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ASA Secretariat
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Submission to the Advertising Standards Authority by the Health Promotion and Policy Research Unit, Department of Public Health, University of Otago, Wellington

Review of the Code for Advertising to Children and the Children's Code for Advertising Food

1. Introduction

- (i) The Health Promotion and Policy Research Unit (HePPRU) appreciates the opportunity to provide this submission on the Review of the Code for Advertising to Children and the Children's Code for Advertising Food (the Codes). We agree to this submission being made public.
- (ii) HePPRU would like to present an oral submission if the opportunity is provided. Please contact: Associate Professor Louise Signal, Director, louise.signal@otago.ac.nz
- (iii) HePPRU brings together health promotion and public health policy researchers working at the University of Otago, Wellington. We also work closely with researchers in other University of Otago sites, at other universities inside and outside of New Zealand, and with staff from other agencies involved with health promotion and policy.

HePPRU aims to foster excellence in research in health promotion and public health policy. HePPRU works in collaboration with policy-makers and policy advocates to advance the good health of the peoples of Aotearoa/New Zealand through independent, critical and innovative research, teaching, and community service. The multi-cultural and multi-disciplinary team within HePPRU has expertise in qualitative and quantitative research methods.

The Unit has a particular emphasis on the prevention of non-communicable diseases (NCDs). It has a strong focus on risk factors including nutrition and tobacco. It also has a strong focus on promoting the health and well-being of children, teaching and community service. Members of HePPRU are leading and contributing to a programme of research that will inform health promotion and public health policy development and advocacy. The Unit is committed to Treaty-based research and uses the Ottawa Charter as a working framework.

- (iv) HePPRU **supports** the recommendations in WHO's *Report of the Commission on Ending Childhood Obesity*¹, including that governments implement WHO's *Set of recommendations on the marketing food and non-alcoholic beverages to children*².
- (v) According to the United Nations Convention on the Rights of the Child (UNCRC), children have the right to health and to live in an environment that supports that right, including a healthy and supportive food environment³. Children have the right for their best interests to be the primary concern in all matters that impact them³. They must also be protected from information, including that conveyed by food and beverage marketing, harmful to their health and well-being.
- (vi) The current Codes require strengthening to ensure New Zealand children's rights are realised. In the context of this submission, the decisions made about food and beverage marketing to children must be weighted in favour of their health and well-being, over the commercial interests of the food and marketing industries. This premise should underpin the new Codes.
- (vii) The food and advertising industries have an obligation to ensure that children's rights are respected and protected, and that any breaches of their rights are remedied.⁴ The document *Children's Rights and Business Principles*⁴ provide guidance for industry in interpreting and applying children's rights to their business activities. HePPRU **recommends** that the Review Panel consult this document when amending or developing new Codes.
- (viii) We first provide a summary of the underlying health issues that form the basis of this submission, that is, the prevalence of diet-related chronic conditions, especially obesity, in New Zealand children. We then address the questions in the submission document and provide a summary of our recommendations.
- (ix) To align with the Review Panel's intentions, this submission takes an evidence-based approach to requests for change or amendments to the Codes.

2. Background

- (i) The prevalence of several diet-related chronic conditions has become a significant issue for the health and well-being of New Zealand children and society. In 2014/15, just over one in five New Zealand children were overweight (2-14y, 21.7% and 15-17y,

20.3%) and one in ten (10.8%) 2-14 year olds and one in six (16.4%) 15-17 year olds were obese.⁵ Māori and Pacific children, and children from areas of high deprivation are disproportionately impacted.⁵ Consequently, young New Zealanders are the third most overweight or obese children in the OECD.⁶ Furthermore, in contrast to several other Western countries where the prevalence of child obesity appears to have stabilised,⁷ it appears to be increasing in New Zealand.⁵

