



**FreeTV**  
Australia

## **Submission by Free TV Australia**

Select Committee into the obesity epidemic  
in Australia

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July 2018

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## 1 Executive Summary

- Free TV acknowledges obesity is a multifaceted and important problem facing the community. We also recognise the growing level of concern in the community and among policy makers regarding this health challenge.
- Commercial free-to-air television remains an important and trusted source of news and entertainment for Australians. Free-to-air television is already the safest platform for families to come together to be entertained.
- Through a series of mutually reinforcing Codes of Practice there are already an extensive range of restrictions on both the scheduling and content of advertising on commercial free-to-air television.
- In addition to our own Commercial Television Code of Practice, other codes specifically regulating the advertising of food and beverage products include the:
  - AANA Food and Beverages: Advertising and Marketing Communications Code;
  - AANA Code for Advertising and Marketing Communications to Children
  - AFGC Responsible Children's Marketing Initiative (RCMI) for of the Australian Food and beverage Industry; and
  - AFGC Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (QSRI).
- In addition, advertising directed to children is subject to increased regulation through the Children's Television Standards (CTS).
- In seeking to address this issue, it is important to have a solid evidence base from which to form policy prescriptions. Studies to date have had mixed results on the impact of advertising on food intake with very few studies being undertaken in the Australian context that recognise the extensive existing controls on TV advertising.
- There is no definitive evidence that further restrictions on food advertising to children will materially impact childhood obesity rates, but it is clear that further restrictions will negatively impact broadcasters' ability to provide quality Australian programming which educates, informs and provides material of social and cultural benefit to children.
- Child audiences for live TV are small and falling, particularly in primetime. In 2017, 91 percent of Australian children were not watching television in primetime. These days children are mostly watching video content on unregulated platforms like YouTube.
- Accordingly, rather than imposing further restrictions on what is already the most heavily regulated platform, the Committee should focus on more holistic strategies that address the broad range of lifestyle factors that contribute to obesity.

## 2 Introduction

Free TV Australia (Free TV) thanks the Committee for the opportunity to submit on the important issue of obesity in Australia. Free TV represents all of Australia's commercial television networks, covering metropolitan, regional and remote areas.

Free TV strongly supports the submission made by the Australian Association of National Advertisers (AANA) to this inquiry. Free TV's submission adds to the AANA submission by highlighting issues specific to the commercial free-to-air television platform.

This submission is broken into 3 sections:

- **Introduction and context** – The value of commercial free-to-air television remains high, but is operating in a very competitive market for advertising against entirely unregulated platforms.
- **Existing protections** – Television is already the safest platform for families and there are a range of existing Codes that limit the amount of advertising and the content of advertising that can be broadcast.
- **Multifaceted causes of obesity** – The causes of obesity are broad, from the food and lifestyle choices to parental and genetic influence. Accordingly, policy prescriptions need to address a broad spectrum of root issues. There is a lack of evidence of a direct link between exposure to advertising in the Australian context and obesity. International studies, or studies that include exposure to internet advertising cannot be relied upon as they do not take into account the efficacy of the existing safeguards on commercial television.

### 2.1 The value of commercial free-to-air television services

The value of commercial free-to-air television to the Australian public remains high. At no cost to the public, we provide a diverse range of channels and content across a broad range of genres, as well as rich online and mobile offerings. These programs are provided free of charge into 99% of Australian households and reach 13 million Australians on average every day.

Our industry is proudly the largest producer and commissioner of Australian content, responsible for \$6 out of every \$10 spent on domestic content. The latest financial reports by the ACMA show that local content investment continues to grow and now stands at over 80% of all content spending.<sup>1</sup>

We are deeply committed to ensuring Australian audiences continue to see Australian faces, voices and stories on their screens. The local content broadcast by our members also delivers enormous cultural and social value by creating and reinforcing our national identity.

Free TV members also transmit local news services into around 40 markets across Australia. Our members cover events of national significance, provide critical information in times of emergency and bring Australians together to witness moments in history, life changing occasions and times of national success.

These are services that are not available on any other platform. However, we can only continue to provide these vital services by earning revenue from advertising.<sup>2</sup> In an already challenging commercial environment, further advertising restrictions would impact on our ability to continue to provide quality local programming, news, documentaries and live sport.

