

**Submission from
Cancer Council Australia to Free TV Australia
Invitation for public comment
Commercial Television Industry Code of Practice
3rd April 2015**

Summary

Cancer Council Australia appreciates the opportunity to comment on the proposed changes to the *Commercial Television Industry Code of Practice*.

Obesity is a significant risk factor for cancer of the bowel, kidney, pancreas, oesophagus, endometrium and breast (in postmenopausal women). Food marketing is one contributing factor to the obesogenic environment in Australia. Food and beverage marketing influences the preferences and purchase requests of children and what they eat. Alcohol consumption is a risk factor for cancers of the mouth, pharynx, larynx, oesophagus, bowel and breast. There is substantial and growing body of evidence which confirms a relationship between high level of alcohol advertising exposure and adolescent alcohol use. Alcohol advertising affects not only the type of alcohol young people choose to drink, but it also shapes many aspects of the cultural context surrounding alcohol consumption, including their opinions on alcohol, how much they choose to drink, how early they start drinking and where they choose to drink.

The food and advertising industry have a duty to demonstrate their commitment to responsible marketing of unhealthy food. At a time when evidence is indicating that the self-regulatory advertising initiatives have limited impact, removing clauses that re-affirm the responsibility calls into question the commitment they undertake to market responsibly to children.

Cancer Council Australia strongly supports advertising regulation that protects children from marketing, advertising, promotion and sponsorship of energy-dense nutrient-poor foods and beverages, and alcohol. We urge Free TV to retain clauses 6.20-6.24 that protect children from advertising of unhealthy food; to retain and strengthen the currently limited provisions which seek to limit the exposure of children and young people to alcohol advertising and retain clauses in section 7 that specify complaint handling procedures.

We recommend Free TV:

- Retain objectives in the current Code that 1) ensure viewers are assisted in making informed choices about their own and their children's television viewing; and 2) provide uniform, speedy and effective procedures for the handling of viewer complaints and ensure that the Code is subject to periodic public review of its relevance and effectiveness.
- Retain the objectives set out in clause 2.1 of the current Code that are intended to ensure that commercial television broadcasts are appropriate for the viewing public.
- Remove clause c), g) ,i) and j) in 5.2.1 from Exempt non-Program matter.
- Include the need to limit the exposure of children to material intended for adult viewing in the objectives for advertising restriction.

- Retain clauses from the previous Code, Section 6.20-6.24 *Commercials or Community Service Announcements Directed to Children and Promotion of Products or Services in Programs Directed to Children*.
- Improve definitions for “unhealthy eating or drinking habits” and “promote” in line with community attitudes and scientific recommendations.
- Prohibit all alcohol advertisements before 9.00pm, when high numbers of children and young people are watching television, and amend the code so that this restriction is not tied to the classification zones.
- If the above recommendation is not followed, at a minimum retain the M and MA classification zones as stated in the current Code to protect children from alcohol advertising and amend clause 6.7.1 so that alcohol advertising is only permitted in MA or AV classification periods; that is after 9.00pm.
- Remove the exemption that permits the broadcast of commercials for alcoholic drinks during sports broadcasts on public holidays and weekends.
- Reject proposed amendments which would allow alcohol advertisements to appear during all sports broadcasts on weekends and public holidays.
- Reject the proposed definition of the “weekend” which would allow alcohol advertisements to be shown from 6.00pm on Friday nights during sports broadcasts.
- Reject the restricted definition of alcohol advertisements.
- Retain clause 7.8 and 7.9 of the existing Code to provide guidance to switchboard staff for oral complaints and advising callers of the code complaint procedure.
- Amend clause 7.2.3 b) to allow the complaint to be made by a person who has seen the broadcast or a person representing them.
- Retain the word “clearly” in clause 7.3.4 b).
- Retain timeframes in clause 7.4.1 for the delivery of the quarterly report to Free TV.
- Retain existing clauses 7.19 and 7.21 that cover procedures for referral of code complaints to the ACMA.

Cancer Council recommends Free TV consider updating the Code to:

- Incorporate provisions to restrict the volume of advertisements for unhealthy food and beverages during the broadcast periods when the highest numbers of children are watching, that is between 7am to 9am and 4pm to 9pm weekdays and 7am to 9pm on weekends.
- Unhealthy food advertisements should be defined according to independent nutritional criteria such as the FSANZ Nutrient Profiling Scoring Criterion.
- Restrict the use of persuasive marketing strategies used to target children with commercial promotions for unhealthy food, including restrictions on the use of premium offers and promotional characters in unhealthy food advertisements during the broadcast periods when the highest numbers of children are watching.
- Broaden the definition of children to those people aged 16 or under to better reflect the age of children and young people that are disproportionately affected by commercial messages.
- Address independent and transparent monitoring of compliance and prompt and appropriate sanctions for breaches.

Introduction

Cancer Council Australia appreciates the opportunity to comment on the proposed Commercial Television Industry Code of Practice.

Cancer Council Australia is a federated organisation established to support the national interests of its eight State and Territory members. We are community funded and community focused. Our mission is to lead a cohesive approach to defeating cancer, through the development of prevention strategies, research into new treatments and cures, and by providing informational and emotional support to those affected by cancer.