- (ii) Obesity is a key risk factor for type 2 diabetes, including in children.^{8,9} Typically diagnosed in adulthood, New Zealand children are now presenting with type 2 diabetes, some as young as seven.^{10,11}
- (iii) Half of all New Zealand children have experienced dental caries (tooth decay) by the time they are twelve. Treatment for dental caries is the leading cause of avoidable hospital admissions for New Zealand children aged 0-14y,¹² with one in five (20.7%) children on hospital waiting lists for such care.¹² In 2009, 5050 children aged 8 years or younger had their teeth filled or extracted under general anaesthesia in New Zealand hospitals.¹³
- (iv) The consequences of overweight and obesity, and type 2 diabetes are considerable. Children's quality-of-life is substantially reduced, and they face a greater risk of developing other chronic conditions such as cardiovascular disease, musculoskeletal disorders, and social and mental health problems.^{14,15} The consequences of dental caries is associated with considerable morbidity and poorer quality of life, including pain and infection; anxiety; reduced function, notably speech and chewing; poor nutrition status; and loss of self-esteem.¹⁶⁻¹⁸ If developed in childhood, many diet-related chronic conditions continue through into adulthood. Such conditions also place substantial financial burdens on individuals and society.^{16,19,20}
- (v) Food and beverage marketing has been identified as "a significant independent determinant of children's food behaviours and health status".^{21(p214)} This situation is supported by evidence from a number of sources,^{1,21-24} most recently WHO's *Report of the Commission on Ending Childhood Obesity*:

There is unequivocal evidence that the marketing of unhealthy foods and sugar-sweetened beverages is related to childhood obesity. Despite the increasing number of voluntary efforts by industry, exposure to the marketing of unhealthy foods remains a major issue demanding change that will protect all children equally. Any attempt to tackle childhood obesity should therefore, include a reduction in exposure of children to, and the power of, marketing.^{1(p18)}

3. Response to questions in submission document

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

- (i) The current Codes are based on some provisions within UNCRC, stating that children's protection and best interests are a concern. This could be seen as strength. However, research demonstrates that the ASA's use of UNCRC is selective, used to serve industry's interests.²⁵ Children's rights are indivisible and as such should be applied in their entirety.³ Furthermore, UNCRC defines a child as any person under the age of 18³ However, the current Codes only include children up to that age of 14; children aged 15-17y are provided an "extended duty of care" within the adult-focussed Code for Advertising Food.²⁶ HePPRU **recommends** that the Code's definition of a child is any person under that age of 18, as defined by the Convention (See 3.7).
- (ii) Children have the right to have their opinions heard on all matters that concern them.³ The current Codes do not provide for children's views on the nature of the food and beverage marketing to which they are exposed, and the monitoring and evaluation processes of the Codes. HePPRU **recommends** that children are consulted in this review and children's representatives are included at all stages in the monitoring, evaluation and complaints processes in the future.
- (iii) The self-regulatory nature of the Codes, including the complaints system, is problematic. The Codes are industry-developed, voluntary, and lack independent monitoring and evaluation. This presents a conflict of interests between the rights of children as the primary consideration in developing and monitoring the Code and the concern of industry to consider the interests of share-holders. Thus, rather than serving the best interests of children, and their health and well-being, the Codes primarily prescribe criteria for industry's commercial interests. Research demonstrates that self-regulation is ineffective in reducing the amount of unhealthy food and beverage marketing, and inconsistent with health goals.^{25,27} HePPRU **recommends** mandatory regulation, and independent monitoring and evaluation, of food and beverage marketing.
- (iv) Although the current Codes encompass a range of marketing activities and media platforms, the list is not exhaustive. Furthermore, the Codes do make allowances for the rapidly emerging forms of media and marketing platforms.²⁸ Furthermore, although there are specific settings that are of significance to children, including home, school and sports clubs, children are exposed to food and beverage marketing in a variety of everyday settings and locations. The Codes do not encompass the marketing to which children are likely to be exposed to on a day-to-day basis.²⁹
- (v) The current Codes are ambiguous and open to interpretation. There is a lack of clarity and specificity regarding the types and frequency of advertising exposures, definitions in terms of the nutrient profile of foods and beverages, marketing techniques, and the content and emotive appeals used in the advertising. HePPRU **recommends** that criteria and definitions about food and beverage marketing are strengthened and

clearly stated in the Code to include the nature of the product, the nature of the communication and the nature of the medium.