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<sup>1</sup> <https://www.acma.gov.au/theACMA/Library/Industry-library/Broadcasting/broadcasting-financial-results-report>

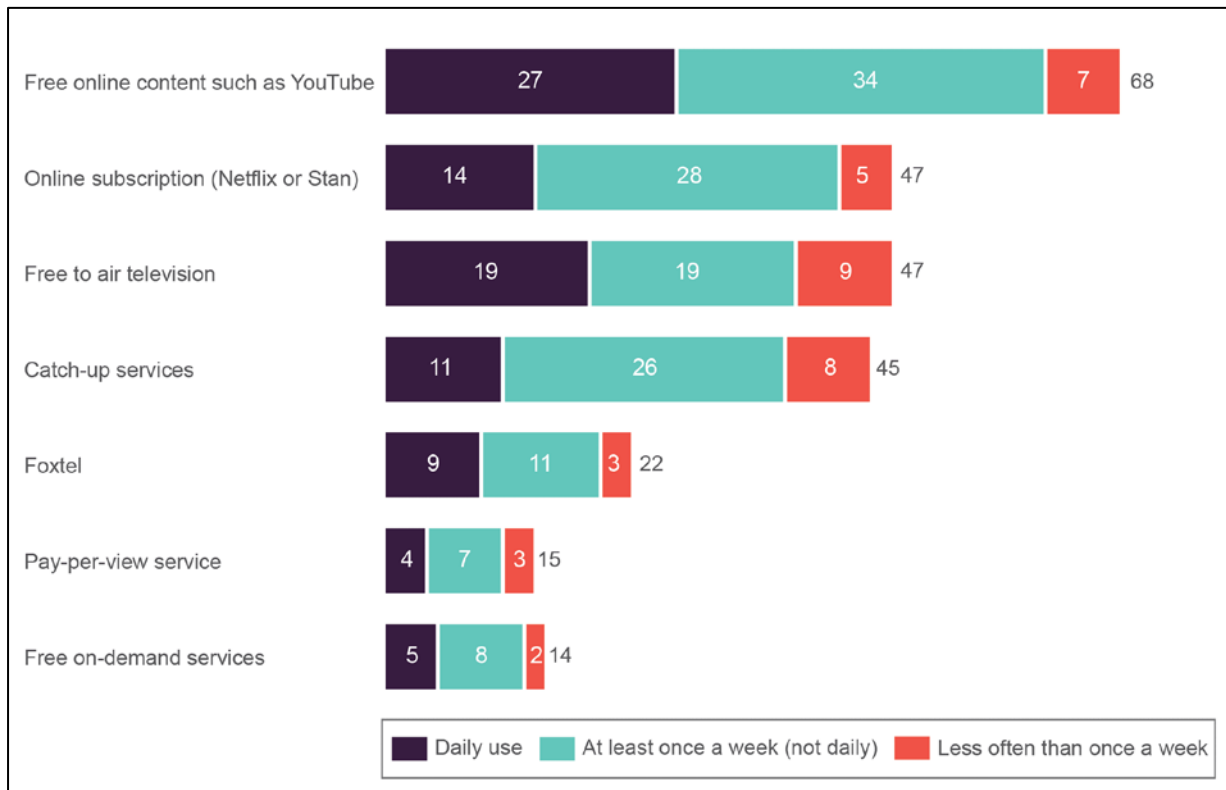
<sup>2</sup> Under the Broadcasting Services Act, commercial television broadcasters are expected to primarily generate their income from advertising. See Section 14, *Broadcasting Services Act 1992*(Cth)

## 2.2 Regulatory bypass – children are already on unregulated platforms

Much of the concern regarding the advertising of food and beverages relates to the exposure of children to such advertising. In this context it is important to recognise that children are watching less commercial free-to-air TV. When they do, they are now most likely to be co-viewing with other family members. This issue is explored further in section 4.3.

A recent survey of parents and guardians by the Australian Communications and Media Authority (ACMA) showed that children today are more likely to watch children’s programming on the Internet – especially on YouTube – than free-to-air television of any kind.

**FIGURE 1: PLATFORMS USED TO WATCH CHILDREN’S PROGRAMS, BY FREQUENCY**



Source: *Children’s television viewing and multi-screen behaviour*, ACMA, August 2017.

The commercial television platform is already the most heavily regulated platform and safest environment for children and families. With children now predominantly watching content on platforms like YouTube, applying simplistic policy solutions like further regulating the TV platform, would not only reduce the revenue available to fund Australian services, but would also fail to achieve the policy intent.

