

Responsible advertising to children: an independent review of the Australian food and beverage industry self-regulatory codes

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Terms of reference

The review will assess whether the application of the Australian food industry self-regulatory Responsible Children's Marketing Initiative (RCMI) and the Quick Service Restaurant Initiative (QSRI) is managed efficiently, effectively and optimally and whether these instruments have the attributes of effective self-regulatory codes.

The review's findings and recommendations will specifically address the design and implementation of the codes. Measures of in-house compliance management, the way in which complaints are handled and resolved and the manner in which the codes themselves are reviewed and reformed will be assessed.

The reviewer will undertake interviews with the code manager (the Australian Food and Grocery Council), all code signatories, the complaints handler (the Advertising Standards Bureau) and the healthy choice arbiter (the Nutritional Physiology Research Centre, University of South Australia).

Whether the codes have resulted in a significant change in the balance of food advertising to children in Australia towards healthier choices is outside the scope of the review.

To provide a context for the review, the report will reference:

- international arrangements governing advertising non-core food to children;
- existing Australian arrangements; and
- published literature on impacts of existing policies.

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List of abbreviations & acronyms

AANA	Australian Association of National Advertisers
ACCC	Australian Competition and Consumer Commission
ACMA	Australian Communications and Media Authority
AFGC	Australian Food and Grocery Council
ANPHA	Australian National Preventative Health Agency
ASB	Advertising Standards Bureau
ASTRA	Australian Subscription Television and Radio Association
BBB	US Council of Better Business Bureaus
CAD	Free TV Commercials Advice
EU	European Union
HFSS	High in fat, sugar and/or salt (refers to food and beverage content)
ICC	International Chamber of Commerce
IFBA	International Food and Beverage Alliance
IoM	US Institute of Medicine
NPRC	Nutritional Physiology Research Centre, University of South Australia
QSRI	Quick Service Restaurant Initiative
RCMI	Responsible Children's Marketing Initiative
WHO	World Health Organization

Executive summary

In response to community concerns about rising rates of juvenile obesity, the Australian food and beverage industry introduced voluntary restrictions on advertising to children in 2009. The effectiveness of these measures is currently the subject of vigorous debate. Not only is it under scrutiny by health expert groups but also a government with a stated commitment to monitor their impact with a view to further intervention if necessary. On the other hand, industry argues that self-regulation is a cost-effective, dynamic and flexible means of responding to consumer issues such as marketing and promotion to children.

The key objective of this independent review was to assess whether the Australian food and beverage industry's Responsible Children's Marketing Initiative (RCMI) and Quick Service Restaurant Initiative (QSRI) have the attributes of well-run and effective self-regulatory codes.

Twenty-two interviews were conducted to investigate how the RCMI and QSRI are implemented within signatory businesses; what steps, processes and actions the code secretariat (the Australian Food and Grocery Council) undertake in their management of the instruments; whether the compliance arrangements (undertaken by the Advertising Standards Bureau (ASB) and the Nutritional Physiology Research Centre of the University of South Australia (NPRC)) are effective, efficient and optimal and whether reform in any of these areas would improve outcomes.

The review found a unanimous, emphatic and enduring commitment to ratification of these Australian codes that limit marketing activity and opportunity—conveying a clear sense of exigent obligation from signatories. However, while it can be clearly shown that the codes have effected significant changes in marketing principles and strategies within signatory businesses, signatories reported an aspiration to improve the credibility of the instruments—and the majority are already applying a variety of restrictions beyond the existing requirements of the codes.

The review therefore makes 17 recommendations for enhancing the codes by clarifying objectives, strengthening the rules and making code administration arrangements more inclusive. These recommendations will bring the Australian industry codes into alignment with international best practice and the recommendations for best practice design of self-regulatory codes of conduct promulgated by the Australian Competition and Consumer Commission (ACCC).

With the right incentives in place for ongoing achievement of the highest levels of compliance, enhancing the self-regulatory codes in this way will improve their reputation—an aspiration of all stakeholders. Accordingly these codes will provide a sound basis for shifting the balance of food and beverage advertising directed at children in Australia towards healthier dietary choices, making these instruments one of a suite of effective tools responding to the complex policy problem of childhood overweight and obesity. In fact, the Australian enhanced codes would represent world's best practice in self-regulation of advertising to children.

Findings

Finding 1:

The majority of signatories to the RCMI and QSRI reported that ratifying the codes was important to their business. Signatories are motivated by acknowledged responsibility for shifting marketing principles towards proactive encouragement of a healthy lifestyle and balanced diet, particularly in relation to children. As a result of changing community expectations in Australia and globally, signing the codes is an investment in company reputation and brand.

Finding 2:

Signatories to the RCMI and QSRI have changed the way they operate and manage marketing strategies as a result of code membership. A shift in marketing principles has been formally embedded throughout all signatory companies from the highest level.

Finding 3:

The majority of signatories to the RCMI and QSRI are applying restrictions beyond the requirements of the codes. Some companies have extended the codes to cover a greater selection of media while others are applying restrictions to where a lower percentage of the audience are children or ceased advertising to children altogether.

Finding 4:

In some instances, the codes have served to initiate other innovative activities within signatory businesses, such as new product development or reformulation.

Finding 5:

During the first three years, signatories have experienced some challenges in implementing the codes:

1. Internal tensions between corporate affairs divisions and marketing divisions in-house were reported in some instances as code requirements have been embedded into business practices and staffing changes occur. Focused education and in-house training mark the general response to this challenge.
2. Educating external advertising, media buying and PR agencies is an ongoing effort for all signatories, taking the form of ongoing verbal and written briefings or including code compliance in contractual arrangements.
3. Educating broadcasting networks (both free-to-air and subscription) is critical to managing risk associated with bonus air time spots.
4. Other responses to the risk of breaching the codes in bonus air time have included a) working with Free TV Commercials Advice to apply a 'with care' rating to television advertisements to ensure that placement restrictions are adhered to, b) relinquishing bonus air time spots for all Friday and Saturday night 'family movies', and c) relinquishing all rights to bonus air time altogether.

Signatories reported that these were initial 'teething' problems, now largely resolved.

Finding 6:

Signatories identified a range of costs associated with implementation, most of which are unquantified but considered substantial.

Finding 7:

Approximately half of RCMI signatories reported that the AFGC manages the code well; is a good conduit of information; conducts useful workshops and co-ordinates an appropriate annual reporting process.

Finding 8:

The other half of RCMI signatories made the following suggestions for improving the role of the AFGC secretariat:

1. More regular updates on recent interpretations and clarifications of ambiguities in the code;
2. Provision of advice relating to code interpretation during advertisement campaign development;
3. Focused work with broadcasting networks to assist signatories manage risk associated with bonus air time;
4. Further effort directed towards code promotion and educating key stakeholders across the food and health sectors;
5. Consideration given to whether the RCMI and QSRI ought to be managed by the AANA along with all other advertising industry self-regulation; and
6. Further effort given to recruiting new members to increase food and beverage market share covered by the codes and to level the playing field.

Finding 9:

Signatories reported a high level of trust and regard for the operations of the complaints handling process.

Finding 10:

The majority of signatories called for guidelines or explanatory notes to underpin the codes in order to clarify definitions and terms and remove ambiguities.