Obesity is a significant risk factor for cancer of the bowel, kidney, pancreas, oesophagus, endometrium and breast (in postmenopausal women).¹ Alcohol consumption is a risk factor for cancers of the mouth, pharynx, larynx, oesophagus, bowel and breast.¹ Cancer Council Australia works to promote healthy choices, help people to maintain a healthy weight, eat a nutritious diet and reduce their alcohol consumption by providing consumer information and nutrition programs, undertaking research into aspects that influence people's choices and health behaviours, and using our expertise and evidence to advocate for policy and regulation that supports individuals to make healthy choices and reduce their own and their family's risk of developing cancer later in life.

In accordance with Cancer Council's goal to reduce the levels of unhealthy food and alcohol marketing that children in Australia are currently exposed to, we wish to highlight the opportunity and responsibility that Free TV Australia has to improve the Code with regards to protecting children from the advertising of unhealthy foods and alcohol. A responsible code should reflect the Australian Dietary Guidelines and create a marketing environment that does not undermine healthy lifestyle choices.

Protecting children from the harms of unhealthy food advertising

Food marketing is one contributing factor to the obesogenic environment in Australia. The World Health Organization in the *Diet, Nutrition and the Prevention of Chronic Diseases Report* concluded that the heavy marketing of fast food and energy-dense micronutrient-poor foods and beverages is a 'probable' causal factor in weight gain and obesity, and is a target for preventive action.² The World Cancer Research Fund recommends restricting food marketing to children in the evidence-informed policy framework that outlines the 10 areas that governments need to take action to reduce non-communicable diseases, including cancer.³ Systematic reviews on food marketing to children indicate that food and beverage marketing influences the preferences and purchase requests of children, influences consumption at least in the short term, is a likely contributor to less healthful diets and may contribute to negative diet-related health outcomes and risks among children and youth.⁴⁻⁶ The majority of foods promoted to children are energy-dense nutrient-poor.⁶ There is now a body of evidence that indicates food marketing is a modifiable risk factor for children's health.⁶

Measures to limit unhealthy food marketing to children need to be part of the range of strategies implemented to reduce obesity rates.⁷ Studies comparing potential interventions to address obesity have been identified, and restricting unhealthy food marketing on television has the greatest overall effect (although small per child)⁸ and would be the most cost effective intervention.⁹

Cancer Council believes that children should be protected from the influence of unhealthy food marketing and that food marketing should support parent's efforts to establish healthy habits rather than undermine them.

Protecting children from the harms of alcohol advertising

The National Health and Medical Research Council (NHMRC) Australian Guidelines to Reduce Health Risks from Drinking Alcohol advise that for under 18-year-olds, and particularly children under 15 years, not drinking at all is the safest option.¹⁰ For 15 to 17 year olds, initiation of drinking should be delayed for as long as possible.¹⁰ In all Australian states and territories it is illegal to sell alcohol to people under the age of 18.

Cohort studies surveying the same group of participants over many years have traced patterns of alcohol use from adolescence to adulthood. Those who drank most as teenagers went on to become the heaviest drinkers as adults, and those who drank moderately as teenagers had the greatest increase in drinking during the transition into adulthood.¹¹ Those who did not drink at all as teenagers, on the other hand, generally became moderate drinkers in adulthood.¹¹ Therefore young people should be encouraged to delay consumption as long as possible. Apart from the risk of becoming heavier drinkers in the long term, consumption of alcohol can be detrimental to adolescents' cognitive, social and emotional development.¹²

Alcohol advertising affects not only the type of alcohol young people choose to drink, but it also shapes many aspects of the cultural context surrounding alcohol consumption, including their attitude towards alcohol, how much they choose to drink, how early they start drinking, where they choose to drink and long term alcohol consumption patterns.¹³⁻¹⁵ Considering these influences on young people and the role advertising has in shaping the drinking culture, as well as the dose response relationship between alcohol and cancer, Cancer Council believes that alcohol advertising should be restricted. This will reduce children and young people's exposure to advertisements for products that are unsuitable for them and cannot legally be purchased by them and reduce the effect this advertising has in influencing their uptake of alcohol and their short and long term drinking behaviour.

The World Health Organization acknowledges that "reducing the impact of marketing, particularly on young people and adolescents, is an important consideration in reducing harmful use of alcohol".¹⁶ Apart from the influence of alcohol advertising on social norms, including young people's future drinking habits and the culture of alcohol consumption in Australia, other health costs associated with alcohol consumption should be considered. The financial cost of the entirely preventable burden of disease and injury from alcohol consumption was estimated at \$15.3 billion in 2004-05.¹⁷ This is an underestimate because it was calculated before research confirmed that alcohol also contributes to bowel cancer, the second most common cancer in Australia.¹⁸ Stronger regulation of alcohol advertising is highly likely to be a cost-effective intervention to offset some of these costs.

Conclusions from the National Preventative Health Taskforce

In 2009, the Australian Government's National Preventative Health Taskforce recommended a comprehensive, multi-faceted approach to reduce levels of childhood obesity and create a healthy environment. They recognised restrictions to unhealthy food marketing to children as one element of this approach.¹⁹

The Taskforce recommended a phased approach to reduce the exposure of children and others to marketing, advertising, promotion and sponsorship of energy dense, nutrient poor

foods and beverages as one of the key areas of action needed to tackle the obesity epidemic. Specifically the Taskforce proposed that the marketing of energy-dense nutrient-poor foods and beverages (unhealthy foods) on free-to-air and Pay TV before 9pm be phased out within four years. As well, the Taskforce proposed that this measure should be accompanied by the phasing out of the use of premium offers, toys, competitions and promotional characters, including celebrities and cartoon characters, to market unhealthy food to reduce the exposure of children to this advertising across all media.¹⁹

In 2010, the response to this recommendation by the Australian government suggested they would continue to monitor the impact of the self-regulatory initiatives to ensure their effectiveness with indications that more direct action may be needed if they are insufficient.²⁰ In the section on *Limited impact of Industry Codes of Practice* we outline evidence that, five years on, those self-regulatory initiatives are ineffective.

