

A Submission from Population Health Scientists at the University of Auckland to the Review of the Code for Advertising to Children and the Children's Code for Advertising Food

This submission is from the public health scientists listed in Annex 1 from the School of Population Health, University of Auckland and it represents the views of those individuals.

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Overview

- Thank you for the opportunity to provide a submission related to the Consultation on the Review of the Code for Advertising to Children and the Children's Code for Advertising Food.
- We believe that the existing Codes are ineffective in protecting children from exposure to the marketing of unhealthy foods and beverages (hereafter referred to as 'foods').
- While the preambles of the Codes mention the rights of the child, their overall aim is to ensure that that each individual advertisement is legal, decent, truthful, and not overtly damaging to children. The code does not enforce any specific restrictions on the actual volume of advertising and the placement of advertisements.
- The Codes therefore do not restrict exposure of children to advertising and fail to protect children from the large volume of sophisticated marketing reaching them every day. This occurs through many media using highly effective integrated marketing techniques to covertly build the relationship between the child and the brand.
- We believe that for the Codes to be effective in protecting children from harmful advertising, they need to comprehensively limit not only the content of advertisements but their placement and overall volume.
- We therefore strongly recommend that the following changes and additional principles be included to strengthen the existing Codes.
 - **There should be a child rights approach throughout the Codes:**
 - The explicit purpose of the code should be to reduce exposure and power of marketing of unhealthy foods to children across all media
 - The code should have an explicit focus on the rights of the child and should be 'child-centric' (restricting the placement and total volume of advertising to children) not 'advertisement-centric' (restricting the content of individual advertisements).
 - **There should be no marketing of unhealthy foods or products directed to children, where 'marketing,' 'unhealthy foods or products,' 'to children' and 'child' are defined as described below:**
 - 'Marketing' needs to be broadly defined as including all communications including sponsorship and brand marketing
 - 'Unhealthy foods' needs to be defined by an independent and accepted nutrient profiling system
 - 'To children' needs to be clearly defined and the Quebec government has a well-tested definition¹ which considers: the nature of the product and

¹ Office of Consumer Protection. Advertising Directed at Children under 13 Years of Age: Guide to the Application of Sections 248 and 249 Consumer Protection Act. 2012.
https://www.opc.gouv.qc.ca/fileadmin/media/documents/consommateur/sujet/publicite-pratique-illegale/EN_Guide_publicite_moins_de_13_ans_vf.pdf

- its likely appeal to children; the nature of the communication and its appeal to children, and; the medium being used and its reach to children
- 'Child' should be defined as under 18 (United Nations Convention on the Rights of the Child).
- **Government needs to be involved preferably through co-regulation:**
 - Government should set policy goals for the code to achieve, e.g. no marketing of unhealthy foods specifically targeted at children
 - There should be legislation for co-regulation and a plausible expectation of strengthening regulations if goals are not met by a certain time
 - The government should fund independent monitoring, research and evaluation (on exposure and power). Monitoring should include public reporting and opportunities to acknowledge companies that are doing well
- **Food industry policies**
 - All signatories to the Codes should make a copy of their marketing to children policy available on their websites

Introduction

- Food marketing to children is powerful (influences children's food behaviours), pervasive (modern, integrated marketing ensures that brands engage with children across multiple media platforms) and predatory (it exploits the credulity of children for commercial gain).
- There is convincing evidence that food marketing influences children's food preferences, requests, choices and behaviours.² A recent systematic review and meta-analysis showed that acute exposure to food advertising increases the intake of those foods in children.³
- Previous studies in New Zealand showed that food marketing to children is predominantly for unhealthy foods across all media platforms.⁴
- Advertising potentially harmful products, including unhealthy foods, to young children is unethical where they are too young to fully understand the persuasive intent of advertising, cannot properly understand or interpret advertising messages and are heavily persuaded by them.
- Given the vulnerability of children to advertising and its potential harmful impacts, it may arguably be regarded as a form of exploitation.⁵ Under the UN Convention of the Rights of the Child, countries, including New Zealand, have a responsibility to protect children from all forms of exploitation.
- There is strong international support to reduce exposure of children to unhealthy food marketing, for example as expressed in the recent final report of the World Health Organization Commission on Ending Childhood Obesity⁶, chaired by Sir Peter Gluckman.
- There is strong support from the New Zealand medical and public health community to reduce exposure of children to unhealthy food marketing, as evident from the New Zealand Medical Association report on tackling obesity.⁷
- There is strong public support for tougher restrictions on unhealthy food marketing to children, as evident from a recent Horizon poll, which showed that three in four New Zealanders are in favour of tougher restrictions on unhealthy food marketing to children.⁸

² World Health Organisation. "Set of recommendations on the marketing of foods and non-alcoholic beverages to children." 2010. http://apps.who.int/iris/bitstream/10665/44416/1/9789241500210_eng.pdf

³ Boyland EJ, Nolan S, Kelly B, Tudur-Smith C, Jones A, Halford JC, Robinson E. Advertising as a cue to consume: a systematic review and meta-analysis of the effects of acute exposure to unhealthy food and nonalcoholic beverage advertising on intake in children and adults. *Am J Clin Nutr*. 2016 Feb;103(2):519-33.

⁴ Vandevijvere S, Swinburn B. Getting serious about protecting New Zealand children against unhealthy food marketing. *N Z Med J*. 2015 Jul 3; 128(1417):36-40. Review.

⁵ Handsley E, Nehmy C, Mehta K, Coveney J. A Children's Rights Perspective on Food Advertising to Children. *The International Journal of Children's Rights*. 2014; 2(1): 93 – 134.

⁶ http://apps.who.int/iris/bitstream/10665/204176/1/9789241510066_eng.pdf?ua=1

⁷ https://www.nzma.org.nz/_data/assets/pdf_file/0015/32082/NZMA-Policy-Briefing-2014_Tackling-Obesity.pdf

⁸ http://www.nzherald.co.nz/lifestyle/news/article.cfm?c_id=6&objectid=11483657

- New Zealand relies entirely on self-regulatory codes but there is no evidence internationally of any impact of self-regulatory codes on exposure and power of marketing.⁹

⁹ Galbraith-Emami S, Lobstein T. The impact of initiatives to limit the advertising of food and beverage products to children: a systematic review. 2013; 14(12):960-74.