## 2.3 Advertising would not simply be replaced—services would suffer

In real terms, the total expenditure on advertising in Australia has been relatively static over the last decade. In 2016/2017 total expenditure was just under \$15.5 billion, compared to just over \$15.7 billion in 2006/2007. What has changed over this period is how much of this advertising spend goes to unregulated online players, like the owner of YouTube—Google.

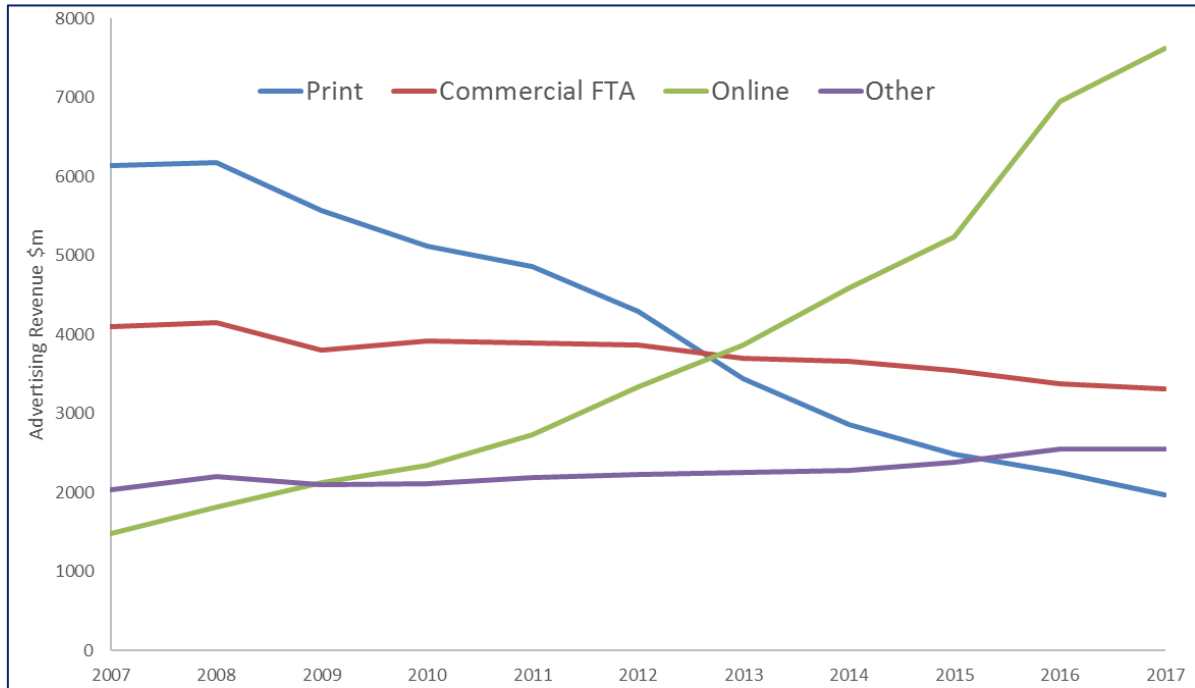
Over the last decade, there has been over 400% growth in online advertising revenue, entirely at the expense of local media companies. This is shown in Figure 2. Last month, a survey of the global advertising industry found Facebook and Google had increased their share of the online marketing sector in taking 135% of new ad spending in 2017.

Where advertising restrictions apply only to one sector, advertising can very easily move from one platform to the next. Advertising that is lost to one platform—such as free-to-air television—is not replaced by other advertising.

This creates the risk of regulatory bypass and given the current viewing behaviour of children may cause the perverse outcome of increasing the exposure of advertising of food and beverages to children on unregulated platforms.

Accordingly, Free TV recommends that the Committee avoid simplistic findings around the need for further advertising restrictions on commercial television, but rather investigate positive ways in which the broadcast platform can assist in addressing the causes of obesity.

**FIGURE 2: CHANGING COMPOSITION OF ADVERTISING SPEND**



Source: CEASA, 2017

### 3 Existing regulation of advertising

Through an extensive array of regulatory controls, commercial free-to-air television provides the safest platform for families to come together to be entertained. As discussed in this section, television specific regulations apply in addition to economy-wide consumer safeguards that protect consumers from inaccurate information.