Similarly, the National Preventative Health Taskforce noted that partial or complete bans on the advertising and promotion of alcohol is a cost-effective strategy to reduce the social harms associated with alcohol consumption.¹⁹ As a result, the Taskforce recommended that the Federal Government prioritise addressing the cultural place of alcohol in Australian society, including the restriction of alcohol marketing and made a number of recommendations including:¹⁹

- That a staged approach be adopted to phase out alcohol promotions from times and placements which have high exposure to young people aged up to 25 years;
- The development and implementation of a comprehensive and sustained social marketing and public education strategy;
- The introduction of a requirement for counter-advertising (health advisory information) that is prescribed content within all advertising.

Most recently in 2014 the Australian National Preventive Health Agency in its investigation into alcohol advertising noted that “research suggests that the cumulative nature of alcohol advertising in its various forms significantly influences adolescents’ decisions about drinking and their expectancies related to alcohol use. This includes their perceptions of alcohol, their initiation to drinking, what they drink, how much and how often they drink, where and with whom they drink”.²¹

Evidence supporting children as a vulnerable audience

Studies have found after viewing food advertisements, children are more likely to select unhealthy products²² and to select these products often despite parental encouragement to choose healthier options.²³ One study found three year old children who watched more television had higher intakes of energy and fat and lower intakes of beneficial nutrients, such as calcium and fibre. For each extra hour of television viewing, there was an increased intake of soft drinks, fast foods and snack foods and decreased intake of fruit and vegetables.²⁴

It is recognised that children understand the intent of advertising by about the age of eight but not that the advertiser’s intent is to convince the viewer to buy something they would not otherwise buy.²⁵ It is not until age 11-16 years that children are able to fully understand other people’s perspectives and the complexities of communication. The associated ability to make rational judgements and question what they are being told is needed to make judgements about the persuasive intent of marketing.²⁶ Therefore restrictions on food marketing to children should extend into early adolescence.^{27;28}

The unhealthy diet promoted through advertising undermines parents' attempts to create an understanding of a healthy diet in their children. Australian children who view more television are more likely to hold positive attitudes towards unhealthy foods, including the perception that their peers consume high amounts of these foods.²⁹ These children are also more likely to consume unhealthy food.²⁹ This provides evidence that an unhealthy diet is influenced by exposure to unhealthy food advertising and the perception that eating these foods is normal.

Children are also a vulnerable audience for alcohol advertising. Australian adolescents are more likely to want to try different types of alcohol after they have been exposed to alcohol advertisements.³⁰ As Australian alcohol advertisements typically link alcohol consumption with positive messages of fun, friendship and social situations,³¹ their likely appeal to children and adolescents is of concern.

The influence of television advertising

The largest numbers of children actually view television during traditional prime time hours, from 6 to 9pm, watching programs like My Kitchen Rules, The Block, X Factor and family movies.³² Unhealthy food advertisements feature prominently during these peak television viewing times of Australian children.³³

Over the course of a year, the average child will see 35 hours of food advertising on television alone. Twenty of these hours or over three school days will be filled with advertisements for unhealthy foods.³⁴ The most common foods advertised in children's peak viewing hours are fast food and confectionery.³⁵

A CSIRO study found that the most common techniques specifically designed to appeal to children in television advertising were nutrition claims, promotional characters and premium offers.³⁶ These techniques were used more commonly for unhealthy foods than healthy foods.³⁶

Currently, the Commercial Television Industry Code of Practice allows alcohol advertising to be shown before 8:30pm, in live broadcasts of sporting events on weekends and public holidays. This means that the large numbers of children who view live sporting events are exposed to many alcohol advertisements during these events.³⁷ The proportion of advertisements for alcohol are significantly higher in live sports broadcasts than in other programming.³⁸ Alcohol sponsorship of and advertising during live sporting events frames alcohol companies as good corporate citizens for supporting sporting organisations, and links alcohol consumption with an active lifestyle through sport.¹³

Limited impact of Industry Codes of Practice

Marketing of unhealthy foods

Cancer Council Australia does not support existing voluntary industry initiatives that are intended to promote more responsible food marketing practices as our research demonstrates that to date they have not adequately addressed either the volume of food advertising to children^{34;39;40} or the persuasive marketing techniques commonly used to appeal to children.⁴¹⁻⁴³

Studies examining the impact of the food manufacturers' self-regulatory initiatives have found that signatories have reduced the number of unhealthy food advertisements per hour since the initiatives were introduced. However, the majority of food advertising continues to

be for unhealthy foods, with signatories overrepresented amongst those advertising unhealthy foods.⁴⁴

Since the introduction of the self-regulatory initiative for fast food, the amount of fast food advertising on television has actually increased. Although there have been some changes in the types of foods or meals advertised by fast food companies, children remain exposed to large amounts of fast food advertising.^{34:39} Unfortunately, this is not always evident in self-reports of these voluntary initiatives produced by their administering body- usually a food or advertising organisation. A systematic review of initiatives worldwide found scientific peer-reviewed papers showed high levels of advertising of less healthy foods but industry-sponsored reports showed high adherence to voluntary codes.⁴⁵