Finding 11:

Signatories reported feeling that the credibility of the codes is compromised, either by the intermittently disingenuous behaviour of some peer signatories, or by advertising behaviour of non-signatories that would breach the codes.

Finding 12:

No consensus emerged among signatories on the value of merging the RCMI with the QSRI, standardising nutrition criteria for the RCMI, or extending the codes to include a wider range of media.

Finding 13:

Although code signatories understand that the multi-factorial nature of childhood obesity means a direct impact from restrictions on advertising to children will be difficult to measure, there is nonetheless a feeling of frustration that due recognition is lacking for their shift in marketing principles and their commitment to act responsibly.

Finding 14:

In contracting the ASB to handle and arbitrate complaints, the AFGC has ensured access to a best practice model for complaint resolution, including independent review of determinations. Although determinations by the ASB Board cannot be legally enforced, stated actions are available to act as a disincentive for this type of breach behaviour.

Finding 15:

Arbitration of complaints has involved more investigative work than initially anticipated, requiring a higher level of resourcing into the future.

Finding 16:

The ASB favours extending the requirements of the RCMI and QSRI to outdoor advertising and company-owned and brand websites.

Finding 17:

The ACMA interpretation of the *Children's Television Standards 2009* that a 'competition' can also be a 'premium offer', is not clarified in the RCMI and QSRI.

Finding 18:

The ASB believes the RCMI and QSRI would be improved by re-drafting in a clear legal style.

Finding 19:

Only one referral has been made to the NPRC during the two years it has held the contract as independent 'healthy choice' arbiter. The ASB provided all materials necessary for a rapid and efficient analysis and response.

Finding 20:

The structure of the AFGC Annual Compliance Report is sound (and the value of purchasing television advertising data is clear) however some administrative challenges relating to the signatory self-reports against Company Action Plans are apparent. In particular, timely delivery of these reports is not pervasive, resulting in inefficient use of resources by the AFGC in following signatories up for response. As well, staffing changes within signatory businesses are not always communicated to the AFGC, making it challenging to follow up on responses to requests.

Finding 21:

As the AFGC code secretariat is also the industry peak body representing signatory interests and involved in defending the effectiveness of the codes, the Annual Compliance Report is not an entirely independent monitoring exercise.

Finding 22:

The AFGC code secretariat suggests re-drafting the codes in a legal style to ensure clearer understanding of objectives and to remove ambiguities throughout.

Finding 23:

The RCMI has not yet been extended beyond its initial scope. The QSRI has recently been amended to increase coverage to include the placement of television advertisements as well as food and vouchers at children's sporting events.

Finding 24:

The AFGC code secretariat favours an ongoing program of code enhancement, benchmarked against global peers. This could include increasing media coverage, increasing the age of childhood and aligning the nutrient criteria in the RCMI. It has also discussed with signatories the possibility of applying further restrictions where the television audience is made up of a minimum of 35% of children in both codes.

Finding 25:

The AFGC code secretariat favours merging the RCMI and the QSRI to streamline administrative processes and present a clearer message about the objectives and intent of the Australian food and beverage industry in relation to marketing to children.

Finding 26:

The membership base of the codes has not substantially increased over the first three years. Two new members have signed on to the RCMI, while there has been no growth in membership of the QSRI since inception.

Recommendations

Recommendation 1:

The purpose and objectives of the codes should be stated in clear measurable terms that are within the direct control of signatories. For example, the codes may be intended to a) shift marketing principles towards proactive encouragement of a healthy lifestyle and balanced diet; and b) reduce the amount and type of food and beverage advertising directed to children. A further objective linked to demonstrating a commitment to ongoing extension of the codes should be included.

Recommendation 2:

The codes would benefit from being drafted in a clear plain English legal style.

Recommendation 3:

The RCMI and QSRI should be re-named as 'codes' rather than 'initiatives'.

Recommendation 4:

Key terms and phrases in the codes need to have precise requirements ascribed to them, either within the code documents or in underpinning explanatory guidelines. The AFGC should consider resourcing the ASB to develop a 'Determination Summary' initially.

Recommendation 5:

Definitions in the codes need to be consistent with other legal instruments. Currently, the ACMA interpretation of the *Children's Television Standards 2009* that a 'competition' can also be a 'premium' needs to be clarified in the RCMI and QSRI.

Recommendation 6:

Australian self-regulatory codes should align with international best practice. In particular, the Australian membership should extend the rules of the RCMI and QSRI to cover company-owned and brand websites and where >35% (or lower) of the audience are children.

Recommendation 7:

The AFGC should commence a review of nutrition criteria with a view to underpinning the RCMI rules with appropriate externally-validated category-based aligned criteria within a specified timeframe. The criteria should be used as the benchmark for product reformulation and development, allowing industry to report on improvements to the nutritional profile of products marketed to children over time as part of the code reporting process.

Recommendation 8:

QSRI signatories should commence tracking and reporting on improvements to the nutritional profile of products developed to meet the standard nutrition criteria established by the code.

Recommendation 9:

An ongoing staged approach to harmonizing the RCMI with the QSRI such that the two documents can be merged into a single Australian food and beverage industry code will further increase the credibility of self-regulatory arrangements.

Recommendation 10:

The AFGC should seek to broaden governance arrangements for the codes making involvement more inclusive of key stakeholders. The AFGC should establish a code administration committee comprising of representatives from key stakeholder groups including signatories, consumers and government to monitor code development, adherence to and evaluation of the codes and oversee future direction.

Recommendation 11:

The AFGC in collaboration with its members should gather data measuring a) the extent of code ratification among all food and beverage manufacturers operating in Australia and b) the extent of code coverage in terms of the percent of all food and beverage promotions and products directed to children across Australian media. Addressing these information gaps will provide the baseline data necessary for developing a code recruitment strategy and monitoring progress against objectives over time.

Recommendation 12:

As part of a code recruitment strategy, the AFGC should explore the implications of making code ratification a requirement of peak body membership. New levels of peak body membership may need to be developed.

Recommendation 13:

As the codes are enhanced and advertising restrictions are increased, incentives for compliance, including commercially significant sanctions, warrant consideration. There may be a role for government in setting positive incentives.

Recommendation 14:

The RCMI and QSRI should include a provision requiring staff within signatory companies to be instructed in the principles and procedures.

Recommendation 15:

Signatories should prepare their annual reports in a timely manner.

Recommendation 16:

The AFGC should consider engaging an independent organisation to undertake and develop the Annual Compliance Report for the codes.

Recommendation 17:

The Annual Compliance Report should include a transparent account of costs associated with operating the code secretariat, contracting the ASB and NPRC to discharge their complaints handling functions and those costs associated with preparing the Report itself.

1 Introduction

Eight per cent of Australian children are obese and seventeen per cent are overweight.¹ In 2008, the burden of adult Australian obesity cost around A\$58 billion.² Globally, more than one in ten of the world's 2008 adult population was obese—more than double the number in 1980.³ According to the World Health Organization (WHO), obesity is one of the great public health challenges of our time.⁴ Against this backdrop of grave public concern, pressure has been mounting around the globe on food and beverage manufacturers and advertisers to responsibly address their influence on children when promoting products that are energy-dense and nutrient-poor— also known as 'non-core' food or food high in fat, sugar and/or salt (HFSS).