#### 3.1 Commercial Television Industry Code of Practice

Commercial free-to-air television content is regulated under the Commercial Television Industry Code of Practice (Free TV Code). The Code is developed by Free TV in consultation with the public and must be registered with the ACMA.

The Code is reviewed regularly and was last updated in March 2018. Before registering the Free TV Code, the ACMA must be satisfied that it reflects community standards. In particular, the ACMA is only permitted to register a Code where it is satisfied that:

- it provides adequate consumer safeguards for the matters covered by the Code;
- it is endorsed by the majority of the commercial television stations; and
- members of the public were given an adequate opportunity to comment through a public consultation process.

The ACMA is then tasked with enforcing the Free TV Code, with significant penalties for non-compliance.

The Free TV Code imposes restrictions on the amount of advertising scheduled in all programs across the viewing day. The Code aims to balance the interests of viewers in uncluttered program presentation, while enabling broadcasters to earn sufficient revenue to continue to invest in important local news and current affairs services, and provide live sport and entertainment programming to all Australians free of charge. The average amount of non-program matter permitted in each hour schedule ranges from 13 minutes to 15 minutes.

TV advertising is also subject to the classification provisions of the Free TV Code. This provides further safeguards for children so that advertisements are placed in the appropriate time zones.

In the periods where advertising is permitted, the Free TV Code requires that advertisers comply with a stringent self-regulatory system for advertising food and beverage products. Self-regulatory codes and principles that apply to food and beverage advertising are:

- AANA Code of Ethics;
- AANA Food and Beverages: Advertising and Marketing Communications Code;
- AANA Code for Advertising and Marketing Communications to Children (which specifically includes restrictions on food advertising which may promote an unhealthy lifestyle);
- AFGC Responsible Children's Marketing Initiative (RCMI) for of the Australian Food and beverage Industry; and
- AFGC Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (QSRI).

These Codes and Initiatives have been negotiated with government, industry and advertisers to ensure appropriate advertising of food choices, particularly to children. Costs to handle consumer complaints are borne by industry.

The AANA Code for Advertising to Children provides that advertisements to children which include to or refer to a 'premium'<sup>3</sup> should not create a false or misleading impression in the minds of children about the nature or content of the advertised product.

The AFGC Code commits signatories to only advertise food or drink to children that are healthier choices. In addition, the AFGC Initiatives provide a common framework for food manufacturers and quick service restaurant companies to ensure parents or guardians can make informed product choices for their children.

Complaints under the AANA Codes and AFGC Initiatives may be sent to Ad Standards (formerly the Advertising Standards Bureau) for investigation and determination and the case report is published on the Ad Standards website.

The Food Acts of various states and territories also prohibit the advertising of food in a manner which is false or misleading.

### **3.2 Enforcing the AANA and AFGC Codes**

The advertising industry-regulation system is managed through Ad Standards and funded through a voluntary levy. Complaints about advertising are determined by the Ad Standards Community Panel. The Ad Standards Community Panel is made up of a representative cross-section of the community, providing a free public complaints resolution service.

The key protections are that food and beverage advertising and marketing communication must:

- be truthful and honest and not misleading or deceptive;
- not undermine the importance of healthy or active lifestyles;
- not encourage excessive consumption; and
- have appropriate substantiation for claims made.

In addition, there are a range of protections specifically designed for children, including that advertising must not:

- encourage an inactive lifestyle or unhealthy eating or drinking habits;
- employ ambiguity or a misleading sense of urgency;
- feature inappropriate price minimisation;
- undermine the role of parents e.g. by encouraging 'pester power';
- feature ingredients or premiums unless they are an integral element of the product; and
- claim the product will give a child a physical, social or psychological advantage over other children.

Although the AANA and AFGC Codes are voluntary and form part of a self-regulatory system, there is complete compliance by advertisers with Ad Standards decisions. Where advertising is found by Ad Standards to be in breach, a cooperative arrangement between Ad Standards and Free TV means that those advertisements are immediately removed from broadcast.

In addition, clause 5.7.1 of the Free TV Code specifically enshrines the AANA Codes. A more detailed description of the protections afforded under the AANA and AFGC codes is included in the AANA submission to this inquiry.

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<sup>3</sup> The AANA Code for Advertising to Children defines Premium as being anything offered either free, at a reduced price, or with an additional cost and which is conditional upon the purchase of an advertised product.