A 2012 study of compliance with Australian regulations and industry initiatives found 301 breaches of the food manufacturer's initiative, 29 breaches of the fast food initiative and 619 breaches of the Children's Television Standards over a two month period.⁴⁶

In 2012, a review on behalf of the Australian National Preventive Health Agency examined the effectiveness of the current self-regulatory initiatives in reducing food marketing to children in Australia. It found that 57% of all food advertisements shown during children's programs were for unhealthy foods. The report recognised that the high level of unhealthy food advertising on Australian television is problematic.⁴⁷

The continued exposure of children to large amounts of unhealthy food advertisements is due to a number of loopholes and gaps that exist within the current regulatory framework. This is also supported by the 2013 systematic review that concluded adherence to voluntary codes may not reduce the advertising of unhealthy foods or the exposure of children to that advertising.⁴⁵

Alcohol marketing

The current self-regulatory approach for alcohol advertising in Australia, is the Alcohol Beverages Advertising (and Packaging) Code (ABAC) Scheme,⁴⁴ This approach has many deficiencies that make it unable to regulate alcohol advertising content in a way that protects children and young people. For example, despite apparent restrictions on content that appeals to children and young people a 2012 study found that alcohol advertisements promoted alcohol consumption as a fun, social and an inexpensive activity.²⁷ These are all attributes that are likely to appeal to children and young people. This highlights the ineffectiveness of the current regulations in reducing children's exposure to alcohol advertisements.

The ABAC Scheme has limited impact because it only covers advertisement content and not placement of advertisements and it specifically excludes sponsorships arrangements. Alcohol advertising placement restrictions are generally dealt with in the relevant media specific codes of practice, of which the Commercial Television Industry Code of Practice is one. However, these codes of practice lack meaningful placement restrictions, and as a result, alcohol advertising is allowed in mediums and at times when large numbers of young people are in the audience, such as during live sporting broadcasts, as well as through the coverage of cultural events with alcohol sponsorship arrangements. In this respect, the existing alcohol advertising self-regulatory scheme (comprising the ABAC scheme and relevant media codes of practice) is not effective in reducing young people's exposure to alcohol advertising. In addition, the ABAC Scheme has weak monitoring or enforcement mechanisms, so compliance with the ABAC Scheme and the rulings of its adjudication panel are entirely voluntary.

Reflecting prevailing community standards

A 2011 survey of South Australian parents found that the overwhelming majority were in favour of the government regulating the way in which food and beverages are marketed to children. Parents suggested that television advertising was effective at creating purchase requests from their children, particularly advertisements for chocolate, lollies and fast food.⁴⁸

Broader surveys of the Australian population, conducted in 2010, have revealed similar support for regulations on unhealthy food marketing to children. These include regulations for television, websites, email and SMS and for sponsorship arrangements. The public is more supportive of these initiatives than taxation.⁴⁹

Recent surveys of Australian parents have found that they are very concerned about the advertising of unhealthy foods to children.^{50:51} The majority of parents are in favour of the government regulating the way that food and beverages are marketed to children.⁴⁸⁻⁵¹

The majority of the Australian public (67%) support restrictions on the television advertising of alcohol before 8.30pm every day.⁵² This support has been increasing in recent years.⁵³ The majority of Australians (62%) also support removing the loophole that currently allows alcohol advertising to be shown during children's viewing hours as an accompaniment to live sports broadcast.⁵⁴ Only 15% oppose a ban to prevent such advertising.⁵⁴ This shows that introducing and enforcing stricter regulations in television advertising to reduce children and young people's exposure to alcohol advertising reflects community standards and is likely to be a popular policy option, as well as a demonstrated cost-effective strategy to reduce the preventable costs of alcohol use in Australia.⁵⁵

Comments on the Proposed Commercial Television Industry Code of Practice 2015

If the advertising and broadcasting industries are committed to voluntary initiatives and to protecting children from unhealthy food marketing and exposure to alcohol marketing then they should be developing a comprehensive code rather than pruning back the existing code.

The preamble and explanatory notes provided with the proposed new Code set out the apparent justification for changes to the current Code. However, the reasons provided fail to acknowledge the substantial and fundamental difference between free-to-air broadcasts and other media content that is actively accessed through subscription services including through online streaming of content. As is recognised in the current Code, commercial television is a freely-accessible medium, open to all Australians. Around 13.6 million Australians watch commercial free-to-air television everyday which is largely accessed through in home TV sets. This places free-to-air television in an unrivalled position with almost ubiquitous access to Australian households and viewers. Unlike content that is actively accessed through on-demand subscription services, free-to-air broadcasts beam into Australian homes simply by turning on the television. There is no active selection or request for content. Importantly and in contrast to pay television services such as Foxtel, no special technology, internet connection or payment is required to access free-to-air broadcasts such that electronic content controls including parental locks will not be available to all viewers. The almost unrestricted access that free-to-air broadcasts have to Australian homes means that content and time zone controls are important and justified to ensure that broadcast content and advertising reflects community standards and is not exposing children and young people to inappropriate material.

