Moreover, the question of 'reasonableness' is unlikely to shed any light here, and finally for reasons discussed elsewhere ACCM is opposed to the use of 'target audience' as a concept for guiding decisions under the Code.

Role of pre-vetting

ACCM submits that the pre-vetting system requires careful consideration as to whether it assists in the protection of the public, and especially children, or whether it undermines the appearance or reality of complaints being considered fairly on their merits. A good pre-vetting system has the potential to prevent the publication of inappropriate advertising, which is welcome, but if it falls short it could make it more difficult to establish a breach, as the matter would have been pre-judged. At the very least the AANA and related bodies should be at pains to demonstrate a strict separation between the two processes (pre-vetting and complaints handling).

Hybrid sections

Some sections of the Code contain multiple separate obligations, as acknowledged, for example, in the Practice Notes for Sections 2.2 and 3.6. ACCM submits that it would be preferable to have a separate section for each obligation. This would facilitate members of the public coming to an understanding of the obligations in question, and therefore deciding whether to submit a complaint and if so how to frame it.

Avoiding legal tests

ACCM questions the apparent determination to avoid legal tests stated at numerous points throughout the Practice Notes. The reasons for this determination are not clear, and nor is the definition of a legal test. But unless these are stated

---

[30] *Discussion Paper*, 35.

we would take the view that legal tests can provide the kind of transparency and consistency that a system like this needs.

Poor drafting

ACCM hopes that the AANA will take this opportunity to improve the drafting of the Code (and the Practice Notes, if they are to be retained). There are numerous points at which the language becomes tortured, apparently as a result of attempts to limit the reach of the various rules. An example is the Practice Notes for Section 2.3:

> *This provision is intended to be triggered by the Community Panel when considering that an average consumer, acting reasonably, might consider statements made within an advertising or marketing communication as health or nutrition claims.*[31]

It is very unclear what actions are being referred to with the phrase 'acting reasonably', and therefore what it actually adds to the guidance the Note provides. This is all the more so considering the use of 'average' to modify 'consumer'.

Another particularly egregious example is Section 3.2:

> Advertising or Marketing Communications to Children shall not improperly exploit Children's imaginations in ways which might reasonably be regarded as being based upon an intent to encourage those Children to consume what would be considered, acting reasonably, as excessive quantities of the Children's Food or Beverage Product/s.[32]

To be useful to the public, these documents should be more straightforward and less wordy.

Make-up of Panel

As alluded to at various points above, ACCM submits that there should be better opportunities for people with child development expertise to contribute to decision-making under the Code(s). This could be done by setting aside one or more places on the Community Panel for people with such expertise.

---

[31] *Discussion Paper*, 28.

[32] Further difficulties with this section include the implication that it is sometimes proper to exploit children's imaginations; the reference to the intent of the advertiser (albeit against a backdrop of 'what might reasonably be regarded' – so a tortuous combination of objective and subjective elements); the inclusion of the 'acting reasonably' qualification when it is unclear what or whose actions are being referred to; and the limitation of the prohibition to children's products, as if it is acceptable for children to be encouraged to eat excessive quantities of other products.

Another improvement to the Community Panel would be for places on it to be publicly advertised, and chosen based on published criteria. This would increase public confidence in the independence of members from industry.

Overlap of functions

One major flaw in the AANA Codes as a system for regulation of advertising is that they rely so heavily on members of the public to complain. Such people may not have the capacity to read and interpret the Codes to the point they are able to make a targeted case under one or more particular sections (potentially of separate Codes), so the ASB itself often decides what sections to apply (or even which Code to apply).[33] This creates scope for selections to be made that will ultimately present the system in the best light, rather than those that will best hold the advertiser (or the industry as a whole) to account.

It is all the more troubling that the system gives advertisers the opportunity to influence the outcome on factual matters rather than looking to independent sources.[34]

For the sake of justice appearing to be done, it would be preferable to build in a function for a person or body who is independent of the AANA and ASB but has the expertise to frame the complaint in the best and most effective way.