Obesity and other diet-related non-communicable diseases are multi-factorial. In 2010, the Productivity Commission undertook an economic study of childhood obesity in Australia—the economic impacts, the drivers, a review of prevention and control interventions and discussion of policy options.⁵ The study described the potential factors explaining the prevalence and increase of the disease. These factors include direct influences such as levels of food and soft drink consumption, physical activity and sedentary activity, as well as indirect influences such as parent income and habits, advertising, access to fast food outlets, knowledge, school and peer behaviour. The study identified 113 obesity-related interventions (government, non-government and industry) implemented in Australia since the mid-1990's. The Australian food and beverage industry self-regulatory codes for responsible marketing to children have been part of this effort and are the subject of this review.

A systematic literature review conducted for the WHO in 2009 found that food and beverage advertising to children is widespread across the world.⁶ Much of the published scientific research seeking to understand the relationship between food marketing and childhood obesity has focused on television advertising, in which the prevailing profiles of food and beverage products marketed to children have been those high in calories, fat, sugar and salt and low in nutrients.⁷

¹ Australian Bureau of Statistics (2008). National Health Survey 2007-08. Cat. 4364.0

² Access Economics (2008). *The Growing Cost of Obesity in 2008: Three Years On*. Canberra, as referenced in Crowle, J. and Turner, E. (2010). *Childhood Obesity: An Economic Perspective*, Productivity Commission Staff Working Paper, Melbourne, 196pp.

³ WHO (2011). *Obesity and overweight factsheet*. No. 311, March.

⁴ Source accessed 29 May 2012: www.who.int/dietphysicalactivity/childhood/en/index.html

⁵ Crowle, J. and Turner, E. (2010). *Childhood Obesity: An Economic Perspective*, Productivity Commission Staff Working Paper, Melbourne, 196pp.

⁶ Cairns, G., Angus, K. and Hastings, G. (2009). The extent, nature and effects of food promotion to children: A review of evidence to December 2008. Prepared for the World Health Organisation, 50pp.

⁷ Institute of Medicine (2006). *Food Marketing to children and youth: threat or opportunity?* Committee on Food Marketing and the Diets of Children and Youth, National Academies Press, Washington D.C., 516pp.

Notwithstanding the prevalence of television in advertising strategies, marketing has become increasingly complex, systems-oriented and implemented at the global level among the world's leading food and beverage companies. The WHO has concluded that:

"...although television remains an important medium, it is gradually being complemented by an increasingly multifaceted mix of marketing communications that focuses on branding and building relationships with consumers. This wide array of marketing techniques includes advertising, sponsorship, product placement, sales promotion, cross promotions using celebrities, brand mascots or characters popular with children, web sites, packaging, 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. Food marketing to children is now a global phenomenon and tends to be pluralistic and integrated, using multiple messages in multiple channels." (p. 7)⁸

An overview of the global and Australian response to this complex policy problem follows, including a summary of monitoring and evaluation associated with interventions and controls.

1.1 International arrangements

In the most recent published overview of global arrangements to control food marketing to children, eight instances of regulatory intervention were identified, while the general conclusion was that self-regulation has been the dominant response.⁹

As at 2009, food and beverage advertising to children was regulated in the UK, France, Ireland, Brazil, Chile, Colombia, Malaysia and South Korea. The requirements of the regulatory controls vary (some impose specific restrictions on marketing while others impose outright bans), as do the definitions of what constitutes an advertisement targeted to children and the cut-off age for childhood. Official non-statutory guidelines were in place in Finland, while self-regulatory codes were in place in Belgium, Denmark, Netherlands, Portugal, Spain, Iceland, Norway, Germany, Canada and the United States. Table 1 provides an overview of global jurisdictional arrangements as they stood in 2009.

Several other significant initiatives are not described in that paper but provide a more complete picture of the current status of global arrangements in 2012:

- The Province of Québec in Canada also upholds a ban on all advertising to children under 13. When it came into force in 1980, the ban responded to concerns about juvenile tooth decay resulting from over-consumption of

⁸ World Health Organisation (2010). *Set of recommendations on the marketing of foods and non-alcoholic beverages to children*. Switzerland, 16pp.

⁹ Hawkes, C. and Lobstein, T. (2011). Regulating the commercial promotion of food to children: a survey of actions worldwide. *International Journal of Pediatric Obesity*, 6: 83-94.

heavily promoted sugary foods. Guidelines assist companies to understand the requirements of the ban.¹⁰

- In 2006 the US Council of Better Business Bureaus launched the “*BBB Children’s Food and Beverage Advertising Initiative*” which now represents 17 leading US food advertisers.¹¹ While noted in Hawkes and Lobstein (2011), recent inclusion of standard nutrition criteria and unique reporting parameters merit special mention.
- The requirements of the voluntary 2008 EU Pledge “*We will change our food advertising to children*” captures companies representing more than two-thirds of the food spend across Europe and 75% of food and beverage advertising. This code of conduct is actively promoted by the European Commission as part of its strategy for reducing ill health due to unhealthy lifestyles and imbalanced diets. The strategy is based on active participation by the private sector and civil society.¹²
- In May 2010 the sixty-third World Health Assembly endorsed a set of recommendations for use by Member States in strengthening existing policies on food marketing to children, to reduce both exposure of children to, and the power, of marketing food high in fat, sugar and salt.¹³
- The 2009 International Food and Beverage Alliance “*Global Policy on Advertising and Marketing to Children*” captures the world’s ten leading food and beverage manufacturers and eight national food industry peak bodies.¹⁴
- The International Chamber of Commerce requirements of the “*Compendium of ICC Rules on Children and Young People and Marketing*” and its 2011 “*Consolidated ICC Code of Advertising and Marketing Communications*” are brought together in the Framework for responsible food and beverage marketing communication.¹⁵

The last two are important since they capture the world’s leading food industry companies operating at the global level and recognize the global nature of marketing.

There is significant variation in requirements under the self-regulatory codes, ‘pledges’ and rules, ranging from the coverage of the instrument (TV, print media, schools, internet) and the nutrition criteria employed to determine

¹⁰ Jeffery, B. (2006). The Supreme Court of Canada’s Appraisal of the 1980 Ban on Advertising to Children in Quebec: Implications for “Misleading” Advertising Elsewhere. *Loyola of Los Angeles Law Review*, 39: 237-239.

¹¹ Source accessed 22 May 2012: www.bbb.org/us/childrens-food-and-beverage-advertising-initiative/

¹² Source accessed 30 April 2012: www.eu-pledge.eu/

¹³ World Health Organisation (2010). *Set of recommendations on the marketing of foods and non-alcoholic beverages to children*. Switzerland, 16pp.

¹⁴ Source accessed 2 May 2012: www.ifballiance.org/commitment-3-responsible-marketing-advertising-children.html

¹⁵ Source accessed 20 March 2012: www.iccwbo.org/uploadedFiles/ICC/Policy_pages/332%20FINAL_Framework_Food_and_Beverage.pdf

advertising restrictions, to the categorization of media targeted to children and the cut-off age for childhood. However, each also states and demonstrates a commitment to ongoing enhancement of the voluntary measures. Most of the signatories also operate in Australia.