### 3.3 Children's television standard

Each commercial network is currently required to broadcast a minimum of 260 hours of children's (C) and 130 hours of Australian preschool (P) programming annually. This content must be approved by the ACMA as being compliant with the Children's Television Standards (CTS) before programming can be counted towards the relevant C and P quotas.

The CTS heavily regulates the advertising that can be shown during C and P programming. No advertisements can be shown at all during P programs. Advertisements during C programming are subject to additional time limits beyond the amounts ordinarily permitted in other programming. In addition, stringent classification requirements apply for advertisements suitable for broadcast during C programs. For example, advertisements must not be designed to put undue pressure on children to ask their parents or another person to purchase an advertised product or service and no advertisement can be broadcast more than twice during any 30-minute period.

However, it is worth noting that despite commercial broadcasters investing millions annually to create this award-winning C and P content, on average only 6,800 children actually watch these shows.

### 3.4 Competition and Consumer Act

The *Competition and Consumer Act 2010* (CCA) protects consumers by prohibiting misleading and deceptive conduct in trade or commerce. Misleading consumers about the nutritional value of a food product for example, would be caught by the CCA. The impression left in the mind of the viewer and in particular the child viewers is important in determining whether an advertisement is misleading or deceptive.

Complaints about misleading and deceptive conduct are investigated by the Australian Competition and Consumer Commission (ACCC) and the complaint process is described clearly on the ACCC's website. The ACCC has a range of penalties available to it including fines, injunctions (to require withdrawal of the advertisement), corrective advertising and compliance programs.

### 3.5 Other legislative protections

From 18 January 2016, all businesses have had to be compliant with a new regulatory regime covering nutrition content and health claims on food labels and in advertisements. This framework is established under the Australia New Zealand Food Standards Code and is enforced by Food Standards Australia New Zealand (FSANZ), the Australian and New Zealand regulatory body.<sup>4</sup>

The Code sets out a highly prescriptive regulatory regime for health and nutrient claims. For example, Schedule 4 of the Code requires that the claim "low sodium" can only be made if the food contains no more than 120 milligrams of sodium per 100 grams.<sup>5</sup>

Misleading and deceptive conduct is also prohibited under the State Food Acts. The Food Standards Health Code and the Code of Practice on Nutrient Claims provide more detail in relation to claims in food advertising.

Complaints can be made to FSANZ and the State/Territory Health Departments. Penalties include fines, withdrawal of the advertisement and corrective advertising.

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<sup>4</sup> <http://www.foodstandards.gov.au/>

<sup>5</sup> <https://www.legislation.gov.au/Details/F2017C00711>

## 4 The multifaceted obesity problem

Obesity is a problem which has a number of different, sometimes interrelated causes. In order to successfully design public policy solutions, it is important that the drivers be properly understood. In the absence of this understanding, policy prescriptions—such as increasing advertising controls—may have unintended consequences that have the potential to do more harm than good.

### 4.1 Outlining the spectrum of causes

At a base level, obesity is caused by the intake of more energy through food and drink, and the amount of energy used by activities of daily life with the unused energy is stored in the body as fat.<sup>6</sup> As children who are obese are more likely to continue being obese throughout their lifetime, there is naturally a focus on improving health outcomes for children.<sup>7</sup>

The AANA submission highlights the Foresight Obesity System Map, commissioned by the UK Government.<sup>8</sup> This analysis maps more than 100 factors that may be influencing the observed increases in obesity. Only one of the drivers described in this analysis relates to marketing.

More simply, the Victorian Government's Better Health Website notes that factors that may cause children to become overweight and obese include:

- Food choices;
- Lack of physical activity;
- Spending a lot of time on sedentary pursuits;
- Overweight parents; and
- Genetics.<sup>9</sup>

Under each of these broad drivers are a set of behaviours that will need a comprehensive strategy to address. For example, related to food choices the Australian Government notes that unhealthy food choices relate to:

- eating processed or fast food high in fat;
- not eating fruit, vegetables and unrefined carbohydrates, such as wholemeal bread and brown rice;
- drinking too much alcohol;
- eating out a lot;
- eating larger portions than you need; and/or
- comfort eating.<sup>10</sup>

Given the breadth of the drivers of obesity and education needed to address the issue, a strategy encompassing all of these identified drivers is required. The television platform may have an important role to play in educating and informing Australians on important healthy lifestyle information. For example, to address a lack of physical activity the Australian Government recommends at least 30 minutes of moderate-intensity activity (for example, cycling or fast walking) on most days of the week.<sup>11</sup> However, applying further advertising