Particular issues

Exclusion of labels and packaging

There is no apparent justification for excluding labels and packaging from the definition of advertising and marketing communications, and ACCM submits that they should be included in that definition. They are an essential part of branding and creating an image that will appeal to consumers, particularly for products with appeal to children, such as breakfast cereals, confectionery and drink boxes. The use of cartoon characters, and personalities loved by children such as The Wiggles, or looked up to, such as sporting stars, makes it important that packaging be included as advertising.

---

[33] *Discussion Paper*, 26 ('Some complaints made under this Code that the Community Panel is better able to determine under the broader aspects of the AANA Code of Ethics will be considered under that Code').

[34] *Discussion Paper*, 30 ('In testing the validity of any associated claim of endorsement by a scientific, health or other organisation, the Community Panel will rely on substantiation by the advertiser').

ACCM notes further that the definition, by implication, excludes in-store promotions. These should be included for the same reasons as labels and packaging.

Exclusion of program promotions

Program promotions should be included in the definition of advertising generally, as programs are products to be 'sold' to consumers just like other products. Licensees may not receive any payment or monetary consideration in screening promotions, but their content may be harmful to children's interests, as can trailers for films. This is reflected in the fact that both program promotions and advertisements for films are required to be classified.

Use of personalities

ACCM is at a loss to understand why Section 2.7 is limited to news and current affairs, and notes in particular that young children's incapacity to distinguish between programs and advertisements is not limited to such programs. Hence they have little if any protection from this requirement. There should be a prohibition against any personality well known to children being used to promote products in advertisements which may appeal to children.

Misleading or deceptive

ACCM has made some general observations above about the approach to these concepts, as a clear and appropriate position on the issue of what misleads or deceives children should underpin this whole Code. There may not be intent on the part of the advertiser, but many advertising presentations can and do mislead children, or children at different stages of development. Nowhere dothe Code, or the Practice Notes, or Clearads processes reflect this basic fact, nor require consideration of this fact.

Specific submissions are as follows:

- The phrase 'truthful and honest' must be qualified: it should read 'shall provide truthful and honest information about the health benefits and/ or nutritional value of such products'.
- The phrase 'or otherwise contravene prevailing community standards' should be replaced by 'or otherwise contravene prevailing health standards and advice'.

- The phrase ‘or designed to be’ should not be included. It is almost impossible to prove intent. The crucial element is whether the advertisement is in effect misleading.
- The emphasis in Section 2.3 on ‘claims’ is misplaced. An ad may not make an overt claim, but it may imply certain benefits. This paragraph should include ‘implied benefits’.
- The Community panel should use tests designed by a person with child development expertise who sets out what sorts of appeals, presentation and language will mislead children and at which ages. ‘Community standards’ should not be used as these may not be reflective of an understanding of what actually misleads or deceives children.

Pester power

While Section 3.5 has some value to prohibit gross inducements by advertisers, it does not address the real problem that children have little buying power of their own, and in order to obtain a product that has real appeal to them (generated by a range of psychological techniques utilised in the advertisement) they will have to pester their parent(s). While some outcomes of advertising to children may be considered to be in the category of ‘externalities’ (the social costs of a market transaction that do not factor in to the decision making of a product’s seller),[35] ‘pester power’ is the direct and intended outcome of an effective appeal to children. It may be difficult to prohibit advertising that will lead to pestering without prohibiting all exposure of children to (effective) advertising, but the presence of a provision like Section 3.5 in a self-regulatory code seems to enable industry to gain the public relations points from claiming it has addressed pester power, when it fact it has not, and it probably never will.

Premiums

It has been claimed for many years, with regard to products such as the children’s meals sold by fast-food chains, that toys or other non-food items are an integral element of the whole product, and so, supposedly, do not constitute a premium. ACCM argues that in effect such toys do constitute a premium in children’s minds.

Belch et al define a premium as ‘an offer of an item of merchandise or service either free or at a low price that is an extra incentive for purchasers’.[36]

---

[35] Robert W McChesney, *The Problem of the Media: US Communication Policies in the Twenty-First Century* (NYU Press, 2004), 202.