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

- (i) The current complaints process relies on members of the public lodging complaints about advertisement they believe has breached the Codes. Research in countries with similar systems as New Zealand shows that the process is difficult to use. It also requires complainants to have a high level of resources in terms of time, knowledge and skill.³⁰⁻³² Parents are also often unaware of the system or do not complain because they perceive the system to be futile due to its low success rate.³⁰⁻³² In New Zealand, research shows that even highly-skilled and knowledgeable nutrition experts have difficulty using the system.³³
- (ii) As mentioned previously, the complaints process is industry-led and as such is subject to a conflict of interest between the commercial goals of industry and the health and well-being of children.
- (iii) The current complaints system is not timely and effective. By the time a complaint is lodged and reviewed, and sanctions (if any) imposed, the impact and potential harm of the advertisement has occurred. HePPRU **recommends** that immediately a complaint is lodged, the advertisement or marketing communication in question is removed and only re-aired or made public until it is reviewed.
- (iv) HePPRU **recommends** that the complaints process be more transparent and monitored by an independent panel consisting of health and child rights experts, and children's representatives. Furthermore, to identify any breaches of the Codes, food and beverage marketing communications that are currently public should be constantly monitored.
- (v) HePPRU **recommends** the implementation of a complaints process that is accessible to and easily used by the public, including children.
- (vi) HePPRU **recommends** that the complaints process is regularly promoted to the public, as occurs for breaches of the Broadcasting Standards.

3. *What changes, if any, are necessary to protect the rights of children and their health / well-being?*

- (i) Children's best interests must be the primary consideration of all individuals, groups and organisations in all matters that concern children.³ As previously mentioned, the food and advertising industries have an obligation to respect and protect children's rights, and to remedy any violations of children's rights. This premise should form the basis of any amendments to the current Code, or development of new Codes and guidelines.

- (ii) This means that decisions made about food and beverage marketing to children must be weighted in favour of children's health and well-being. Only healthy food should be marketed. To ensure this occurs, HePPRU **recommends** that all food and beverage marketing is evaluated by an independent panel consisting of nutrition, health and child rights experts before being aired or made public. A nutrient profiling system that is specifically designed for the regulation of food and beverage marketing should be used to evaluate the nutrient status of foods and beverages food producers and advertisers wish to promote.
 - (iii) HePPRU **recommends** that the health and child rights sectors have majority input into the development of the Codes, including the complaints process.
 - (iv) The recommendations in this submission are made with the best interests of children as a primary concern. Implementing the recommendations would protect the rights of children, and their health and well-being.
4. *Please comment on any concerns you have with different media formats in relation to advertising to children (for example, magazines, television, social media, websites).*
- (i) WHO defines food and beverage marketing as

any form of commercial communication or message that is designed to, or has the effect of, increasing the recognition, appeal and/or consumption of particular products and services. It comprises anything that acts to advertise or otherwise promote a product or service.^{34(p9)}

Marketing techniques include:

Advertising, sponsorship, product placement, sales promotions, cross-promotions using celebrities, brand mascots or characters popular with children, web sites, packaging, food labelling and point-of-purchase displays, e-mails and text messages, philanthropic activities tied to branding opportunities, and communication through “viral marketing”, and by word-of-mouth.^{2(p7)}

- (ii) HePPRU recommends that the Codes include the examples of marketing provided in WHO's *A Framework for the Implementation of the Set of Recommendations on the Marketing of Foods and Non-alcoholic Beverages to Children* (p. 10).³⁴
- (iii) Television is still a significant media format used by New Zealand children.³⁵ Although time restrictions are in place for food to advertising on free-to-air channels,³⁶ the time limits are inconsistent across the channels (being 5pm and 5.30pm) and do not correspond with the times that the majority of children watch television. Almost a fifth of New Zealand children report watching television after 8.30pm.³⁵ HePPRU recommends time restrictions for unhealthy food and beverage

marketing be extended to 9pm and when a programme's audience is expected to consist of more than 20% children, for example sports events and programming. This is in line with regulatory restrictions in other countries.³⁷