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<sup>6</sup> Obesity: Prevalence Trends in Australia, Australian National Preventive Health Agency, pg 18

<sup>7</sup> Ibid pg 1

<sup>8</sup> <https://www.gov.uk/government/publications/reducing-obesity-obesity-system-map>

<sup>9</sup> <https://www.betterhealth.vic.gov.au/health/healthyliving/obesity-in-children-causes>

<sup>10</sup> <https://www.healthdirect.gov.au/what-causes-obesity>

<sup>11</sup> ibid

restrictions does not represent a holistic obesity strategy and as noted above may drive perverse outcomes through regulatory bypass.

## 4.2 Advertising is not the main driver and should not be the main focus

Studies previously undertaken have generally not shown a clear link between television advertising and obesity. One article published in 2016 undertook a review of the data from 18 different studies into the impact of food and non-alcoholic beverage advertising and food consumption.

The paper concluded that analysis of the 18 datasets showed “no evidence of an effect on advertising on intake” for adults.<sup>12</sup>

While the study did conclude that a moderate impact was observed in relation to advertising to children, these results may not be relevant to television advertising in the Australian context. The dataset included by the researchers included exposure to internet advertising through advertising supported games.

Further, in the experiments children were exposed to greater levels of advertising than would be allowed under the existing regulations. For example, one experiment exposed children to ten advertisements in a ten-minute cartoon. This would breach both advertising limits for children’s programming and the regulation for the content of the advertisements as all were “unhealthy food advertisements”.

It is important that any policy prescriptions are drawn from studies that are relevant to the Australian context. Studies that rely on extensive overseas data fail to take into account the extensive regulation that already applies to Australian free-to-air television.

Previous work undertaken by the ACMA noted that “whilst research indicates a relationship between television viewing and increased Body Mass Index, overweight and obesity, the contribution of television advertising to the relationship appears inconclusive at this time”.<sup>13</sup>

The literature review undertaken for ACMA by Bond University’s Dr. Jeffrey Brand, Television Advertising to Children, A review of contemporary research on the influence of television advertising directed to children, found that:

*“public health literature points to a range of multi-factorial contributors to obesity, including hereditary, environmental, social and cultural factors”.*<sup>14</sup>

Dr. Brand reviewed the extensive research on the impact of television advertising on childhood obesity undertaken by the UK regulator, Ofcom in 2004. He concludes:

*“Ofcom stated that it is difficult to determine the relative contribution of television advertising by comparison with all the other factors that influence children’s food choice and health, and difficult to disentangle the contribution of television viewing as a factor associated with obesity”.*<sup>15</sup>

Other recent articles have pointed to socio-economic and geographic factors being a key driver of differing health outcomes.<sup>16</sup> These suggest that initiatives such as town planning and

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<sup>12</sup> Emma J Boyland Sarah Nolan Bridget Kelly Catrin Tudur-Smith Andrew Jones Jason CG Halford Eric Robinson, 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, The American Journal of Clinical Nutrition, Volume 103, Issue 2, 1 February 2016

<sup>13</sup> ACMA Children’s Television Standards Review, Issues Paper June 2007, page 30

<sup>14</sup> Dr. Jeffrey Brand, Television Advertising to Children, A review of contemporary research on the influence of television advertising directed to children, 2007 page 41

<sup>15</sup> *Ibid* page 42

<sup>16</sup> <https://www.theguardian.com/society/2016/dec/08/australias-obesity-gap-widening-between-country-and-city-report-finds>

education are more likely to have a direct effect on outcomes, as exposure to television advertising is likely common across all socio-economic groups.<sup>17</sup>

### 4.3 Child audiences for live TV are low

Further evidence that additional restrictions on television advertising would likely be ineffective can be found by examining the percentage of children watching live TV. The television platform has a robust measurement system, where audiences can be accurately estimated, including with demographic breakdowns.

At least one research paper has recently been published that attempted to draw conclusions regarding children's exposure to advertising by logging advertising on television, without overlaying this with the actual live TV audiences.

In this 2016 study, 30,000 hours of television were logged in an Adelaide based experiment.<sup>18</sup> Accordingly to their logging exercise, on average 1.7 adverts for discretionary foods were broadcast per hour. The study noted that "in the absence of any formally accepted definition" assumed children's peak viewing times were between 7am-9am and 4pm-10pm.<sup>19</sup> The study then assumed that the average 5 to 8-year-old was watching 1 hour and 20 minutes of television every day, leading to an estimated annual exposure of 4 hours (with some of that viewing time assumed to be as late as 10pm).