Consultation questions

Question 1. What are the strengths and weaknesses of the two current Children's Codes?

Response:

Strengths

- The Codes provide guidelines for advertisement content, which may have contributed to getting the worst of the worst advertisements off the air.
- The introduction of the Children's Code for Advertising Food applies to television advertising. Since the introduction of this Code, the number of food advertisements awarded a Children's Food Classification (suitable to be aired during broadcaster-defined children's programming times) has dropped sharply.¹⁰ However:
 - Nielsen data for 2015 (Annex 2) show that audience measurement ratings for children do not reach their highest peak during these times but later in the day.
 - There is also no pre-vetting of any food advertisements for any other medium except for television.
 - Exceptions can be made to allow occasional foods to be advertised during children's programming times.¹¹
 - The Code applies only to television.
 - Therefore, the overall effect of the Code in reducing the volume of unhealthy foods advertised to children is unknown and is likely to be extremely limited.

Weaknesses

- The Codes are insufficient to reduce the overall exposure of children to the advertising of unhealthy foods and total advertising.
- **They do not include restrictions on the placement and volume of advertising**
 - The Codes focus only on the content of individual advertisements and do not include specific restrictions on the placement of and volume of advertising, which are necessary to limit the exposure of children to advertising.
 - Therefore, while the introductions of both Codes mention the rights of the child, the Codes are 'advertisement-centric' not 'child-centric.'
- **Pre-vetting requirements included in the Children's Code for Advertising Food only apply to television**

¹⁰ Think TV. Briefing on the Children's Food (CF) Classification System. <http://www.thinktv.co.nz/wp-content/uploads/CF-Briefing.pdf>

¹¹ Commercial Approvals Bureau. Advertising food and beverage products to children. 2011. http://www.commercialapprovals.co.nz/cf_code.php

- The Commercial Approvals Bureau (CAB) pre-vets the advertisements for which marketers are requesting Children's Food Classifications (CFCs) for television but not for radio, websites, social media or outdoor settings.
- This means that for other advertising platforms, this Code not only has no impact on reducing the volume of advertising children are exposed to, but also has absolutely no effect on the content and persuasiveness of advertisements children are exposed to.
- **Except for television advertising, no supplementary regulation from industry exists to limit placement and volume of advertising**
 - Therefore, for all other platforms except for television, the bar is set very low – an advertisement could meet all the content requirements and still be directed to child audiences.
- **Supplementary industry regulation contains incorrect definitions of children's viewing times & is overly complicated**
 - Broadcaster-defined children's programming times end at 5:30pm¹² which does not match children's actual viewing times:
 - Nielsen from 2015 show that for the major free-to-air channels (TV1, TV2 and TV3), peak viewing times for children occur after 5:30pm (see Appendix 2). Research conducted at the University of Otago using Nielsen data from 2010¹³ on TV2 and TV3 shows similar audience rating patterns.
 - The times do not align with the Broadcasting Standards Authority's (BSA) definition of the end of children's viewing times (8.30pm)¹⁴.
 - Only TV2 and FOUR have policies on advertising during children's hours¹⁵ because the other channels do not have children's programming. However, Nielsen data from 2015 shows that the numbers of children watching TV peak after 5:30pm not just on TV2 but TV1 and TV3 as well (see Annex 2).
 - Guidelines for advertisement content in children's programming times are set by the ASA in the Codes, but content is pre-vetted for suitability to be aired in children's programming times by the CAB, and neither the ASA

¹² Think TV. The Children's Television Policies Advertising in Pre-School and School-Age Children's Television Programming Times. 2015. http://www.thinktv.co.nz/wp-content/uploads/Times_Info_Sheet_May_2015.pdf
Broadcasters were emailed for up to date times and confirmed that the times did not extend past 5:30pm.

¹³ Jenkin G. Food marketing to NZ kids (presentation on research). 2014.
<http://www.otago.ac.nz/wellington/otago065818.pdf>

¹⁴ Broadcasting Standards Authority. Classifications and timebands. 2016.
<http://bsa.govt.nz/standards/classifications-and-timebands>

¹⁵ Think TV. The Children's Television Policies Advertising in Pre-School and School-Age Children's Television Programming Times. 2015. http://www.thinktv.co.nz/wp-content/uploads/Times_Info_Sheet_May_2015.pdf
Broadcasters were emailed for up to date times and confirmed that the times did not extend past 5:30pm & that hours only applied to TV2 and FOUR.

nor the CAB set these times, which are set by the broadcasters and subject to change.

- **Nutrient profiling in the Children's Code for Advertising Food is not used appropriately**
 - The Code currently misrepresents & misinterprets the Fuelled4Life system.
 - At present, foods classified as high in sugar, fat and salt by the Fuelled4Life system are incorrectly classified as 'treat' foods. In the Ministry of Health system they are not classified as treats (suitability for using as rewards) but as foods that do not provide essential nutrients, are unsuitable for sale in schools and ECEs and are to be reserved for occasional consumption only.¹⁶
 - In the current Code, exceptions can be made that allow occasional foods to be advertised in children's viewing times. However, as occasional foods are not recommended for sale to children in schools or ECEs in the Fuelled4Life system, no exceptions should be allowed.
- **There are no meaningful sanctions** for breaches of the Codes.
- **There is no independent monitoring** of the effectiveness of the Codes in reducing exposure of children to marketing.
- **There is no government involvement** (setting policy objectives, monitoring exposure and power of marketing to children, funding evaluation of the impact of codes on exposure and power)
- In addition to the Codes being insufficient in reducing the total exposure of children to advertising, they also have the following additional weaknesses which are covered in more detail in the following sections:
 - A child is defined as under 14 years, yet the UN Convention on the Rights of the Child define a child as under 18 and adolescents are still highly susceptible to marketing and suffer from a high level of obesity (see Question 7 for more detail).
 - There are no measures of 'generally prevailing community standards'
 - There has been no evaluation of the effectiveness of the Codes in reducing the total exposure of children to advertising.