[36] Helen Stuart and Gayle Kerr, ‘Marketing to Children: The Premium Effect’ ANZMAC (2009), retrieved from https://pdfs.semanticscholar.org/acd9/4058782171e0b9be333f56d3b9fa944ce271.pdf, citing Belch et al (2009).

Stuart and Kerr argue that 'at best, a premium is a value-added form of the product.'[37] However, in the case of children's premiums, they are usually not product related which is an important distinction. The reason for this is obvious: children are the user not the buyer of the product; therefore they do not have any interest in an extra 100g of the product for example. …. So instead of a consumable premium, many children's premiums are collectible.[38] When children (and adults) wish to collect the whole set of [a particular range of] toy premiums, subsequent purchases of the same product range is required, increasing purchase frequency. The premium, when collected, also becomes an ongoing reminder of the brand.'[39]

What constitutes a premium in relation to children's food products is apparently unclear, yet the blurring of the boundary between product and premium is exactly how children interpret the message about unhealthy food products. 'The premium is the product in their minds'.[40]

ACCM argues that from a public health perspective, an important issue is that the bundling of toys with food leads children to consume more of the food than they otherwise would, for reasons that have nothing to do with the food itself. Advertising for food should focus on the food, and debates about what is or is not a premium miss the point.

ACCM submits further that Section 3.6 should apply to all products, not only 'Children's Food or Beverage Products'.

Product placement

There is no valid reason, from a child protection standpoint, why children should not be protected against promotions that occur via the use of product placements in programs or films. There can be little doubt that such placements involve either the exchange of funds, or other transactions of value. Therefore the Code should include provisions addressing this form of marketing.

Privacy

The Code, while on paper seeming to include advertising in all media, has very few items related to aspects of online advertising to children that are very troubling, chief among which is the invasion of children's privacy through direct gathering of

---

[37] Ibid.

[38] Ibid, citing Belch et al (2009).

[39] Ibid.

[40] RN Laczniak and KM Palan 'Targeted advertising pinpoints how kids sway their parents' buying decisions' (Spring 2004) *Marketing Research* 34.

their personal details, and via covert tracking to gather data which enables further advertising to be directed to the child.

Therefore the Code should include provisions along the lines of:

- shall not gather personal details from children without the express permission of their parents
- shall not track or gather other information about children which is then used to market further products to them
- shall not encourage children to make in-app purchases without the knowledge of their parents
- shall not permit unsuitable advertising to be shown to children using apps suitable for children

Discussion Paper questions

1. **It is the AANA's intention to formally review each of its Codes via a public consultation at least every five years. Is this frequency appropriate for the F&B Code? If not, why not?**

Five years is appropriate.

2. **Do you think the relatively low level of complaints about F&B advertising is indicative of public satisfaction with food and beverage advertising.? If not, why not?**

No, we do not think it is so indicative. Reasons are set out above under 'Complaints about food and beverage advertising compared to complaints about sex and violence'.

3. **Is there a need for further sanctions for breaches of the AANA F&B Code or AFGC initiatives and/or a need to consider penalties for non-compliance? If so, why?**

It may not be possible to introduce these in the context of industry self-regulation. ACCM's reservations about self-regulation are set out above under 'Self-regulation: an inappropriate and ineffective tool to regulate marketing of food and beverages to children'.

4. **Should the F&B Code incorporate the requirements of the RCMI and QSRI to create one over-arching Food and Beverage Code? If not, why not?**

Yes, there should be one over-arching Code, and moreover any Practice Notes should also be incorporated into the same document. Our reasons for supporting this approach are set out above under 'One-stop shop / amalgamation of Code and Initiatives'.

5. **Should there be a single definition of 'medium' to which the self-regulation of F&B advertising in Australia applies? If not, why not? If so, what should the definition of 'medium' include and exclude?**

Yes, there should be a single definition, and it should be extended to labels, packaging and in-store promotions.