1. Application and Objectives

To protect children from advertising of unhealthy foods and exposure to inappropriate content, we suggest that the new Code retains the objectives set out in clause 1.1, and in particular clauses:

- 1.1.2 “ensure that viewers are assisted in making informed choices about their own and their children’s television viewing”;
- 1.1.3 that it “provide uniform, speedy and effective procedures for the handling of viewer complaints about matters covered by the Code”; and
- 1.1.4 “be subject to periodic public review of its relevance and effectiveness”

The nature of commercial television and the importance of ensuring that program content is appropriate for the viewing audience are reflected in the current Code’s objectives in clause 2.1 and in the requirement for periodic public review. The proposed Code does not include equivalent objectives. These objectives should be maintained in the proposed new Code as a reflection that free-to-air broadcasters need to ensure that their program content and advertising meets and reflects community standards and expectations.

Recommendations:

Retain objectives from the current Code that 1) ensure viewers are assisted in making informed choices about their own and their children’s television viewing; and 2) provide uniform, speedy and effective procedures for the handling of viewer complaints and ensure that the Code is subject to periodic public review of its relevance and effectiveness

Retain the objectives set out in clause 2.1 of the current Code that are intended to ensure that commercial television broadcasts are appropriate for the viewing public.

2. Classification and Proscribed Material

Changes to M and MA15+ classification zones

The current Commercial Television Industry Code of Practice, permits alcohol advertisements to be broadcast only during M, MA15+ or AV classification periods, or outside of these periods only as an accompaniment to live sporting broadcasts on weekends and public holidays (Clause 6.7 and 6.8). However research has shown that about half of all alcohol advertising on television in Australian capital cities occurred during children’s peak viewing times (between 7.00-9.00am and 3.30-10.30pm weekdays, and 7.30-10.30am and 3.30-10.30pm weekends).³¹ This research demonstrates that greater placement restrictions on alcohol advertising are needed. Cancer Council is concerned that permitting the proposal to begin the M classification zone earlier will allow alcohol advertising to appear on television from 7.30pm. This will lead to alcohol advertising becoming even more prevalent, and greater exposure of children and young people to these alcohol advertisements.

This move is contrary to community sentiment around exposure of children to alcohol advertising. To demonstrate industry commitment to protecting children from alcohol promotion and because over 400,000 children aged 0-14 years watch free to air television before 9pm in the evenings,³² we strongly recommend that the time restrictions on when alcohol can be shown should be independent and separate from the classification zones and prohibit alcohol advertisements from being broadcast before 9.00pm. This will ensure that

any revision of the classification periods will not inadvertently allow the increased exposure of children to alcohol advertising. If this submission is not accepted, we recommend at a minimum that the timing of the M and MA15+ (previously MA) classification zones be maintained as stated in the existing Code and the new Code be revised so that alcohol advertisements only be permitted in MA15+ and AV classification periods, so that alcohol advertisements are not permitted before 9.00pm.

Recommendation:

Prohibit all alcohol advertising before 9.00pm independently of the classification zones. At a minimum the current Code's M and MA classification zones should be retained and the Code amended to only permit alcohol advertisements in MA15+ and AV classification periods so that alcohol advertisements may only be broadcast after 9.00pm.

5. Advertising Limits

Clause c) (below) has been added to the new Code. We believe that given children do not have the cognitive skills to differentiate advertising from program content, clause c) should be removed.

5.2 Exempt non-Program matter

5.2.1 For the purposes of this section, the following is counted as exempt non-Program matter:

c) product placement and commercial integration within a Program, including material which refers to and/or depicts commercial products or services or brands within a Program in an integrated manner;

We recommend clause g), i), and j) should not be included in exempt non-program matter in regards to shows commonly viewed by children.

g) a sponsorship announcement, before or after a Program, segment or other material, provided that:

i. it is made clear to the viewer either visually or aurally that there is a sponsorship relationship between the sponsor and the Program, segment or other material;

ii. it consists of no more than 10 seconds in the case of a single sponsor, or 10 seconds per sponsor in the case of multiple sponsors, to a maximum of 30 seconds in any instance;

i) a promotion transmitted during the closing credits of a Program;

j) superimposed text or visual matter occupying only part of the screen during a Program;

Recommendation:

Remove clause c), g) ,i) and j) in 5.2.1 from Exempt non-Program matter.

6. Advertising restrictions

The food and advertising industry have a duty to demonstrate their commitment to responsible marketing of unhealthy food. At a time when evidence is indicating that the self-regulatory initiatives have limited impact removing clauses that re-affirm the responsibility calls into question the commitment they undertake to market responsibly to children.

The objectives for Section 6 should be retained as outlined in the existing Code so that they “ensure that television commercials and community service announcements are classified and broadcast appropriately, in the light of current community attitudes, the need to limit the exposure of children to material intended for adult viewing, and the fact that such material is typically very brief, and cannot in practice be preceded by a warning.”

In our introductory section above on *Reflecting prevailing community standards* we outline evidence that the public want children protected from advertising of unhealthy foods and alcohol marketing. We have also recently observed a parent’s comments to the Advertising Standards Board when lodging a complaint (Complaint Case number 0257/14).

“before heading off to work I was watching what my child was watching. I was unsurprised by all the toy advertising however when a clearly Junk food ad for Wendy’s came on I was quite upset. I thought Australia had regulation for exactly this reason?”

It is clear from these comments that the public think that children are protected from advertising when they are not.

The clauses protecting children should be retained; Section 6.20-6.24 *Commercials or Community Service Announcements Directed to Children and Promotion of Products or Services in Programs Directed to Children*. The explanatory notes recognise that there is a level of community concern about the exposure of children to certain television commercials and this should still be acknowledged by including a section protecting children. Given the community support for regulation of food marketing to children there is no evidence to remove these protections.