Question 2. What are the strengths and weaknesses of the complaints process?

Response:

Strengths

- Low cost to taxpayer
- Relatively short turn-around time

¹⁶ Heart Foundation. Occasional foods. 2012. <http://www.fuelled4life.org.nz/tips/occasional-foods#.Vw29GHF96Uk>

- Reasonably simple form to complete

Weaknesses

- Does not measure whether the total volume of advertising children are exposed to, including unhealthy food advertising, is reducing.
- The complaints process takes place after the advertisement has aired so by the time a complaint is processed, the advertisement campaign may have already run its course. Therefore in many cases the complaints process may do very little to restrict actual exposure of children to harmful advertising. Pre-vetting across all media and not just television and radio is far more preferable.
- Little or no effort to inform the public that a complaints procedure exists for unhealthy food advertising. Emphasis is usually placed on advertisements and television shows/radio broadcasts that may morally or socially offend viewers.
- Little or no effort to inform public that the complaints procedure exists across all mediums, including social media.

Question 3. What changes, if any, are necessary to protect the rights of children and their health/wellbeing?

Response:

A. We recommend that the following statements should be changed as outlined below:

Introduction- “All advertisements for food and beverages (food) that influence children”

- It is not clear what is meant by ‘influence’. It can be argued that all advertising influences children (whether specifically aimed at children or not).
- We advise that the code should contain a statement similar to the one used by the Quebec government’s Consumer Protection Act: “is the product one that appeals to children; does the communication contain features which appeal to children (cartoons, characters, children, language, colour etc.); is the medium one which will reach significant numbers of children?”¹⁷

1c: “Advertisements for treat food, snacks or fast food should not encourage children to consume them in excess” AND,

¹⁷ Office of Consumer Protection. Advertising Directed at Children under 13 Years of Age: Guide to the Application of Sections 248 and 249 Consumer Protection Act. 2012.
https://www.opc.gouv.qc.ca/fileadmin/media/documents/consommateur/sujet/publicite-pratique-illegale/EN_Guide_publicite_moins_de_13_ans_vf.pdf

1d: “Advertisements for treat food, snacks or fast food should not encourage children to consume them in substitution for a main meal on a regular basis, nor should they undermine the Food and Nutrition Guidelines for Health Children.”

- These should be changed such that advertising of unhealthy food, snacks or fast food to children is prohibited altogether.
- The term ‘treat food’ should be removed because whether a food is used a reward is immaterial to its classification of healthiness.

2c: “Care should be taken to ensure advertisements do not mislead as to the nutrient value of any food. Foods high in sugar, fat and/or salt, especially those marketed to and/or values by children, should not be portrayed in any way that suggests they are beneficial to health”.

- This should be reworded so that products (energy drinks for example) cannot be promoted to children by sports people

Principle 3: “Persons or characters well-known to children”

- ‘Characters well known by children’ needs to be clearly defined making it clear that they include brand mascots, movie tie-in characters and so on.
- There should be no premium offers (gifts or collectables, games or apps, contests, discounts) or promotional characters (cartoons, celebrities, movie tie-ins) used with unhealthy food advertisements directed at children.

B. We recommend that the Codes should include statements similar to those found in the alcohol advertising standards. We suggest that the following statements should be included in the Codes after being modified to apply to food advertising:

- “Alcohol advertising and promotions shall not suggest that alcohol can lead to sexual, social, sporting or business success or popularity or is necessary to achieve social status with peers.”
- “Anyone visually prominent in alcohol advertising and promotions depicting alcohol being consumed shall be, and shall appear to be, at least 25 years of age with their behaviour and appearance clearly appropriate for people of that age or older. Minors may appear in alcohol advertising and promotions only in situations where they would naturally be found, for example in a family barbecue, provided that there is no direct or implied suggestion that they will serve or consume alcohol.”

C. We strongly suggest the Codes should include statements covering sponsorship as a form of advertising (see our response to Question 9).

D. We also recommend that the Codes be modified to consider the following additional points:

- **Total exposure to advertising:** The Codes need to consider the totality of advertising, not just single advertisements (as it works with the current complaint system). The current system only filters out the worst single advertisements, while it is the totality of advertisement exposure that influences children. As explained under Question 1, the code should be 'child-centric' not 'advertising-centric'.
- **Branding:** Food manufacturers carry out advertising activity with the aim of building brand awareness and brand loyalty as it is believed that brand preference precedes purchase behaviour.¹⁸ For example, McDonalds could technically promote healthy salads to children, but the majority of their products (brand) are not healthy. All food branding to children should be prohibited including, but not limited to product placement; internet advergames; viral marketing; product, programme and event sponsorship; mobile phone advertising; advertising within schools and point-of-sale marketing.
- **Audience indexing:** Advertising restriction should not only be focused on programmes 'of particular appeal to children' but to peak family viewing times between 6 and 10pm (see our response to Question 4).¹⁹

Question 4. Please comment on any concerns you have with different media formats in relation to advertising to children

Response:

- Studies conducted on food marketing to children in New Zealand have found that food marketing across all investigated media platforms is predominantly for unhealthy foods²⁰. In addition, modern, integrated marketing ensures that brands engage with children across multiple media platforms (e.g. TV advertisements and product packaging urging children to visit purpose-built websites or social media pages).
- It is therefore important that any restrictions on unhealthy food advertising to children are comprehensive and apply to a wide range of media, such as TV and radio (children's programs and children's peak viewing/listening times), magazines targeted at children and magazines with a high readership of children, food and non-food websites popular among children, popular social media platforms among children (Facebook, YouTube), outdoor advertising (particularly in zones of 500m

¹⁸ Boyland EJ, Halford JC. Television advertising and branding. Effects on eating behaviour and food preferences in children. *Appetite*. 2013 Mar 1;62:236-41.