Table 1: Global jurisdictional arrangements for restricting food and beverage promotion to children in 2009, adapted from the most recent overview by Hawkes and Lobstein (2011).⁸

Countries with statements about food marketing to children in nutrition/obesity/health policies, plans or strategies	Countries with policies on food marketing to children	Countries who report that they plan to take future action on food marketing to children
Belgium Bulgaria Denmark Finland Germany Greece * Ireland Italy Netherlands Portugal Spain Sweden UK Iceland Norway Croatia Israel * Moldova Serbia Turkey Australia+ Canada New Zealand * * Brazil Colombia South Korea	Approved self-regulation % Belgium Denmark France Netherlands Portugal Spain UK Iceland Norway	Austria Belgium Bulgaria Cyprus France Germany Greece Ireland Lithuania Malta Netherlands Portugal Slovenia Spain Sweden UK Norway Switzerland Bosnia Croatia Israel Macedonia Moldova Serbia Turkey Australia+ Canada United States Brazil Colombia Chile South Korea
	Encouraging self-regulation @ Germany Australia+ Canada United States	
	Official guidelines \$ Finland	
	Statutory regulation France Ireland Province of Québec, Canada++ UK Brazil * Chile * Colombia Malaysia South Korea	

* In draft.

** Policy shelved by new Government.

% Approved self-regulation refers to self-regulation that has been developed in collaboration with, or at the request of, government.

@ Encouraging self-regulation means the government has made a policy statement saying it favours self-regulation, but has not explicitly approved a particular code.

\$ Official guidelines refer to guidelines that are not legally binding but have been issued by a government or government-approved body.

+ See section 1.2 below for a full up-to-date explanation of Australian arrangements—note that Hawkes & Lobstein (2011) provides incomplete information.

++ The Province of Québec in Canada imposed a ban on all advertising to children less than 13 years of age in 1980.

(Jeffery, B. (2006). The Supreme Court of Canada's Appraisal of the 1980 Ban on Advertising to Children in Quebec: Implications for "Misleading" Advertising Elsewhere. *Loyola of Los Angeles Law Review*, 39: 237-239).

1.2 Existing Australian arrangements

A complex set of both regulatory and self-regulatory arrangements govern the promotion of food and beverages to children in Australia, involving restrictions placed on broadcasting networks, the advertising industry and food and beverage manufacturers.

The *Broadcasting Services Act 1992*, administered and enforced by the Australian Communications and Media Authority (ACMA), incorporates the *Children's Television Standards 2009*.¹⁶ This standard makes licensed television network and radio services beholden to provisions relating to the timing and content of advertisements to children for products including food and beverages. Penalties for breach include advertisement withdrawal and special license conditions placed on the network involved.

These mandatory standards in turn reference the *Commercial Television Industry Code of Practice*, administered by Free TV Australia¹⁷ and ACMA. Free TV Australia is the peak body for all Australian commercial free-to-air television licensees and compliance with the code is a condition of a free-to-air network license. Under this co-regulatory code, advertisements broadcast by members must 'not promote an inactive lifestyle' or 'encourage...unhealthy eating or drinking habits'. Penalties for breach, as determined by ACMA, include advertisement withdrawal and special license conditions placed on the network involved. Free TV Commercials Advice (CAD)¹⁸ provides classification services to advertisers, agencies and production houses. All advertisements must be classified prior to broadcast on commercial free-to-air television.

Subscription broadcasting networks are also licensed by ACMA and must abide by the *Australian Subscription Television and Radio Association (ASTRA) Codes of Practice*. ASTRA is the peak body for subscription networks (Pay TV) operating in Australia. The ASTRA Code provides classification rules for use by licensees. Advertising aired by licensees must comply with the relevant Australian Association of National Advertisers' Codes. In addition, each channel that advertises to children must publish its own code addressing advertising directed to children. If insufficient effort is made to rectify a breach, ACMA may impose special license conditions and ultimately revoke a broadcast license.

The Australian Association of National Advertisers (AANA), the peak body for advertisers, administers the self-regulatory *AANA Code for Marketing and Advertising Communications to Children* and the *AANA Food and Beverages: Advertising and Marketing Communications Code*.¹⁹ Under these codes, advertisements must not undermine the importance of healthy or active lifestyles or the promotion of healthy balanced diets. Complaints are referred to the Advertising Standards Bureau (ASB). Penalties for breach include a directive to modify or discontinue the marketing promotion.

¹⁶ www.acma.gov.au

¹⁷ www.freetv.com.au

¹⁸ www.freetv.com.au/content_common/pg-cad.seo

¹⁹ www.aana.com.au

Notwithstanding the above mix of complex arrangements and initiatives, and in response to ongoing community and Government concerns about the level of advertising to children of foods high in energy, fat, sugar and salt, the Australian food and beverage industry (many of whom operate globally) developed the *Responsible Children's Marketing Initiative* (RCMI). This self-regulatory voluntary code came into effect on 1 January 2009. The code secretariat resides within the industry peak body, the Australian Food and Grocery Council (AFGC). On 1 August 2009, the Australian quick service restaurant industry launched the similar *Quick Service Restaurant Industry Initiative* (QSRI).²⁰ Following two years under management by the AANA, the AFGC took on the role as QSRI secretariat in 2011.

The codes are intended to:

"...provide a framework for food and beverage companies to help promote healthy dietary choices and lifestyles to Australian children" (RCMI); and

"...ensure that only food and beverages that represent healthier choices are promoted directly to children and to ensure parents and guardians can make informed product choices for their children" (QSRI).

No explicit outcome is anticipated in the preamble to the codes, except the express intent to:

"...ensure that a high level of social responsibility in marketing communication and marketing food and beverage products in Australia is maintained" (RCMI); and

"...provide confidence in the responsible marketing practices via clear expectations of the form, spirit and context, and a transparent process for monitoring and review practices" (QSRI).

Although the codes do not anticipate their impact on children's exposure to advertising of non-core foods, on juvenile purchase requests or on any public health outcome, they go beyond the requirements of ACMA, Free TV Australia and the AANA codes by imposing a positive obligation on an advertisement (to promote and encourage healthy dietary choices, as stated above) and applying nutritional standards to products advertised to children.

They capture all advertisements on television, radio, newspapers and magazines, cinema, third-party websites and interactive games. The QSRI provides additional focus on outdoor billboards and posters and emails. The codes apply when the themes, visuals and language of marketing is directed primarily to children. In relation to television, signatories do not advertise at all during pre-school (P) programs while any advertising during children's (C) programs, general (G) programs directed primarily to children²¹, and during all programs

²⁰ The RCMI can be found online at: <http://www.afgc.org.au/industry-codes/advertising-kids.html>. The QSR can be found online at: <http://www.aana.com.au/QuickServiceRestaurantInitiative.htm>

²¹ As defined by the *Children's Television Standards 2009*, Federal Register of Legislative Instruments F2012C00061 and determined by the ASB. Sourced accessed 21 March 2012:

where more than 50% of the audience is children is subject to the requirements of the codes. The RCMI defines children as being under 12 years old, while the QSRI definition is under 14 years.