There are a number of problems with these assumptions. First, as a recent ACMA report highlights, Australian children now actually watch less than 40 minutes of commercial free-to-air television per day.<sup>20</sup>

Second, the analysis looks at the potential audience, rather than the actual audience. In fact, children make up a very small and falling proportion of the primetime audience. As shown in the graph below, in 2017 children aged between 5-12 made up just 4.9 per cent of the entire primetime audience. Expanding this to include all kids under 13 makes up only 7.6% of the audience.

Third, as noted previously, there are formally accepted classification zones for children on commercial television. P programming is only permitted between 7.00am to 4.30pm Monday to Friday, and C programming is only 7.00am to 8.30am Monday to Friday, 4.00pm to 8.30pm Monday to Friday, and 7.00am to 8.30pm Saturday, Sunday and School Holidays.

Finally, an analysis that simply looks at advertising during particular time bands without regard to whether the content would have appeal to children is of limited value for policy makers. During the time bands examined by this study, commercial broadcasters would have had large amounts of content of adult appeal including news and current affairs programs and M classified content.

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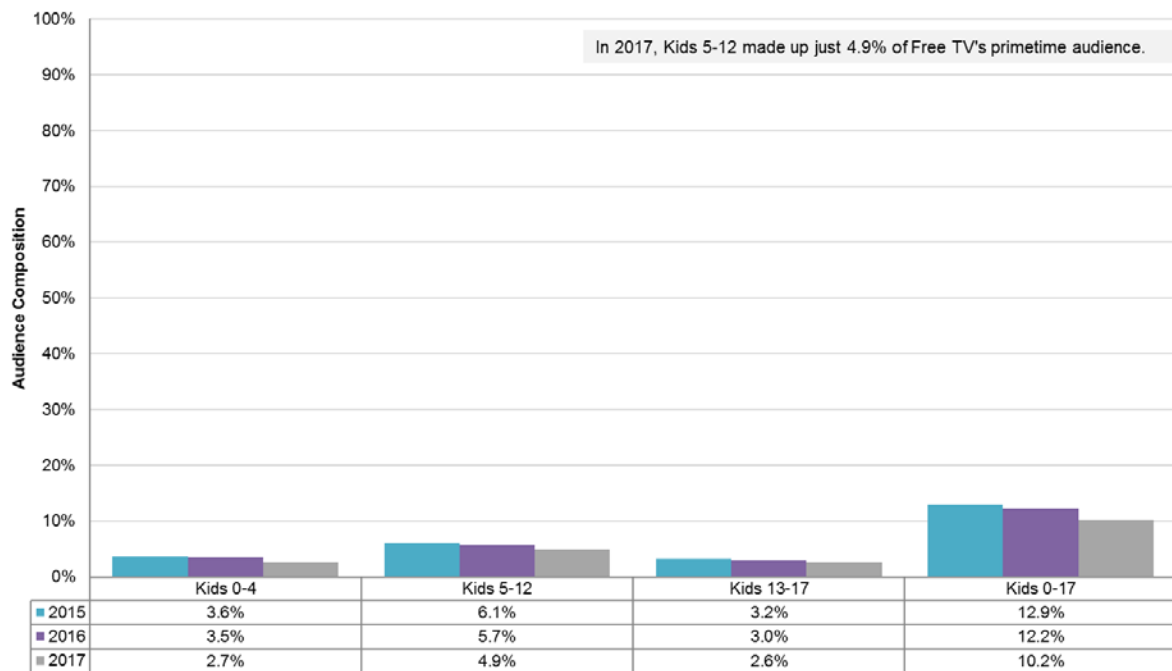
<sup>17</sup> <https://www.smh.com.au/national/nsw/australias-health-trackers-reveals-huge-health-gaps-between-sydney-suburbs-20161123-gsvl9o.html>

<sup>18</sup> Lisa G Smithers, Dandara G Haag, Benjamin Agnew, John Lynch, Matthew Sorell, Food advertising on Australian television: Frequency, duration and monthly pattern of advertising from a commercial network (four channels) for the entire 2016, *Journal of Paediatrics and Child Health* 2017 doi: 10.1111/jpc.13929