¹⁹ Boyland EJ, Halford JC. Television advertising and branding. Effects on eating behaviour and food preferences in children. *Appetite*. 2013 Mar 1;62:236-41.

²⁰ Vandevijvere S, Swinburn B. Getting serious about protecting New Zealand children against unhealthy food marketing. *N Z Med J*. 2015 Jul 3; 128(1417):36-40. Review.

around primary and secondary schools), settings and events where children learn and play (schools, early childhood education centres, children's sport clubs, children's sport and cultural events), food packaging (especially for foods intended to be consumed by children or consumed frequently by children), supermarket displays and check-outs and direct marketing to children via post, email, downloads and mobile phone SMS.

- The code should disallow all unhealthy food advertisements directed at children. 'Unhealthy food' should be defined through an accepted and independent nutrient profiling system. See response to Question 8 for more detail.
- Food advertisements directed at children should be defined as food advertisements that are intended or likely to appeal to children and any unhealthy food advertisement that is likely to be seen or heard by children. See response to Question 3 for a proposal on how to assess whether a food advertisement is directed at children or not.
- Some specific concerns with different media formats in relation to advertising to children are as follows:

(i) Free-to-air television

- In addition to specific children's programmes, children's peak viewing times need to be covered in the restrictions. Peak viewing times ideally need to be defined as times when the number of children watching television (all channels combined) is greater than a quarter of the maximum child audience rating for the day.²¹
- From recent research that we have just completed, we found that there is relatively little advertising for unhealthy foods during children's programmes. Most unhealthy food ads occur during family viewing times from 6-10pm, when also peak viewing times of children 5-13 years occur.
- While the existing voluntary code from Think TV ('Getting it right for children') covers the time slots 6-9.50 and 2-5pm, recent audience measurement data from Nielsen (2015) shows that the percentage of 5-13 year olds watching the major free to air channels is higher during a) the time slots not covered by the current code b) during the same time slots on channels not covered by the current code (which only cover Channel 2 and Four).

(ii) Internet and social media

- It is very difficult for parents to monitor and supervise the types of advertising to which children are exposed on websites and social media.
- Many social media sites allow marketers to target advertisements specifically to children.

²¹ Kelly B, Halford JC, Boyland EJ et al. Television food advertising to children: a global perspective. Am J Public Health 2010; 100: 1730–1736.

- Promotions through these media enable marketers to interact directly with children without the involvement of parents.
- New Zealand food brand websites use a wide range of different marketing techniques to engage with children, including 'advercation' (branded education) (87% of websites), viral marketing (64% of websites), use of cookies (54 % of websites), free downloadable items (43% of websites), promotional characters (39% of websites), designated children's sections (19% of websites) and 'advergaming' (branded games) (13% of websites).²²
- Those techniques are found more frequent on websites specifically targeting children than websites targeting the general population. There are currently no good data on social media food marketing, but the advertisements appearing on social media are potentially much more powerful since they are specifically tailored to what children like or what their friends like.

(iii) Magazines

- Magazines specifically targeted to children and adolescents contain a significantly higher proportion of unhealthy branded food references (72%) compared to the women's magazines (42%).²³
- Branded food references (30% of total) are more frequent for unhealthy (43%) compared to healthy (25%) foods.

(iv) Schools and early childhood education centres, school food zones and children's sport clubs and events

- These settings and events need to be completely free from unhealthy food marketing and sponsorship.
- The issue on sponsorship needs to be addressed within a revision of the code (see our response to Question 9).

(v) Food packaging

- There should be no promotional characters (e.g. celebrities, movie tie-ins or cartoons) or premium offers (games, contests, discounts) on packages for unhealthy foods, especially if they are for foods designed for children or consumed frequently by children.

Question 5. If the content of advertisements is a concern, can you please give examples and/or supporting evidence?

Response: Some examples of unhealthy food advertisements targeted at children (e.g. containing promotional characters or premium offers appealing to children) recently aired on television are attached in Annex 3.

²² Vandevijvere S, Swinburn B. Getting serious about protecting New Zealand children against unhealthy food marketing. N Z Med J. 2015 Jul 3; 128(1417):36-40. Review.

²³ Vandevijvere S, Swinburn B. Getting serious about protecting New Zealand children against unhealthy food marketing. N Z Med J. 2015 Jul 3; 128(1417):36-40. Review.

Question 6. If the placement of advertisements is a concern, can you please give examples and/or supporting evidence?

Response: Some examples of unhealthy food advertisements shown during peak viewing times of children are attached in Annex 3. In addition, a few examples on unhealthy food advertisements shown during children's programmes are added in Annex 3 as well.

Question 7. The Children's Codes currently define a child as under the age of 14. Do you support or oppose this definition. Why?

- We oppose this definition because it is important to protect the health of all children, including adolescents.
- Obesity, diabetes and tooth decay show strong evidence for tracking from younger ages into adulthood. It is therefore important to not only restrict marketing to children, but also to adolescents (similar as in the Code for Advertising and Promotion of Alcohol).
- The code uses the Children, Young Persons and Their Families Act of 1989 to define the term 'child.' However, the definition of childhood in New Zealand varies across legislation and depends on the legal context.²⁴ The context of use for this definition is very narrow and only applies to children requiring protection from harmful home environments and those in the youth justice system.²⁵ By comparison, the beginning of adulthood is unambiguously defined in the Age of Majority Act 1970 as age 20, and applies in all contexts.²⁶
- The only definition of 'children' that applies in all contexts comes from the United Nations Convention on the Rights of the Child (UNROC), to which New Zealand is a signatory. This defines a child as 'every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.'²⁷
- Given the strong need to protect all children, including adolescents, from unhealthy food marketing and the high legal age of adulthood in New Zealand, we therefore argue to increase the age limit in the standard to the age of 18 so that marketing of unhealthy food, snacks and fast food can only be directed at adults.

Question 8. Is there a role for a nutrient profiling system such as the health star rating system in the Children's Code? If yes, in what way and which system would you suggest?