Cancer Council cautions against the reliance on the Children’s Television Standards to ensure adequate protection of children from unhealthy food marketing. To remove these provisions from the Free TV Code would serve to undermine confidence in a system that the public believe should protect their children. The Children’s Television Standards do not cover all advertising in C or P periods or in breaks immediately before or after a C or P period but instead apply only to programs specifically classified as P or C. We don’t believe that the public is aware of this paucity of protection of children.

Recent data from the Australian Communications and Media Authority on children’s viewing patterns shows that the audience for C and P programs has declined.³² For example, in 2005 the highest rating C program achieved an average 0–14 year old audience of 185,000 compared to 30,000 in 2013.³² Therefore it is important that there is a television code that protects children from advertising in programs other than those covered by the Children’s Television Standards.

Definitions in section 6.23 should be improved to align with the government endorsed definition for “unhealthy eating or drinking habits”. Definitions should include those in the Australian Dietary Guidelines and the Australian Guide to Healthy Eating. The Code should consider an independent nutrient profiling criteria such as the Food Standards Australian

New Zealand criteria for nutrition, health and related claims.⁵⁶ The definition of “promote” should be reviewed as it is commonly understood to be much more than “expressly endorse” but to include any form of marketing.

With regards to Clause 6.24.2, we would like to draw attention to ACMA File No: 1999/0809 Complaint No: 11385 March 2000 when Channel 7 was found to breach this clause when the host of a children’s show promoted a product. If this clause is removed then this protection is removed. These clauses need to be retained as there is no evidence that children in 2015 no longer require protection from this type of promotion.

Recommendations about strengthening these clauses to protect children from unhealthy food advertising are further explained in the section *Recommended additions to the Free TV Code*.

Recommendations:

Include the need to limit the exposure of children to material intended for adult viewing in the objectives for advertising restriction.

Retain clauses from the previous Code, Section 6.20-6.24 *Commercials or Community Service Announcements Directed to Children and Promotion of Products or Services in Programs Directed to Children*

Improve definitions for “unhealthy eating or drinking habits” and “promote” in line with community attitudes and scientific recommendations.

6.1 Commercials for Alcoholic Drinks

Cancer Council believes that any new Code should include stronger protections to minimise children and young people’s exposure to alcohol advertising. This is consistent with recommendations of both the World Health Organization,¹⁶ the National Preventative Health Taskforce⁵⁷ and the Australian Preventive Health Agency’s (ANPHA) recommendations.²¹ The proposed new Code does the opposite and substantially weakens the minimal protections that currently exist. It is important to protect children from alcohol advertising to reduce their future consumption of alcohol and denormalise alcohol’s role in Australian culture.

6.1.1 M and MA Classification zones

As set out above, Cancer Council reiterates the importance of prohibiting alcohol advertising during periods when high numbers of children and young people are watching television. Cancer Council believes that the Code should be amended so that alcohol advertising is prohibited before 9.00pm, independent of the timing of the classification zones. If this proposal is not accepted, Cancer Council recommends that at a minimum the current M and MA classification zones should be retained so that alcohol advertisements cannot appear as early as 7.30pm. Further, we recommend that the currently clause 6.7 should be amended such that alcohol advertisements may only be broadcast during MA or AV classification periods; that is, not before 9.00pm in the evenings.

6.1.2 Exemption for live sports broadcasts and extended definition of “weekend”

The current Code includes an exemption in clauses 6.7 and 6.8 to the general prohibition on advertising alcohol outside M classification periods that allows direct alcohol advertisements to be broadcast “as an accompaniment to the live broadcast of a sporting event on weekends and public holidays”. Concern about this exemption has been prolonged and widespread. Notably in 2009, the National Preventative Health Taskforce raised serious concerns about the association between sport and alcohol, and expressed the strong view that “reducing exposure of young people to alcohol promotion is an essential element in reducing alcohol-related harm”.¹⁹ In February 2014, ANPHA released its draft report in relation to the effectiveness of the current alcohol advertising regulatory codes.²¹ ANPHA recommended that the current exemption in the Commercial Television Industry Code of Practice be removed.²¹

Recently released research on alcohol and unhealthy food advertising during sports broadcasts found that a significant proportion of alcohol advertising (49.5%) during the period analysed was shown during sports broadcasts.⁵⁸ Given that sports broadcasts only made up 29% of total programming content during the same period, this demonstrates that alcohol marketers are targeting sports programming.⁵⁸ New research that is soon to be published confirms the findings of previous studies showing that alcohol advertisers are utilising the exemption to inundate live sports broadcasts with alcohol advertisements during children’s viewing hours.⁵⁹ An analysis of alcohol advertising demonstrates that on weekends and weekday public holidays, approximately 44% of alcohol advertising makes use of the exemption so that it can be shown between 5.00am and 8.30pm.⁶⁰ New and soon to be released data suggests that removing the exemption would remove almost 90% of the alcohol advertising that is seen during the periods between 5.00am and 8.30pm when many children are watching television.⁵⁹

As outlined above, it is now well-known that children and young people are particularly susceptible to the harmful effects of alcohol. Research consistently shows a strong association between exposure to alcohol advertising in magazines, television, in-store displays and sports venues, and young people’s early initiation to alcohol use and/or increased alcohol consumption.¹³

While the alcohol industry may not deliberately set out to target the youth market, the youth market is highly susceptible to advertising messages.⁶¹ Exposure to alcohol advertising shapes young people’s beliefs, attitudes and drinking behaviours and several studies show that youth, even 10-12 year olds, interpret the messages, images and targeting of alcohol advertisements in the same way as adults.⁶² This vulnerability makes limiting exposure and placement restrictions of paramount importance to protect children.