- (iv) Electronic media is playing an increasing role in New Zealand children's lives³⁵ and provides a largely unregulated platform for food and beverage marketing, including social media sites, websites, advergames and product placement in games and other electronic sources.²⁸ Therefore, it is likely that children are increasingly exposed, and unprotected against, such marketing.²⁸
 - (v) Product packaging is a key marketing medium^{21,22,24,38,39} not captured by the current Codes. Marketing techniques on food packaging aimed at children include the use of cartoon and film characters, sports celebrities, promotions and premiums, and health and nutrition claims.³⁹
 - (vi) Sponsorship is not captured by the current Codes. HePPRU's views and recommendations on sponsorship were outlined in point 3.9.
 - (vii) HePPRU recommends that the Codes encompass all media formats and that provision is made to incorporate new formats within the Codes as and when they become publically-available.
5. *If the content of advertisements is a concern, can you please give examples and / or supporting evidence? A product name and description would be helpful so we can source the advertisements.*
- (i) Marketing content impacts children's food and beverage preferences.^{22,22,24,40} Young children often view advertising as information, and cannot discern between programming and advertising. While older children are often cognisant of the persuasive intent of marketing, they frequently do not act on this knowledge.^{24,41} The use of persuasive techniques include, but are not limited to, premium offers, promotional characters, nutrition and health-related claims, the theme of taste, and the emotional appeal of fun.⁴⁰ Sports sponsorship, and associations with sport, including product endorsement by sports personalities, has a similar impact.⁴²⁻⁴⁴
 - (ii) The use of well-known athletes is particularly pertinent. Children perceive them as heroes and as such have considerable influence on children's food preferences and behaviours when used to endorse or be associated with food and beverage products.⁴⁵⁻⁴⁸ Such an association legitimises the consumption of food and beverages regardless of nutrient profile; implies that the products are healthy and part of a recommended diet, even when they are not; and encourages children to adopt the behaviours of their heroes.^{43,45,49-52}
6. *If the placement of advertisements is a concern, can you please give examples and /or supporting evidence? For broadcast media it would be helpful to have the*

time/date/channel or programme, for other media, a link / publication title / outdoor location would be appreciated.

- (i) The place where marketing activities are located is a key feature of the marketing mix.⁵³
- (ii) One key location which is especially concerning is food and beverage marketing around schools, such as on bus shelters and the backs of buses used to transport school children.

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

- (i) HePPRU **supports** extending the Code to include persons aged less than 18y.
- (ii) Doing so would ensure the Code is in keeping with (i) UNCROC;³ (ii) the WHO *Report of the Commission on Ending Childhood Obesity*;¹ (iii) the national obesity plan;⁵⁴ and (iv) *New Zealand's Food and Nutrition Guidelines for Healthy Children and Young People (Aged 2-18 Years)*.⁵⁵
- (iii) As previously mentioned, even though children over the age of 8 may be able to discern the persuasive intent of the marketing, they do not necessarily act on this knowledge.^{24,41} Moreover, young children are still impacted by marketing aimed at older children and young adults,² for example, energy and sports drinks.

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?

- (i) HePPRU **recommends** the use of a nutrient profiling system in the Code.
- (ii) Nutrient profiling systems may usefully inform consumers about healthier food and beverage choices^{56,57} and encourage food manufacturers to reformulate products.⁵⁷ Front-of-pack traffic light labelling systems have been shown to be the most effective interpretive labelling systems for consumers.⁵⁸
- (iii) New Zealand currently uses the voluntary Health Star Rating system. HePPRU does not recommend the use of the Health Star Rating system to evaluate the suitability of food and beverage marketing to children. The Health Star Rating system was not developed to support the restriction of food marketing to children. The nutrient profiling system that underpins the Health Star Rating system has been criticised as it results in healthy and unhealthy foods receiving similar ratings.⁵⁹ For example many fruits and nuts receive a three star rating while widely accepted 'junk' foods receive 2.5 stars.⁵⁹ Furthermore, the Health Star Rating applies only to packaged foods. Research indicates that almost half of vegetables do not receive a five star rating⁵⁹.

- (iv) HePPRU **recommends** the use of a fit-for-purpose system. One such system is the WHO Regional Office for Europe Nutrient Profile Model,⁶⁰ which has been developed specifically to underpin the regulation of food marketing to children. This model could be readily applied in its current form or adapted for the New Zealand without difficulty to evaluate food marketing before being aired or made public.

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

- (i) HePPRU **supports** a specific guideline on sponsorship.
- (ii) Sponsorship is a key marketing strategy used by companies to increase awareness, and generate brand loyalty and sales of products.⁶¹ Sport is a key activity that receives food and beverage sponsorship, but music concerts and other entertainment events also receive sponsorship funding.
- (iii) Unhealthy food and beverage sponsorship occurs at all levels of sport in New Zealand.^{62,63} However, there is a conflict of interest between the healthy nature of sport and the generation of income for sporting organisations and food companies from sponsorship.⁶² Furthermore, community organisations such as local sports clubs are particularly vulnerable to unhealthy food sponsorship given the perceived need for them to find funding sources.
- (iv) Sport plays a significant role in New Zealand children's lives. A substantial proportion (50-90%) of children engage in sport, either as players, leadership or support roles, or as spectators of live or televised sport.⁶⁴ As such, New Zealand children are likely to be exposed to substantial levels of food-related sponsorship of sport.
- (v) Research demonstrates that sports sponsorship influences children's food preferences, choices, purchasing and consumption.^{21,42,52,65,66} Sponsorship-related marketing communications in sport include, but are not limited to, Player of the Day vouchers, merchandise, sponsorship of equipment and uniforms displaying brand or company logos, funding for sports workshops and programmes, and hoardings and posters.^{62,67,68} HePPRU **recommends** that sponsorship-related marketing communications are included in the Code.