²⁴ Pollock K. Childhood - Defining childhood. Te Ara - the Encyclopedia of New Zealand. 2012.
<http://www.TeAra.govt.nz/en/childhood/page-1>

²⁵ Parliamentary Counsel Office. Children, Young Persons, and Their Families Act 1989.
<http://www.legislation.govt.nz/act/public/1989/0024/latest/whole.html>

²⁶ Parliamentary Counsel Office. Children, Young Persons, and Their Families Act 1989.
<http://www.legislation.govt.nz/act/public/1989/0024/latest/whole.html>

²⁷ United Nations, Office of the Human Rights Commissioner. Convention on the rights of the child. 2016.
<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

Response: Foods high in energy, saturated fats, *trans*-fatty acids, free sugars or salt should not be marketed to children. An accepted nutrient profiling tool is therefore critical to classify foods as suitable/unsuitable for marketing to children and to implement restrictions.

The Health Star Rating (HSR) system is one such nutrient profiling tool. Whilst HSR could be used to identify the suitability of some foods to be marketed to children it has the following limitations:

- HSR is only applicable to packaged foods. It is not suitable for use with fresh foods, fast foods or restaurant foods.
- HSR is a continuous scoring system and a cut point has not yet been widely agreed where it could be used to dichotomise foods as healthy/unhealthy. Nevertheless work commissioned by the NSW Ministry of Health on the alignment of HSR with existing Traffic Light schemes and the 2013 Australian Dietary Guidelines found that *“healthy core foods with a HSR of ≥ 3.5 can be confidently promoted in public settings as healthier choices”*.²⁸ This cut point has been proposed for use in New Zealand as a means of identifying packaged foods consistent with District Health Boards’ Healthy Food Policy and suitable for sale in hospitals.

The Heart Foundation Fuelled4Life is another nutrient profiling system that could potentially be used. It classifies foods and beverages children consume in an education setting as “everyday” or “sometimes” foods (“occasional” foods, such as confectionery, deep-fried foods and sugar-sweetened drinks are not recommended). Many foods classified as “sometimes” foods are however unacceptably high in saturated fats, free sugars or salt. Therefore if this system were adopted to classify foods as suitable/unsuitable for marketing to children, it is imperative that only “everyday” foods be permitted to be marketed to children.

We believe that the most appropriate nutrient profiling model to restrict the marketing of foods to children is the World Health Organization (WHO) Regional Office for Europe Nutrient Profiling Tool.²⁹ Advantages of this tool include:

- It is specifically designed for the purpose of restricting the marketing of foods to children.
- It was developed following extensive consultation with European member states, and is based on three nutrient profile models currently in use in Europe for restricting marketing to children.
- It encompasses 17 food categories, including fruit, vegetables, and ready-made meals.
- Certain food categories are not permitted to be marketed to children under any circumstances. These include chocolate and confectionery, cakes and sweet biscuits,

²⁸ Dunford E, Cobcroft M, Thomas M, Wu JH (2015) Technical Report: Alignment of NSW Healthy Food Provision Policy with the Health Star Rating System. Sydney, NSW: NSW Ministry of Health

²⁹ World Health Organization (2015) World Health Organization Regional Office for Europe Nutrient Profiling Model. Copenhagen, Denmark: World Health Organization.

juices and energy drinks. Conversely, unprocessed meat and fish and fresh/frozen fruit and vegetables can be marketed without restriction. Maximum nutrient level cut points are applied to determine the eligibility of foods in all other categories to be marketed to children.

We therefore strongly recommend adoption of the World Health Organization Regional Office for Europe Nutrient Profiling Tool to restrict marketing of junk foods to New Zealand children.

Question 9. Do you support or oppose a specific guideline on sponsorship? Why?

Response: Food companies state that the aim of their sponsorship, fundraising and community outreach initiatives is to give back to their communities.²⁸⁻³³ Branding of these initiatives builds brand loyalty and is not necessary to achieve the aim of giving back to communities. Therefore, we strongly support the following propositions-

- That sponsorship, fundraising and community outreach initiatives by industry be defined as forms of advertising and covered by the revised Codes.
- That no branded sponsorship directed to children (including but not limited to television shows, online games and magazines) on any media platform be permitted.
- That no branded sponsorship/community outreach in the following settings be allowed: schools, ECEs, children's sports teams, clubs or groups, sporting events for children or the whole family, school events, and all other community and cultural initiatives involving children.
- Real-world examples of current industry sponsorship/ community outreach in New Zealand that would only be permitted without branding under these new guidelines include:
 - **McDonald's:** sponsorship of junior football³⁰
 - **Coca Cola:** contributes funding to youth development programmes and awards ³¹ & developed the Move60 programme to encourage teens to be active ³²
 - **Frucon:** sponsors Harold's Life Education Trust mobile classroom³³
 - **Burger King:** gives out BK Player of the Day awards in local youth sports³⁴
 - **Yum! Brands** (KFC, Pizza Hut, Carls Jr. and Starbucks): sponsor of the Condor Sevens, a secondary school level regional tournament, supporting sevens at a grassroots level ³⁵
- This revision to the Codes would only limit company's ability to use these settings to build brand loyalty and would not limit their ability to give back to their communities.

³⁰ See <https://mcdonalds.co.nz/learn/responsibility/maccas-community>

³¹ See <https://mcdonalds.co.nz/learn/responsibility/maccas-community>

³² See <https://ccamatil.co.nz/sustainability/community>; <https://www.move60.co.nz/about.html>

³³ See http://www.frucon.co.nz/index.php/social_responsibility/community/

³⁴ See <http://www.burgerking.co.nz/sponsorship>

³⁵ See <http://www.restaurantbrands.co.nz/files/documents/corporateresponsibility/restaurantbrandscsr.pdf>

- If the aim of these activities is truly to give back to communities, companies should have no objections to these revisions.

Question 10. Do you support or oppose the introduction of independent monitoring and evaluation of the codes? How would this work?