As previously stated, public clarification of nutrition criteria is a key principle. Only products that meet company-stated nutritional standards for a healthy choice (in the case of RCMI signatories) or that meet the published standard nutrition criteria (in the case of QSRI signatories) may be advertised directly to children. Other core principles of the initiatives relate to:

- Use of popular personalities and licensed characters
- Product placement
- Use of products in interactive games
- Advertising in schools
- Use of premium offers
- Children’s sporting events (QSRI only)
- On-pack nutrition labelling (QSRI only)
- Availability of nutrition information (QSRI only—regulated for manufactured food)

Signatories are listed in Table 2 and are required under both codes to publish a ‘Company Action Plan’ on their business websites. These plans outline specific company commitments to meet the principles enshrined in the codes. For signatories of the RCMI, this includes details of the company’s nutritional standards. Annual reports against their Company Action Plans are submitted to the manager of the codes, the AFGC, who monitors compliance and publishes results annually.

The ASB manages the complaints resolution mechanism and sets penalties. The Board of the ASB meets twice per month to consider any complaints and signatories must abide by the adjudication. During arbitration, the ASB may refer to an independent arbiter to determine whether the products represent a healthy choice (as defined by the signatory’s published nutritional standards). The Nutritional Physiology Research Centre (NPRC) at the University of South Australia is contracted by the AFGC to fulfil that role when a referral is made by the ASB.

In its 2010 response to the obesity recommendations of the National Preventative Health Taskforce, the Australian Government made it clear that it will “continue to monitor the impact of these initiatives to ensure their effectiveness in reducing children’s exposure to advertising of energy-dense, nutrient-poor foods and beverages”, with a “potentially escalating approach to change, allowing for voluntary measures to be trialled with action to follow if

necessary”.²² The Australian National Preventative Health Agency (ANPHA) accordingly states in its 2011-2012 Operation Plan that it will establish a process for collecting data to review and analyse food marketing to children “with attention to foods with low nutritional value” by June 2012 (p. 10).²³

²² Source accessed 26 May 2012:

[www.preventativehealth.org.au/internet/preventativehealth/publishing.nsf/Content/6B7B17659424FBE5CA25772000095458/\\$File/obesity.pdf](http://www.preventativehealth.org.au/internet/preventativehealth/publishing.nsf/Content/6B7B17659424FBE5CA25772000095458/$File/obesity.pdf)

²³ Australian National Preventative Health Agency (2011). *Operational Plan 2011-2012*. Canberra, 22pp.

Table 2: Signatories to the RCMI and QSRI, major brands, nutrition criteria policies for advertising to children in Australia and other relevant food and beverage marketing codes signed internationally.

RCMI signatories	Company role, major brands, nutrition criteria where relevant and other codes
Campbell Arnotts	– Baked snacks, simple meals and healthy beverages. Brands include Country Ladle, Chunky, V8, Tim Tam, Tiny Teddy and Shapes. – Nutrition criteria for advertising to children based on the <i>NSW Healthy School Canteen Strategy Fresh Tastes @ School Program</i> for green and amber foods. – US division abides by the US “<i>BBB Children’s Food and Beverage Advertising Initiative</i>”.
Coca-Cola South Pacific Pty Ltd	– Beverages such as Coke, Fanta, Lift, Sprite, Pump, Powerade and Nestea. – No advertising directed to children under 12, regardless of nutrition profile. – In other locations, abides by the US “<i>BBB Children’s Food and Beverage Advertising Initiative</i>”; the EU Pledge; the IFBA “<i>Global Policy on Advertising and Marketing to Children</i>”; and the <i>Consolidated ICC Code of Advertising and Marketing Communications</i> referred to in section 1.1.
Ferrero Australia Pty Ltd	– Confectionary such as Tic Tac, Ferrero Rocher, Kinder Surprise, Kinder Bueno and Nutella spread – No advertising directed to children under 12, regardless of nutrition profile. – In other locations, abides by the EU Pledge and the IFBA “<i>Global Policy on Advertising and Marketing to Children</i>” referred to in section 1.1.
Fonterra Brands (Australia) Pty Ltd	– Dairy products such as milk, yoghurt, cheese, icecream and butter. Brands include Mainland, Anchor and Calci Yum. – Nutrition criteria for advertising to children based on Fonterra <i>Good Choice Guidelines</i>.
General Mills Australia Pty Ltd	– Baking mixes, pasta, Italian and Mexican meal kits. Brands include Latina, Old El Paso, Betty Crocker and Nature Valley. – No advertising directed to children under 12, regardless of nutrition profile. – In other locations, abides by the US “<i>BBB Children’s Food and Beverage Advertising Initiative</i>”; the IFBA “<i>Global Policy on Advertising and Marketing to Children</i>”; and the <i>Consolidated ICC Code of Advertising and Marketing Communications</i> referred to in section 1.1.
George Weston Foods (incorporating AB Food and Beverages Ltd)	– Grain smallgoods and hot beverages. Brands include Tip Top, Bûrgen, Abbott’s Village Bakery, Twinings, Jarrah and Ovaltine. – Nutrition criteria for advertising to children based on the <i>NSW Healthy School Canteen Strategy Fresh Tastes @ School Program</i> for green and amber foods and the <i>NSW School Canteen Association Healthy Kids</i> program.
Kellogg (Aust) Pty Ltd	– Breakfast cereals and snackfoods. Brands include Cornflakes, Cocopops. – No advertising directed to children under 6; nutrition criteria for advertising to children 6-12 based on <i>Kellogg Global Nutrition Criteria</i>. – In other locations, abides by the US “<i>BBB Children’s Food and Beverage Advertising Initiative</i>”; the EU Pledge; the IFBA “<i>Global Policy on Advertising and Marketing to Children</i>”; and the <i>Consolidated ICC Code of Advertising and Marketing</i>