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

- (i) As previous stated, HePPRU **supports** the introduction of independent monitoring and evaluation of the Code.
- (ii) Such action is recommended by WHO to protect children and improve health outcomes¹

- (iii) Such action should be undertaken by members of the health sector, children's representatives and child rights advocates.

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

- (i) HePPRU view the sanctions imposed by the ASA when a complaint is upheld as weak, as the punitive measures do not provide a significant deterrent for the food industry nor signal the importance of the issue.
- (ii) HePPRU **recommends** implementing sanctions that include significant monetary losses for, and transparency in identifying, those companies and organisations that have breached the Codes. Such companies should be made to compensate for the harm inflicted and financially contribute to health promotion activities.

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

- (i) The *Report of the Commission on Ending Childhood Obesity* states that “settings where children and adolescents gather (such as schools and sports facilities or events) and the screen-based offerings they watch or participate in, should be free of marketing of unhealthy foods and sugar-sweetened beverages”.^{1(p18)}
- (ii) Settings where it is inappropriate to market to children include all educational facilities such as early-childhood centres, schools, after-school and holiday facilities; sporting facilities such as sports clubs and events; health organisations; public facilities such as libraries, recreation centres and areas; playgrounds, parks and halls, churches, bus stops and other transportation facilities.
- (iii) Research suggests that advertising to children in schools presents serious threats to children's education and to their psychological and physical well-being and recommends that, “policymakers should prohibit advertising in schools unless the school provides compelling evidence that their intended advertising programme causes no harm to children”.⁶⁹
- (iv) Normalising marketing activities in schools and differential school reliance on corporate sponsorship are a serious threat to the autonomy and integrity of both individual children, schools and the educational system as a whole. We **recommend** that the new codes specifically address advertising in schools.
- (v) However, as previously stated, children are exposed to food and beverage marketing throughout the day, on a daily basis.²⁹ The Code should encompass all unhealthy food marketing children are likely to be exposed to, regardless of setting.

13. Do you support or oppose combining the two codes? Why?

- (i) HePPRU **opposes** combining the two Codes.

- (ii) The prevalence of diet-related disease in New Zealand children is significant and alarming. To ensure that children's diet-related health is afforded the specific attention it requires, it is crucial that the Code for Advertising Food is maintained as a separate document.

4. Summary of HePPRU's recommendations

1. HePPRU **supports** the recommendations in WHO's *Report of the Commission on Ending Childhood Obesity*,¹ which includes governments implement WHO's *Set of recommendations on the marketing food and non-alcoholic beverages to children*.²
2. HePPRU **recommends**:
 - that children's rights are the primary concern, underpinning the amendment of the Codes, including the complaints process.
 - that the Review Panel consult the WHO document *Children's Rights and Business Principles*⁴ when amending the Code.
 - that the Code's definition of a child is any person under that age of 18
 - that the health and child rights sectors, and children's representative have majority input into the development of the Codes, including the complaints process.
 - that all food and beverage marketing is monitored and evaluated by an independent panel consisting of nutrition, health and child rights experts before being aired or made public
 - that a nutrient profiling system specifically developed for evaluating the suitability of food and beverages marketed to children is used.
 - that an easy-to-use, efficient, and transparent and independently monitored complaints system be implemented; that current food and beverage marketing activities be constantly monitored; that a new complaints system encompass a component that is easy for children to use; that strong sanctions are imposed for breaches of the Codes. Also, that the complaints system is regularly promoted to the public.
 - that the Codes encompass all media formats and a broad range of settings and locations.
 - that criteria and definitions about food and beverage marketing are strengthened and clearly stated in the Code to include the nature of the product, the nature of the communication and the nature of the medium.
 - that a specific guideline on sponsorship is developed.
 - that the two Codes remain separate.

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