Response:

- We strongly support the introduction of independent monitoring and evaluation of the Codes. This will ensure industry are aware of and comply with the Codes, which in turn protects New Zealand children.
- The current on-line complaints process for consumers is valuable and should be retained, but the public are generally unaware of the conditions within the Codes and this process alone cannot be expected to ensure industry compliance.
- Independent monitoring should:
 - Be undertaken regularly (at least once a year) using an open-access, systematic process covering all television hours, but focused specially on those relevant to children
 - Be contracted to an impartial individual or (preferably) group. Groups that may be suitable include: non-government organisations, District Health Boards, Universities, Independent Research Organizations, Market Research Companies
 - Not involve industry, with the exception of notification of member sanctions (see response to Question 11).

Question 11. What is your view of the sanctions imposed by ASA when a complaint is upheld?

Response: Currently, if a complaint is upheld ASA just requests removal or amendment of the advertisement. In fact a search for the term 'sanction' on the ASA website produces no results. In our view, this is a wholly insufficient response to marketers found to be in breach of the code. We believe sanctions such as those employed by the UK Advertising Standards Authority³⁶ should be applied where a complaint is upheld i.e.:

- Public notification of marketers found to be in breach of the code. Their name and non-compliance should be featured on a dedicated section of the ASA website
- Alerts to its members, including the media, advising them to withhold services such as access to advertising space
- Disqualification from industry awards
- Persistent or serious offenders should be required to have their marketing material vetted before publication

³⁶ See <https://www.asa.org.uk/Industry-advertisers/Sanctions.aspx>

Question 12. Are there environments where you consider it to be inappropriate to advertise to children?

Schools and early childhood education centres, school food zones and children's sport clubs and events should be completely free from unhealthy food marketing and sponsorship. Please also see our response to Question 4.

Conclusion

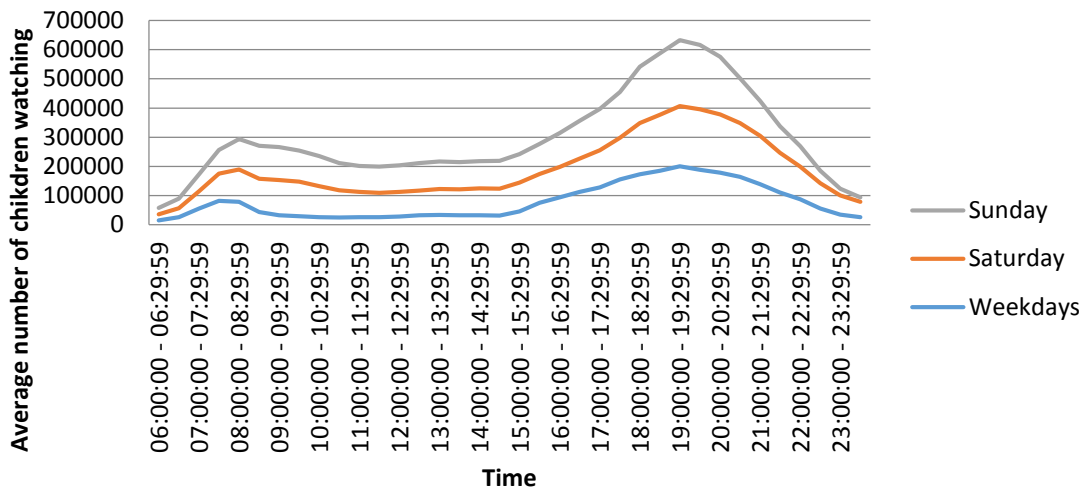
Thank you for the opportunity to make a submission to the 2016 Consultation on the Review of the Code for Advertising to Children and the Children's Code for Advertising Food. As we outline above, the current Codes are not sufficient to reduce exposure of children to excessive volumes of powerful, persuasive and predatory unhealthy food marketing across multiple advertising platforms. We therefore argue strongly for the revised Codes to adopt the recommendations made in this submission.

Annex 1 Individuals who contributed to and support this submission in alphabetical order

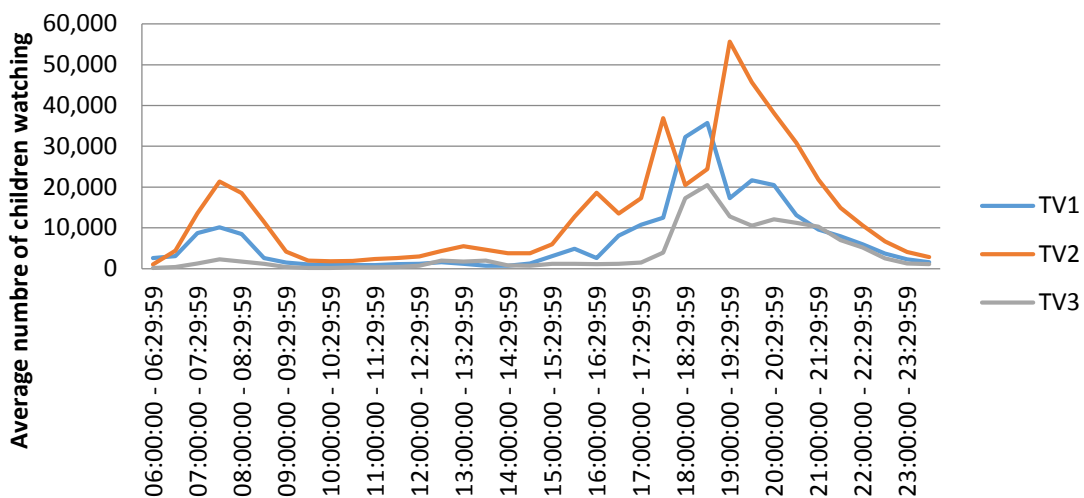
NAME	DISCIPLINE, DEPARTMENT, INSTITUTION
Dr Amy Bird	Clinical Psychology, General Practice & Primary Health Care, University of Auckland
Tina Buch	Nutrition, School of Population Health, University of Auckland
Professor Chris Bullen	Public Health Medicine, National Institute for Health Innovation, University of Auckland
Dr Helen Eyles	Nutrition, National Institute for Health Innovation & Epidemiology & Biostatistics, University of Auckland
Sarah Gerritsen	Epidemiology, Centre for Longitudinal Research, University of Auckland
Dr Rob McNeill	Health Systems, School of Population Health, University of Auckland
Professor Cliona Ni Mhurchu	Population Nutrition, National Institute for Health Innovation, University of Auckland
Dr Vanessa Selak	Public Health Medicine, Epidemiology & Biostatistics, University of Auckland
Alanna Soupen	Nutrition, School of Population Health, University of Auckland
Dr Gerhard Sundborn	Nutrition, Epidemiology & Biostatistics, University of Auckland
Professor Boyd Swinburn	Population Nutrition, School of Population Health, University of Auckland
Dr Jennifer Utter	Nutrition, School of Population Health, University of Auckland
Dr Stefanie Vandevijvere	Nutrition, School of Population Health, University of Auckland
Associate Professor Natalie Walker	Epidemiology, National Institute for Health Innovation, University of Auckland
Dr Wilma Waterlander	Nutrition, School of Population Health, University of Auckland
Amanda Wood	Health Systems, School of Population Health, University of Auckland