	<i>Communications</i> referred to in section 1.1.
Kraft Foods Limited	– Spreads and confectionary. Brands include Vegemite, Peanut Butter, Philadelphia, Cadbury Dairy Milk, Freddo, Pascall, Toblerone and Cheestik. – No advertising directed to children under 6; nutrition criteria for advertising to children 6-12 based on <i>Kraft Sensible Solution Criteria</i>. – In other locations, abides by the US “<i>BBB Children’s Food and Beverage Advertising Initiative</i>”; the EU Pledge; the IFBA “<i>Global Policy on Advertising and Marketing to Children</i>”; and the <i>Consolidated ICC Code of Advertising and Marketing Communications</i> referred to in section 1.1.
Lion Pty Ltd (incorporating National Foods Ltd)	– Beverages such as beer, wine, juice and dairy drinks, cheese and yoghurt. Brands include Pura, Berri, Coon, Fruche, Tooheys, Hahn, Boag and Heineken. – Nutrition criteria for advertising to children based on the <i>Dietary Guidelines for Children and Adolescents in Australia</i>, the <i>Australian Guide to Healthy Eating</i> and state-based school canteen nutrition policies.
Mars Snackfood Australia	– Confectionary, gum, pasta sauce, cereals and petfood. Brands include Mars, M&Ms, Hubba Bubba, Extra, Dolmio, Uncle Bens, Dine and Pedigree. – No advertising directed to children under 12, regardless of nutrition profile. – In other locations, abides by the US “<i>BBB Children’s Food and Beverage Advertising Initiative</i>”; the EU Pledge; the IFBA “<i>Global Policy on Advertising and Marketing to Children</i>”; and the <i>Consolidated ICC Code of Advertising and Marketing Communications</i> referred to in section 1.1.
Nestle Australia Ltd (incorporating Cereal Partners Worldwide)	– Beverages, confectionary, icecream and chilled dairy products. Brands include Milo, Peters, Kit Kat, Uncle Tobys and Maggi. – No advertising directed to children under 5; nutrition criteria for advertising to children aged 5-12 based on the global <i>Nestle Nutritional Profiling System</i>. – In other locations, abides by global Nestle policy on marketing to children; <i>Nestle Consumer Communication principles</i>; the US “<i>BBB Children’s Food and Beverage Advertising Initiative</i>”; the EU Pledge; the IFBA “<i>Global Policy on Advertising and Marketing to Children</i>”; and the <i>Consolidated ICC Code of Advertising and Marketing Communications</i> referred to in section 1.1.
Patties Foods Ltd	– Frozen foods. Brands include Four’n Twenty, Nanna’s, Chefs Pride. – No advertising directed to children under 12, regardless of nutrition profile.
Sanitarium Health and Wellbeing Company	– Cereals, soy milks, spreads, easy-cook vegetarian meals, nuts and dried foods. Brands include Weetbix, So Good, Up&Go and Vegie Delights. – Nutrition criteria for advertising to children based on <i>Sanitarium Corporate Nutrition Policy</i>.
Simplot Australia Pty Ltd	– Convenience meals, chilled, frozen and canned. Brands include Birds Eye, Edgell, John West, Leggo’s and Lean Cuisine. – Nutrition criteria based on <i>NSW School Canteen Association Healthy Kids</i> program.
The Smith’s Snackfood Company (incorporating Pepsico Australia)	– Snackfood and beverages. Brands include Smiths Crisps, Doritos, Grain Waves, Pepsi, Gatorade, 7-Up and Mountain Dew. – No advertising directed to children under 12, regardless of nutrition profile.

	– In other locations, abides by the US “<i>BBB Children’s Food and Beverage Advertising Initiative</i>”; the EU Pledge; the IFBA “<i>Global Policy on Advertising and Marketing to Children</i>”; and the <i>Consolidated ICC Code of Advertising and Marketing Communications</i> referred to in section 1.1.
Unilever Australasia	– Beverages, spreads, icecreams, soups, sauces and seasonings. Brands include Streets ice cream (Paddlepop), Liptons, Knorr, Flora, Slim-Fast, Continental and Bertolli. – No advertising directed to children under 6; nutrient criteria for advertising to children 6-11 based on the <i>NSW Healthy School Canteen Strategy Fresh Tastes @ School Program</i> for green and amber foods and the <i>Unilever Global Internal Nutrient Criteria</i>. – In other locations, abides by the US “<i>BBB Children’s Food and Beverage Advertising Initiative</i>”; the EU Pledge; the IFBA “<i>Global Policy on Advertising and Marketing to Children</i>”; and the <i>Consolidated ICC Code of Advertising and Marketing Communications</i> referred to in section 1.1.
QSRI signatories	Company role (QSRI standard nutrition criteria applies)
Hungry Jack’s	– Burger meals – In other locations, abides by the US “<i>BBB Children’s Food and Beverage Advertising Initiative</i>” and the EU Pledge referred to in section 1.1.
McDonalds Australia	– Burger meals – In other locations, abides by the US “<i>BBB Children’s Food and Beverage Advertising Initiative</i>” and the EU Pledge referred to in section 1.1.
QRS Holdings	– Chicken meals: Red Rooster, Chicken Treat, Oporto
Yum! Restaurants International	– KFC, Pizza Hut

1.3 Published literature on existing policy impacts

The question of whether any of these self-regulatory codes are achieving public health gains is at the centre of global policy debate. Several global literature reviews have addressed the topic and many more evaluations of compliance with existing instruments are in the public domain.

1.3.1 Literature reviews

A 2006 systematic review of evidence undertaken by the US Institute of Medicine (IoM) reported that:

- *“There is strong evidence that television advertising influences the food and beverage preferences of children ages 2–11 years. There is insufficient evidence about its influence on the preferences of teens ages 12–18 years.*
- *There is strong evidence that television advertising influences the food and beverage purchase requests of children ages 2–11 years. There is insufficient evidence about its influence on the purchase requests of teens ages 12–18 years.*
- *There is moderate evidence that television advertising influences the food and beverage beliefs of children ages 2–11 years. There is insufficient evidence about its influence on the beliefs of teens ages 12–18 years.*
- *There is strong evidence that television advertising influences the short-term consumption of children ages 2–11 years. There is insufficient evidence about its influence on the short-term consumption of teens ages 12–18 years.*
- *There is moderate evidence that television advertising influences the usual dietary intake of younger children ages 2–5 years and weak evidence that it influences the usual dietary intake of older children ages 6–11 years. There is also weak evidence that it does not influence the usual dietary intake of teens ages 12–18 years.*
- *Statistically, there is strong evidence that exposure to television advertising is associated with adiposity²⁴ in children ages 2–11 years and teens ages 12–18 years.*
- *The association between adiposity and exposure to television advertising remains after taking alternative explanations into account, but the research does not convincingly rule out other possible explanations for the association; therefore, the current evidence is not sufficient to arrive at any finding about a causal relationship from television advertising to adiposity.” (pp. 8-9).²⁵*

Another systematic literature review conducted for the WHO in 2009 analysed 205 papers (both peer-reviewed and ‘grey’) and found that children across the

²⁴ the state of being obese

²⁵ Institute of Medicine (2006). *Food Marketing to children and youth: threat or opportunity?* Committee on Food Marketing and the Diets of Children and Youth, National Academies Press, Washington D.C., 516pp.

world are exposed to marketing that promotes energy-dense food and beverages that are high in fat, salt and sugar. The study found that this promotion has a modest impact on nutrition knowledge, food preferences and consumption patterns but that the evidence base associating advertising with diet-related disease is not complete (and is mostly focused on television advertising).²⁶

The Australian Productivity Commission made a bolder finding in a 2010 review of global literature relating to marketing food and beverages, stating:

“...while international research indicates that there is a link between advertising and knowledge and preferences, it is difficult to discern a relationship between advertising and body weight...” (p. 52).²⁷

In particular, the study found that:

“Australian children are exposed to a relatively high number of advertisements for energy-dense nutrient-poor foods. This has led to many calling for a ban on advertising of these foods. Yet, while research shows that television viewing and childhood obesity are related, the direction of causation and the magnitude of the contribution of food advertising to obesity is uncertain. In addition, the link between television viewing and childhood obesity is very small...While research shows correlations between advertising and children’s preferences, there is no strong evidence of a causal relationship between advertising and children’s food preferences and weight outcomes. It is also difficult to isolate the effect of advertising from other factors that affect the television viewing and obesity relationship, such as the sedentary nature of television viewing...If, as the evidence suggests, the link between television viewing and childhood obesity is tenuous, or at most small in magnitude, it is unlikely that banning the advertising of energy-dense food would significantly address childhood obesity prevalence...” (p. 77).