6. **The RCMI and QSRI 's definition of advertising to children includes a placement definition whereby "A*dvertising or Marketing Communications that are placed in Medium that is directed primarily to Children (in relation to television this includes all C and P rated programs and other rated programs that are directed primarily to Children through their themes, visuals and language); and/or where Children represent 35 per cent or more of the audience of the Medium*". Should these parameters around placement be incorporated into the F&B Code?**

Any parameters should be centred around whether the advertisement or marketing communication is likely to appeal to children. There should be no reference to the type of medium or the percentage of the audience made up of children.

7. **Should certain other products with known nutritional benefits be exempt from the additional requirement to promote good dietary habits and physical activity? If so, which foods?**

ACCM's answer to this question is set out above under 'Foods of nutritional value other than fresh fruit and vegetables'.

8. **Should food advertising designed specifically to target adults through the themes, visuals and language used be permitted during TV programming during certain times, e.g. 9pm – 6am? If not, why**

not?

ACCM supports the removal of all parameters based on the intent of the advertising (or whom it is 'targeting'). The question should always be whether children are likely to see the advertising and whether it is likely to appeal to them. See further the discussion above under 'Prevailing community standards / objectivity'.

9. **Do you think advertisements where food or beverages are incidental to the ad should comply with the requirement to promote good dietary habits and physical activity? If so, why?**

ACCM opposes any exceptions based on whether an element is 'incidental'. Our reasons are set out above under 'Definition of children's advertising'.

10. **The AFGC's QSRI specifies nutrition criteria for assessing whether an advertisement for that meal can be directed to children. Is this definition of meals offered by quick service restaurants for which advertising can be directed to children appropriate? If not, why not?**

Any nutrition criteria should be set by independent experts, not by any industry body. See further the discussion above under 'Prevailing community standards / objectivity'.

ACCM notes further that it is highly artificial to distinguish between meals promoted to children aged 4-8 years and those promoted to children aged 9-13 years.

11. **Should signatories to the RCMI continue to determine and publish the nutrition criteria used to establish whether advertising for the food product can be directed to children and/or should common nutrient criteria be applied noting an expert, on behalf of Ad Standards independently validates the nutritional composition of a product subject to complaint? If so, what methodology should apply?**

Again, any nutrition criteria should be set by independent experts.

12. **Both of the AFGC's initiatives have a range of compliance requirements, in relation to which signatories have agreed to report annually and publicly. Given that all relevant advertisers, not just**

signatories, now need to meet the requirements of the initiatives, is a compliance regime required? If so, what should it look like?

A compliance regime will always be a useful addition to a complaints-based system. It increases the likelihood that parties are taking their responsibility seriously, and not taking a chance their breaches will not be noticed, or complained about.

13. **Should the Practice Note applying to the F&B Code be amended to include specific references to the additional requirements currently contained in the AFGC's initiatives that only healthier options be marketed to children and brand owners restrict activities in places where children congregate? If not, why not?**

ACCM supports the extension of marketing restrictions in places where children congregate. Regarding the extension of 'only healthier options', in principle this should also be helpful to children's interests, but ACCM has doubts as to whether such provisions have any influence on the advertising to which children are exposed, at least while industry is determining the meaning of the phrase.

14. **Are you aware of any evidence-based research that could help inform the development of the self-regulation of food and beverage advertising in Australia?**

ACCM has extensive knowledge of such research, and makes details available to members and supporters. If the AANA would like to discuss accessing this material, please contact the ACCM office.

15. **Does the F&B Code continue to meet its stated objectives? If not, why not?**

ACCM doubts that the Code has ever met the objective of ensuring a high sense of social responsibility. Our impression is that the attitude has been more one of strict compliance with the letter of the Code, exploiting loopholes wherever possible. We do not criticise food companies for taking this attitude as it is best in keeping with their responsibilities to their shareholders, namely to maximise profits by selling as much of their product as they can, to as large a market as they can. Rather ACCM is sceptical as to whether a self-regulatory system, without the force of law, can ever modify that responsibility.