Annex 2 Nielsen audience rating data for 2015

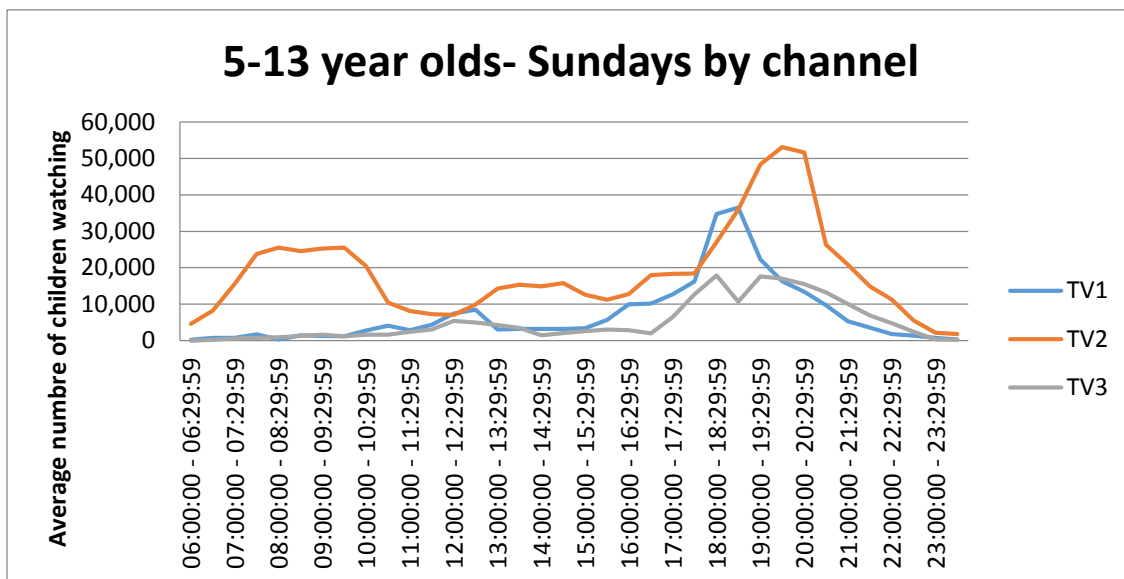
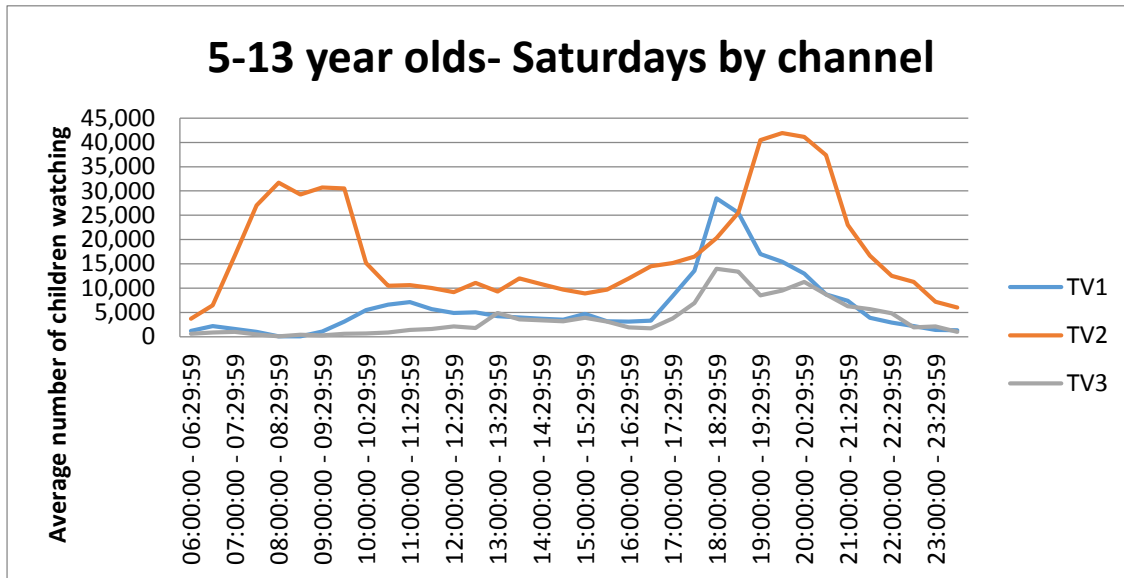
5-18 year olds- all channels by day type



5-13 year olds- weekdays by channel



Annex 2 Nielsen audience rating data for 2015 (continued)



Annex 3 Examples of food advertisements which recently appeared on TV and for which content and/or placement are considered inappropriate