Nonetheless, it is argued, due to the multi-factorial nature of obesity and the scale of the epidemic, every tool in the policy tool-box must be brought to bear and the vigorous debate about the role of government in food promotion to children continues around the world.²⁸ Jolly (2011) provides a solid overview of all sides of the debate from an Australian vantage point, concluding that policy “decisions ultimately will be about how effectively any government can, and is committed to balancing a number of complex issues— protecting children from manipulation and exploitation, the rights of commercial interests to promote

²⁶ Cairns, G., Angus, K. and Hastings, G. (2009). The extent, nature and effects of food promotion to children: A review of evidence to December 2008. Prepared for the World Health Organisation, 50pp.

²⁷ Crowle, J. and Turner, E. (2010). *Childhood Obesity: An Economic Perspective*, Productivity Commission Staff Working Paper, Melbourne, 196pp.

²⁸ “Recommendation 8: Government at all levels should marshal the full range of public policy levers to foster the development and promotion of healthful diets for children and youth.” p.12, Institute of Medicine (2006). *Food Marketing to children and youth: threat or opportunity?* Committee on Food Marketing and the Diets of Children and Youth, National Academies Press, Washington D.C., 516pp.

their goods and to trade legitimately, and divergent ideological stances” (p. 43).²⁹

In this context, independent evaluations of the regulations and self-regulatory codes referred to in sections 1.1 and 1.2 are critical for developing a substantial evidence base upon which to build the sort of appropriate policy frameworks sought by WHO.³⁰

Indeed, while a 2011 review of statutory and non-statutory interventions in 59 countries measured a significant policy shift towards greater restrictions on food marketing to children between 2006 and 2009, it also found that indicators for monitoring and evaluation of those arrangements are not generally well-developed or aligned with clearly articulated targets.³¹

1.3.2 Compliance reports

The following examples of recent performance reports show that monitoring compliance with industry self-regulation is straightforward and appears to be generally high:

- The AFGC has just published the 2011 RCMI signatory compliance report involving analysis of data from company reports (a qualitative analysis of each signatories performance against the RCMI over a one year period); an external audit of television advertising from 24 hours per day of free-to-air programming during March to June 2011 across five capital cities; and complaints. This review concluded that compliance was ‘high’. It identified, however, that the provision of bonus air-time (whereby a television station fills any unsold commercial airtime with advertisements at no cost to the advertiser and without their prior consent) continued to account for some incidences of non-compliance, as it had in 2010, noting that signatories are developing mechanisms for ensuring that the allocation of bonus airtime does not cause them to be in breach of the RCMI in 2012.³²
- In 2011, the Healthy Kids Association published an independent compliance report of QSRI signatories. This review involved audits of all marketing material (provided by the signatories) relevant to two fortnight periods in 2010 and 2011. Overall, signatory companies were found to meet the requirements of the QSRI in the audit periods, with one suite of advertisements using a licensed character being uncompliant in the first audit and two advertisements being non-compliant in the second audit. Ensuring the compliance of advertising in bonus airtime was once again identified as an area for improvement and the review recommended that definitions of licensed characters required updating.³³

²⁹ Jolly, R. (2011). *Marketing obesity? Junk food, advertising and kids*. Parliament of Australia, Department of Parliamentary Services, Research Paper No. 9, 44pp.

³⁰ World Health Organisation (2010). *Set of recommendations on the marketing of foods and non-alcoholic beverages to children*. Switzerland, 16pp.

³¹ Hawkes, C. and Lobstein, T. (2011). Regulating the commercial promotion of food to children: a survey of actions worldwide. *International Journal of Pediatric Obesity*, 6: 83-94.

³² Australian Food and Grocery Council (2012). *Responsible Children’s Marketing Initiative: Compliance Report 2011*. Canberra, 32pp.

³³ Healthy Kids Association (2011). *Final Report on the Compliance of Signatories to the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising to Children*. Available from

- In November 2011, the EU Pledge Secretariat published its first monitoring report. Independent audits found high levels of compliance across the 19 member companies (99.1% for television; 100% for print; 100% for online advertising and 98% for product-related communication in primary schools). Since 2005, a 79% reduction in exposure to advertising of products that did not meet companies' nutrition criteria was measured during programs for which >50% of the audience were children (and a 29% reduction across all programs at all times), though there was little reduction between the years 2010 and 2011. This was attributed largely to methodological differences such as different sampling of member states and companies. The report highlighted that continued expansion of membership and further strengthening of Pledge requirements were key challenges for the years ahead.³⁴ In 2012, commended by the European Commission, the Pledge has been strengthened to apply where >35% of the audience is under 12 and to include all online marketing (such as company-owned and brand websites).³⁵
- In December 2011, the US Council of Better Business Bureaus published a report on compliance with the "*BBB Children's Food and Beverage Advertising Initiative*" including an analysis of performance from 2006-2011.³⁶ The report found that compliance was 'high' and that the few violations occurring were advertisements misplaced by external advertising agencies and broadcasting networks. Ongoing improvements in the nutrition profile of products advertised directly to children have been recorded and form a key component of reporting. The core principles of the "*BBB Children's Food and Beverage Advertising Initiative*" were enhanced to include social media in 2009, to apply where >35% of the audience is under 12 years old in 2011 and have just been enhanced again to incorporate standard nutrition criteria, an arrangement that will come into effect by December 2013.
- In March 2012, the International Food and Beverage Alliance published an independent monitoring report of its members 2011 compliance with the requirements of their "*Global Policy on Advertising and Marketing to Children*". This data showed 100% global member compliance with the policy in both print and internet media and a 97.6% compliance rate in television (99.4% in Australia).³⁷ In November 2011 the policy was strengthened to ensure more broadcast programming is covered (applying measures where >35% of the audience is under 12) and to improve coverage online (such as company-owned and brand websites).

the Australian Food and Grocery Council.

³⁴ EU Pledge Secretariat (2011). *2011 Monitoring Results*. EU Platform for Action on Diet, Physical Activity & Health. Source accessed 26 March 2012:

http://ec.europa.eu/health/nutrition_physical_activity/docs/ev20111128_co04_en.pdf

³⁵ Source accessed 2 May 2012: www.eu-pledge.eu/content/enhanced-2012-commitments

³⁶ Council of Better Business Bureaus (2011). *Children's Food and Beverage Advertising Initiative in Action*, Arlington, VA, 52pp. Source accessed 22 May 2012:

www.bbb.org/us/storage/16/documents/cfbai/cfbai-2010-progress-report.pdf

³⁷ Accenture (2012). *2011 Compliance Monitoring Report For the International Food & Beverage Alliance : On Global Advertising on Television, Print and Internet*. Paris, 28pp.