The susceptibility of children and young people to the persuasive effects of advertising is compounded by the evident appeal that sport and sporting heroes have to young people. Within this context, the ubiquitous nature of alcohol advertising and pro-drinking messages in sports broadcasts is particularly concerning, especially given the strong association between the age of first drink, and long term health effects of alcohol consumption. Research shows that the younger a person is when they initiate drinking, the greater the chance they will be alcohol dependant later in life.⁶³

The purpose of the Code and the *Children’s Television Standards 2009* is to protect children from inappropriate content and advertising. If it is accepted that children need to be protected from advertisements for alcohol in general, there is no basis for the exemption which allows the current protections to be undermined during broadcasts that unarguably

have a high appeal to children and high numbers of children watching. Further, the exemption is not consistent with community concerns about alcohol advertising. Current research shows that “71% of Australians believe that alcohol advertising and promotions influence the behaviour of people under 18 years” and there is majority support for restricting alcohol advertising before 8.30pm.⁵² In increasing numbers, the majority of Australians also believe that alcohol sponsorship should not be allowed at sporting events.⁶⁴

The majority of Australians (78%) believe that Australia has a problem with excess drinking or alcohol abuse.⁵² It is time to change the culture in Australia that glamorises drinking and tolerates and accepts harmful drinking behaviours. Disassociating the positive relationship between sports, sporting heroes and the Australian drinking culture is an important step in the difficult task of changing the Australian drinking culture. Such a cultural attitude shift has occurred in Australia through years of campaigning in relation to drink driving and tobacco use. The same shift in cultural attitudes is now required to reduce the alcohol-related harms in our community, which include alcohol-fuelled violence, anti-social behaviour and increasingly, chronic disease.

Removing the exemption that enables direct alcohol advertising during live sports broadcasts on weekends and public holidays is an important first step to reducing children and young people’s exposure to alcohol advertising and the positive drinking messages that come through associating alcohol with sporting activities.

Cancer Council is very concerned that the proposed Code broadens this exemption significantly. This move is strongly against community sentiment that supports increased controls of alcohol advertising.

Cancer Council strongly opposes the provisions of the proposed Code which broaden the exemption by:

- Removing the limitation that the sporting broadcast be a “live” event, that will allow all sports broadcasts on weekends and public holidays to utilise the exemption; and
- Expanding the definition of “weekend” to allow alcohol advertising to appear as part of a sports broadcasts from 6.00pm on Friday nights.

Cancer Council recommends that subclause (b) that permits the broadcast of advertisements for alcoholic drinks during live sports broadcasts on Public Holidays and Weekends be removed in its entirety to protect the very large number of children who watch sports broadcasts.

6.1.3 Restricting the definition of alcohol advertisements

The proposed changes to the definition of alcohol advertisements will decrease the restriction on direct promotions of alcohol by excluding categories of alcohol advertisements that were previously captured by the restrictions on alcohol advertising. The definitions in the current Code and proposed Code are set out below:

Current definition of a “Direct Advertisement for alcohol”:	Proposed definition of a “Commercial for Alcoholic Drinks”:
A commercial broadcast by a licensee that draws the attention of the public, or a segment of it, to an alcoholic drink in a manner calculated to directly promote its	A commercial that directly promotes the use or purchase of one or more Alcoholic Drinks. It does <u>not</u> include:

<p>purchase or use.</p> <p>This does not include the following, <u>provided that their contents do not draw attention to an alcoholic drink in a manner calculated to directly promote its purchase or use:</u></p> <p>6.11.1 a program sponsorship announcement on behalf of a brewing company or other liquor industry company;</p> <p>6.11.2 a commercial for a licensed restaurant; or</p> <p>6.11.3 A commercial for a company whose activities include the manufacture, distribution or sale of alcoholic drinks.</p> <p>(emphasis added)</p>	<p>a. Program sponsorship announcements;</p> <p>b. a Commercial which does not directly promote an alcoholic drink for an entity or company that participates in the manufacture, distribution or sale of alcoholic drinks;</p> <p>c. a Commercial where alcohol or a brand associated with alcohol is incidental and any alcohol consumption responsibly depicted;</p> <p>d. A Commercial for a licensed restaurant or club, entertainment venue, tourist attraction or dining establishment.</p> <p>(emphasis added)</p>
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The definition of alcohol advertisements under the proposed Code represents a significant limitation of the definition contained in the current Code. The proposed definition seeks to exempt an expansive list of advertisements based on the identity of the advertiser or type of advertisement, rather than the content of the advertisement. The current Code deals with this by including a catch-all caveat for otherwise exempt advertisements in that such advertisements are only exempt when “their contents do not draw attention to an alcoholic drink in a manner calculated to directly promote its purchase or use”. By way of illustration arguably this means that a sponsorship announcement that directly promoted an alcohol drink such as “this program proudly brought to you by the Melbourne Beer Company, after a hard day playing cricket, enjoy an ice cold Melbourne beer” would be exempt under the proposed Code whereas it is captured under the current Code and thereby subject to restrictions.

Cancer Council believes that all alcohol advertisements should be restricted and there should be no exemptions.

Recommendations:

Prohibit all alcohol advertisements before 9.00pm, when high numbers of children and young people are watching television, and amend the code so that this restriction is not tied to the classification zones.