Date	Channel	Programme	Company	Product	Ad start	AUD% 5-13	AUD % 14-18	Promo-tional charac-ters or pre-mium offers used?	Aired during children's program?	Aired before BSA cut off? (8:30 pm)
8-Aug-15	TV2	Zoom	Wendy's	Baconator burger with Terminator movie tie in	19:13:48	7.8	4.0	Yes	Yes	Yes
8-Aug-15	TV2	Zoom	Subway	Country chicken sub	20:10:16	7.9	3.8	Yes	Yes	Yes
14-Jun-15	TV2	Thunderbirds Are Go	KFC	Family favourites bucket- family with teenagers in ad	18:21:33	5.2	1.8	Yes	Yes	Yes
14-Jun-15	TV2	The Smurfs 2	Dominos	New pizza	18:22:17	5.2	1.8	Yes	Yes	Yes
14-Jun-15	TV2	Thunderbirds Are Go	Pizza Hut	Classic pizzas	18:24:27	5.2	1.8	No	Yes	Yes
14-Jun-15	TV2	The Smurfs 2	Pizza Hut	Classic pizzas	18:34:26	7.0	2.2	No	Yes	Yes
14-Jun-15	TV2	The Smurfs 2	Red Bull	Red Bull- cartoon characters	19:02:05	9.3	4.0	Yes	Yes	Yes
14-Jun-15	TV2	The Smurfs 2	Mondelez (Cadbury)	Dairy milk range- family playing dominos with chocolate blocks	19:03:04	9.3	4.0	Yes	Yes	Yes
14-Jun-15	TV2	The Smurfs 2	Mondelez (Cadbury)	Dairy milk range- family playing dominos with chocolate blocks	19:18:06	9.3	4.0	Yes	Yes	Yes
14-Jun-15	TV2	The Smurfs 2	Mars Inc.	Maltesers	19:18:21	9.3	4.0	No	Yes	Yes
14-Jun-15	TV2	The Smurfs 2	Mars Inc.	Maltesers	19:42:08	10.2	4.1	No	Yes	Yes
14-Jun-15	TV1	The Chase	Mars Inc.	MnMs with MnM character	10:14:55	0.1	0.4	Yes	No	Yes
14-Aug-15	TV3	Baggage	Burger King	\$12 big feed- teenagers in ad	12:48:32	0.4	0.2	Yes	No	Yes
14-Aug-15	TV3	Entertainment Tonight	Burger King	\$12 big feed- teenagers in ad	16:18:02	0.2	0.2	Yes	No	Yes
14-Aug-15	TV1	Millionaire Hot Seat	Mars Inc.	MnMs with MnM character	17:31:47	2.4	2.4	Yes	No	Yes
14-Aug-15	TV3	The Block: Triple Threat	Burger King	\$12 big feed- teenagers in ad	17:37:58	0.8	0.6	Yes	No	Yes
24-Jul-15	TV1	ONE News at 6pm	Wrigley	Skittles Fruits- overweight teenagers in ad	18:37:25	6.9	4.7	Yes	No	Yes
14-Aug-15	TV2	Take Me Out	Burger King	\$12 big feed- teenagers in ad	21:21:31	4.2	4.2	Yes	No	No

14-Aug-15	TV2	Take Me Out	Mars Inc.	MnMs with MnM character Kinder surprise chocolate- kid in ad plus toy included	21:36:08	2.9	3.4	Yes	No	No
17-Aug-15	TV3	Entertainment Tonight	Ferrero		16:20:00	0.2	0.2	Yes	No	Yes
17-Aug-15	TV3	Shark Tank	Mars Inc.	MnMs with MnM character Gold jelly bears; kid talking throughout advertisement	20:46:32	2.2	3.0	Yes	No	No
22-Aug-15	TV3	Survivor Phillipines	Haribo		11:43:09	0.3	0.2	Yes	No	Yes
8-Aug-15	TV3	Jamie's 30 Minute Meals America's Funniest Home Videos	Burger King	\$12 big feed- teenagers in ad	16:47:24	0.3	0.3	Yes	No	Yes
22-Aug-15	TV2		Mars Inc.	MnMs with MnM character	17:08:49	2.9	1.9	Yes	No	Yes
8-Aug-15	TV2	All New Wipeout	Burger King	\$12 big feed- teenagers in ad Gold jelly bears; kid talking throughout advertisement	18:11:23	3.9	1.8	Yes	No	Yes
22-Aug-15	TV3	American Ninja Warrior	Haribo		19:48:13	1.8	2.7	Yes	No	Yes
8-Aug-15	TV3	Masterchef	Coca Cola	Powerade- All Blacks in ad Kinder surprise chocolate- kid in ad plus toy included	20:13:44	2.2	2.4	Yes	No	Yes
14-Jun-15	TV3	Dancing With the Stars	Ferrero		15:55:00	0.6	0.3	Yes	No	Yes
14-Jun-15	TV2	Home and Away	Pizza Hut	Pizza- Thunderbirds are go sponsor the advertisement Gold jelly bears; kid talking throughout advertisement	17:59:50	3.6	1.9	Yes	No	Yes
16-Aug-15	TV3	Masterchef NZ	Haribo		19:45:56	3.3	3.0	Yes	No	Yes
16-Aug-15	TV2	I Can Do That USA There's No Taste Like Home	Mars Inc.	MnMs with MnM character Sour Patch kids with Sour Patch character & teenager in advertisement	20:16:26	9.9	3.8	Yes	No	Yes
2-Jul-15	TV1	Baggage	Pascall		10:52:33	0.2	0.4	Yes	No	Yes
2-Jul-15	TV3	Baggage	Coca Cola	Powerade- All Blacks in ad The 'Bomb' burger. Burger is 'Joseph Parker's favourite' for "only \$3".	12:37:42	0.4	0.2	Yes	No	Yes
2-Jul-15	TV3	Baggage	Burger King		12:38:13	0.4	0.2	Yes	No	Yes
2-Jul-15	TV1	Millionaire Hot Seat	Mars Inc.	MnMs with MnM character Sour Patch kids with Sour Patch character & teenager in advertisement	17:38:28	2.4	2.4	Yes	No	Yes
2-Jul-15	TV1	Britain's Got Talent	Pascall		20:10:50	4.0	3.3	Yes	No	Yes