<sup>19</sup> *Ibid* pg.2

<sup>20</sup> ACMA, 2016, Children's television viewing and multi-screen behaviour, Analysis of 2005–16 OzTAM audience data and 2017 survey of parents, carers and guardians, pg 8

### Free TV Audience Composition for Kids in Primetime 2015- 2017

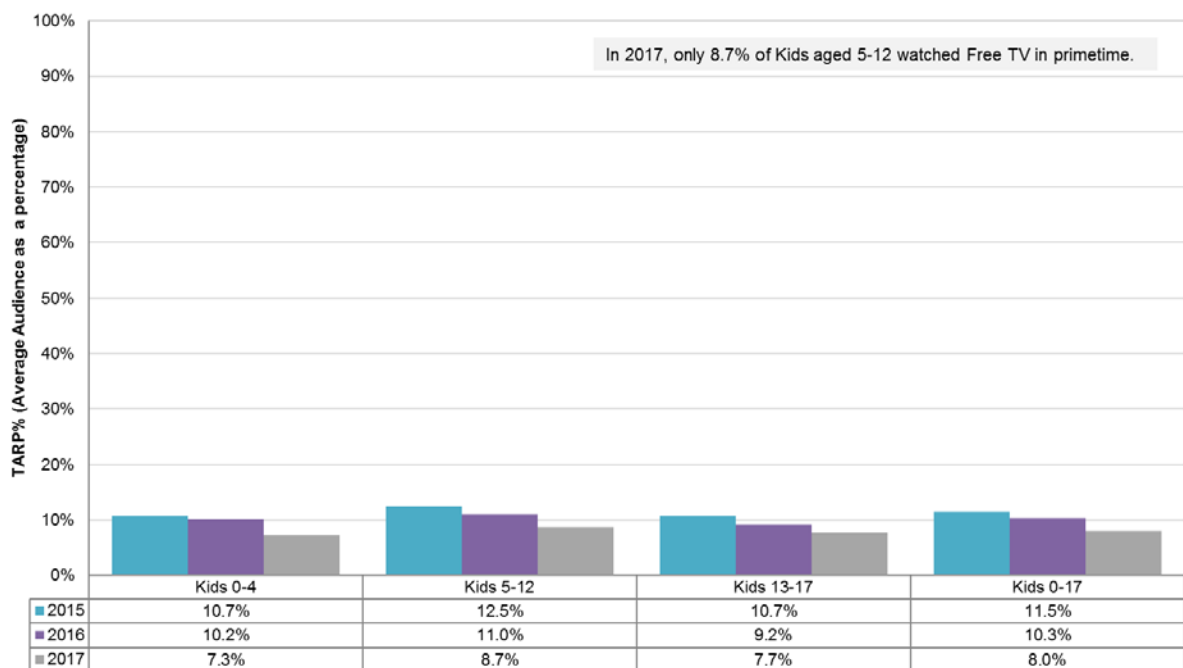


Source: OzTAM, 5 City Metro, Weeks 1- 52 2015, Weeks 1-53 2016, Weeks 1-52 2017. 6pm - 9pm, kids 0-4, 5-12, 13-17 and 0-17 based on consolidated data for 2015 and consolidated data 28 data from 2016, Profile Total Commercial inc Spill

Another dataset that is instructive in considering the effectiveness of policy prescriptions that include further television advertising restrictions is the percentage of all children who are watching television in primetime.

As shown in the next graph, the percentage of all Australian children watching live tv is less than 9 per cent across all age ranges. That is, 91 per cent of Australian children are not watching television during primetime.

### Free TV's TARP% for Kids in Primetime 2015-2017



Source: OzTAM, 5 City Metro, Weeks 1- 52 2015, Weeks 1-53 2016, Weeks 1-52 2017. 6pm - 9pm, kids 0-4, 5-12, 13-17 and 0-17, based on consolidated data for 2015 and consolidated data 28 data from 2016, TARP Total Commercial inc Spill

#### **4.4 Conclusion**

Taken together, the lack of evidence demonstrating causality between advertising and obesity in the Australian context, the range of protections already afforded under our regulatory framework and data showing child audiences in live TV are low, shows there is no case for further television advertising restrictions.

Accordingly, rather than imposing further restrictions on what is already the most heavily regulated platform, the Committee should focus on more holistic strategies that address the broad range of lifestyle causes.