If the above recommendation is not followed, at a minimum retain the M and MA classification zones as stated in the current Code to protect children from alcohol advertising and amend clause 6.7.1 so that alcohol advertising is only permitted in MA or AV classification periods; that is after 9.00pm.

Remove the current exemption that permits the broadcast of a commercial for alcoholic drinks during sports broadcasts on public holidays and weekends.

Reject proposed amendments which would allow alcohol advertisements to appear during all sports broadcasts on weekends and public holidays.

Reject the proposed definition of the “weekend” which would allow alcohol advertisements to be shown from 6.00pm on Friday nights during sports broadcasts.

Reject the restricted definition of alcohol advertisements.

7. Feedback and Complaints

The level of community trust in a self-regulatory system hinges on the degree of transparency of the complaint system and reassurance that complaints are likely to have a fair hearing. Introducing barriers that make it difficult for the public to engage will undermine confidence in the Code.

7.1 Feedback

This section provides no guidance for handling of feedback and telephone calls. We suggest Clause 7.8 and 7.9 from the previous Code (below) be retained to provide guidance to callers and switchboard staff.

Oral Complaints and Advising Callers of the Code Complaint Procedure

7.8 Licensees will ensure that switchboard staff record the substance of telephoned comments from viewers about matters covered by the Code, and that this is brought to the attention of key staff.

7.9 When a viewer complains by telephone about material covered by the Code, and wishes to pursue the complaint further, the licensee will advise him or her that a written complaint may be made within 30 days of the particular broadcast, and that the licensee is obliged to respond in writing to that complaint.

7.2 Code complaints

7.2.3 A Code Complaint can only be made:

In reference to Page 18 of the explanatory notes “Subclause (b) provides that a complainant must have seen the material that is the subject of the complaint on television, as part of a terrestrial television broadcast in Australia.”

Clause 7.2.3 b) is unnecessarily restrictive as there may be occasions when complainants wish to have the help from another party to lodge a complaint. It is important that community members and organisations are able to make a complaint where they have seen a copy or recording of the relevant commercial and it is brought to their attention by others. We suggest the clause read:

b) About a matter that the complainant or the person represented by the complainant has seen broadcast, either live or via a recording afterwards, by the licensee in Australia;

7.3 Responding to Code Complaints

We suggest reinstating the term “clearly” in 7.3.4 b) *a licensee is not required to provide a written response to a Code Complaint that:*

b) is clearly frivolous, vexatious, or an abuse of the Code process

7.4 Transparency

There are no timeframes in this clause. We suggest the timeframes as well as clarity about the term “substance” from the previous Code be retained.

7.4.1 Each licensee will report within 15 working days of the end of each quarter to Free TV Australia the number and substance (including for each complaint the date received and date or dates of response, and details of any complaint upheld and of action taken by the licensee.) of the Code Complaints

Referral of Code Complaints to the ACMA

The new Code fails to specify the referral or reporting mechanisms between Free TV and ACMA.

We suggest retaining clauses from the existing Code covering working with ACMA, including the following:

7.19 If the ACMA requests a response concerning a complaint made in accordance with Clause 7.2 (and which does not fall within Clause 7.3) and which complaint is subsequently referred to the ACMA, the licensee will provide the response within 30 working days of receipt of the request.

7.21 Free TV Australia will provide a summary of this information to the ACMA within 10 working days of receiving it.

We also recommend a system to monitor compliance with the Code. Presently, compliance with the Code and complaint lodging falls to the community. Referring responsibility to the public to monitor the integrity of broadcasters is not satisfactory for several reasons:

- Members of the public do not always have the time to lodge complaints;
- Members of the public do not have an adequate understanding of the details of the Code to make informed complaints;
- Members of the public do not fully understand the process for making complaints; and
- Members of the public may be fearful of the threat of litigation from food industry.

This recommendation is covered in the section *Recommended additions to the Free TV Code*.

Recommendations:

Retain clause 7.8 and 7.9 of the existing Code to provide guidance to switchboard staff for oral complaints and advising callers of the code complaint procedure.

Amend clause 7.2.3 b) to allow the complaint to be made by a person who has seen the broadcast or a person representing them.

Retain the word “clearly” in clause 7.3.4 b).

Retain timeframes in clause 7.4.1 for the delivery of the quarterly report to Free TV.

Retain existing clauses 7.19 and 7.21 that cover procedures for referral of code complaints to the ACMA.

Recommended additions to the Free TV Code

Cancer Council recommends Free TV consider updating the Code to:

Incorporate provisions to restrict the volume of advertisements for unhealthy food and beverages during the broadcast periods when the highest numbers of children are watching, that is between 7am to 9am and 4pm to 9pm weekdays and 7am to 9pm on weekends.

Unhealthy food advertisements should be defined according to independent nutritional criteria such as the FSANZ Nutrient Profiling Scoring Criterion.

Restrict the use of persuasive marketing strategies used to target children with commercial promotions for unhealthy food, including restrictions on the use of premium offers and promotional characters in unhealthy food advertisements during the broadcast periods when the highest numbers of children are watching.

Broaden the definition of children to those people aged 16 or under to better reflect the age of children and young people that are disproportionately affected by commercial messages.

Address independent and transparent monitoring of compliance and prompt and appropriate sanctions for breaches.

Thank you once again for the opportunity to comment on the new Code. If you would like to discuss any of the matters raised please contact Kathy Chapman, Chair of the Cancer Council Australia Nutrition and Physical Activity Committee on 9334 1720 or at kathyc@nswcc.org.au

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