16. **Do the current objectives need to be amended? If so, what are the objectives that the F&B Code should address?**

The Code should have the objective of limiting children's exposure to food advertising, as discussed above under 'Definition of children's advertising'.

17. **Are any changes required to the definitions in the F&B Code? If so, what changes are required and why?**

The definition of advertising and marketing communications should be changed, to remove the exclusion of labels and packaging; it should also be extended to in-store promotions. (See above under 'Exclusion of labels and packaging'.)

In addition, the definition of advertising to children should be made broader so as to include all advertising that children are likely to see, and that is likely to appeal to them (whether or not it appeals to adolescents or adults as well). (See above under 'Definition of children's advertising'.)

18. **Should there be a single definition of a child and if not, why not? If so, what should that definition be?**

Yes, there should be a single definition, and it should be no younger than 14. Eighteen would be consistent with the *UN Convention on the Rights of the Child*. This is discussed further above under 'Definition of child'.

19. **Are any changes required to the rules in Section 2 of the F&B Code? If yes, please give reasons.**

AND

20. **Are any changes required to the Practice Notes for section 2 of the Code? If yes, please give reasons.**

ACCM is answering these two questions together as we would like to see the rules and the Practice Notes amalgamated. Many of these comments relate also to Section 3 and the Practices notes for it.

Generally the Code should take an objective approach both to the position of the advertising and to the position of the audience, and in particular there should be no reliance on the concept of a 'target audience'. This is discussed further above under 'Prevailing community standards / objectivity'.

As discussed above under 'Prevailing community standards / objectivity', the Code should also move away from 'Prevailing Community Standards' to more evidence-based standards. The Panel should not rely on the advertiser, or the product packaging, for proof of factual matters.

Section 2.7 should be broadened to include any advertising likely to appeal to children, and any personality likely to be familiar to them. See above under 'Use of personalities'.)

ACCM submits further that each obligation imposed should be in a separate section (see above under 'Hybrid sections').

The Panel should not necessarily avoid the application of 'legal tests' – or if it is to do so, there should be an explanation of what this means and why it is desirable (see above under 'Avoiding legal tests').

21. **Are any changes required to the rules in Section 3 of the F&B Code? If yes, please give reasons.**

AND

22. **Are any changes required to the Practice Notes for section 3 of the Code? If yes, please give reasons.**

As noted, many of the comments above in relation to Section 2 apply here as well.

The Practice Notes persistently state that the Panel will 'form its own view' on a variety of matters; ACCM submits that most if not all of these matters are for a child development professional to judge, not a Community Panel.

All references to the subjective intent of the advertiser should be removed, for example the word 'aim' in Section 3.4 and the words 'seek to' in Section 3.1.

Section 3.1 should be redrafted to make it clear that the rule is against practices that are likely to mislead the average child. (See above under 'Misleading or deceptive'.)

Section 3.2 should be made less wordy and more straightforward (and at the very least the words 'acting reasonably' should be removed). (See above under 'Poor drafting'.)

Section 3.5 should be refocussed on practices that are likely to inspire children to pester their parents, rather than direct appeals to children to do so – though we realise this is tricky because it could extend to any effective form of advertising. (See above under 'Pester power'.)

23. **Are any changes required to the rules in Section 4 of the F&B Code? If yes, please give reasons.**

AND

24. **Are any changes required to the Practice Notes for section 4 of the Code? If yes, please give reasons.**

It would be preferable simply to incorporate the RCMI and QSRI provisions into the FBAMCC.

In addition, there should be no exceptions for advertisements ‘for’ fresh fruit and vegetables, when these can still effectively be promoting a company that is best known as a purveyor of non-core foods.

If nutrient criteria are to be used, they should be uniformly and independently set by experts, not the industry (or individual companies).

25. **Do you have any additional questions or comments on the effectiveness of the self-regulation of food and beverage advertising in Australia?**

If so, they are addressed in earlier sections. In particular, please note the observations about product placement, and privacy.

END OF SUBMISSION