1.3.3 Studies on impacts of specific instruments

While monitoring compliance is transparent, uncomplicated and compliance rates are generally high, assessing the impact of those instruments on public health is not straightforward. Some studies have sought to clarify whether existing arrangements result in decreased exposure by children to food and beverage advertising and findings about this impact are inconclusive:

- In July 2010 the UK broadcasting regulator (Ofcom) published an evaluation of the restrictions imposed in 2007 on television advertising for products that are high in fat, salt or sugar (HFSS).³⁸ The study found that UK broadcasters complied with the ban. From 2005 to 2009, the study reported a 37% reduction in children's exposure to HFSS food advertising during children's airtime and a 1% reduction in children's exposure during adult airtime. The study reported a decrease in the use of persuasive marketing techniques (such as licensed characters) in children's airtime but an increase in adult airtime.³⁹
- Also in July 2010 the European Commission Directorate General Health and Consumers published an evaluation of self-regulation pertaining to advertising and marketing to children, in particular the EU Pledge.⁴⁰ While the review did not find any significant barriers to implementation of voluntary measures (beyond human and financial resourcing), it sought to measure their effect on exposure (defined as the reach, frequency and media impact of the message) and power (defined as the creative content, design and execution of the message). The review found that while data appeared to suggest decreased exposure by children under 12, measuring the real impacts was difficult to determine (nonetheless making recommendations about what more could be done). It found that the voluntary measures did little to limit the power of advertising to children. In addition, the review noted that impacts on consumption habits were unclear and warranted further examination.
- In December 2011 the Australian Government broadcasting regulator (ACMA) published a monitoring report of industry self-regulation and found that "real-life change in the level of children's exposure to food and beverage advertising on free-to-air television is unclear" (exec. sum). The report concluded that the RCMI and QSRI were not perfectly aligned with community and health industry concerns about rising levels of childhood obesity and called for the Australian National Preventative Health Agency to inform and promote a whole-of-government response.⁴¹

³⁸ In November 2006, Ofcom announced a ban on the scheduling of HFSS advertising during children's television programs and around programs with a disproportionately high child audience.

³⁹ Office of Communication (OfCom) (2010). *HFSS advertising restrictions: Final Review*. Statement 26/07/10, London, United Kingdom, 110pp.

⁴⁰ Source accessed 2 May 2012:

ec.europa.eu/health/nutrition_physical_activity/docs/evaluation_case1_en.pdf

⁴¹ Australian Communications and Media Authority (2011). *Industry self-regulation of food and beverage advertising to children: ACMA monitoring report*. Canberra, 37pp.

- A 2011 CSIRO review of the impact of the RCMI and QSRI on South Australian television audiences found that free-to-air children's (C) programs contained much less advertising than general (G) programs; that food advertisements made up a small proportion (20%) of total advertising and that approximately half of those were for HFSS food.⁴² There was no significant change in the rate of HFSS food advertising on free-to-air and PayTV television in South Australia between 2008 and 2010 for signatories and non-signatories alike. Given that the study also found that children are watching television outside of regulated children's viewing times (including programs that are not targeted at them), CSIRO recommended redefining the terms of the self-regulatory codes to cover children's actual viewing times in order to properly target the instruments and alter children's exposure to HFSS food.⁴³
- A 2011 study by the RCMI and QSRI secretariat, the AFGC, found that Australian television advertisements for HFSS food and beverages screened during children's programs during a two-week period in 2010 represented 3% of all food and beverage advertising screened across eight channels and that the frequency of those advertisements in children's viewing periods was 0.9 per hour (7am-9am and 3.30pm-10.30pm weekdays; 7.30am-10.30am and 3.30pm-10.30pm weekends).⁴⁴
- This frequency was lower than that measured by King et al (2010)⁴⁵ who collected Australian advertising data from seven days in 2006 and 2007 and four days in 2009. They measured 3.2 HFSS food and beverage advertisements per hour during the same children's viewing periods in 2009. While finding a reduction in HFSS advertising by RCMI signatories between 2006-2009, overall HFSS food advertising to children did not decrease. The authors concluded therefore that the RCMI "does not adequately protect children" (exec. sum.) because its membership base is too narrow, however the study found a statistical difference in HFSS advertising rates between signatories and non-signatories over the experimental period.
- Further analysis and critique of the RCMI and the QSRI and its impacts have been discussed in four Hebden et al studies (2010a, 2010b, 2011a and 2011b).^{46,47,48,49} One of these found that 72% of food and beverage products

⁴² Note that some HFSS food advertisements are for products that don't appeal to children, such as spreads, cooking oils, drink mixers, meat (see Ofcom 2010 - footnote 22).

⁴³ CSIRO (2011). *Television food advertising to children in South Australia*. Prepared for SA Health, Adelaide, 170pp.

⁴⁴ Australian Food and Grocery Council (2012). *Non-core Food and Beverage Advertising to Children on Australian Television*. Research Report, January, Canberra, 15pp.

⁴⁵ King, L., Hebden, L., Grunseit, A., Kelly, B., Chapman, K. and Venugopal, K. (2010). Industry self regulation of television food advertising: Responsible or responsive? *International Journal of Pediatric Obesity*, Early Online 1-9.

⁴⁶ Hebden, L., King, L., Kelly, B., Chapman, K. Innes-Huges, C. (2010a). Industry self-regulation of food marketing to children: Reading the fine print. *Health Promotion Journal of Australia*, 21:3, 229-235.

advertised to children on subscription television channels were for non-core foods with a mean rate of 0.7 non-core food advertisements broadcast per hour, per channel. The authors contended that the impact of the Australian industry self-regulatory codes is weakened because a) they do not impose restrictions during the complete range of children's viewing times, b) the wording is ambiguous allowing for inconsistent interpretation by signatories and c) the nutrient criteria and thresholds for restricted promotion are variable between signatories (in the case of the RCMI) and more lenient than nutrient criteria used by the Australian government and non-government organisations for the classification of foods.

This list of studies cannot be taken as complete, since a formal literature review was outside the terms of reference of this report, however it is clear that the impacts of existing measures on curtailment of children's exposure to HFSS food and beverage advertising are difficult to ascertain.

Although compliance with specified prescriptive measures is relatively easy to monitor and obviously critical, it is only one step in the evaluation pathway for achieving any impact on community health. The 2006 US IoM evidence review recognised that a variety of interacting factors affect the health and weight of children and youth. In relation to industry self-regulation, the IoM called for standards rigorous enough to shift the emphasis of marketing away from high calorie, low nutrient food and beverages towards promotion of 'healthful' food and beverages, making those instruments one of a suite of effective tools responding to this complex problem.⁵⁰

1.4 Project Scope

The existing Australian system for limiting children's exposure to advertisements for high fat, sugar and salt foods (HFSS) must be reviewed regularly to ensure that arrangements continue to be effective for contributing to the achievement of associated public health goals. A three-year review of the RCMI and QSRI is now appropriate, in keeping with self-regulatory best practice. A comprehensive review of the policy instrument ideally involves measuring and reporting on two discrete but co-joined system components: the 'processes' and the 'outcomes'.

⁴⁷ Hebden, L., King, L., Kelly, B., Chapman, K., Innes-Huges, C. and Gunatillaka, N. (2010b). Relating the types of foods and beverages marketed to Australian children: How useful are food industry commitments? *Nutrition and Dietetics*, 67: 258-266.

⁴⁸ Hebden, L., King, L., Grunseit, A., Kelly, B. and Chapman, K. (2011a). Advertising of fast food to children on Australian television: the impact of industry self-regulation. *Medical Journal of Australia* Rapid Online Publication, 195: 20-24.

⁴⁹ Hebden, L., King, L., Chau, J. and Kelly, B. (2011b). Food advertising on children's popular subscription television channels in Australia. *Australian and New Zealand Journal of Public Health*, 35(2): 127-130.

⁵⁰ Institute of Medicine (2006). *Food Marketing to children and youth: threat or opportunity?* Committee on Food Marketing and the Diets of Children and Youth, National Academies Press, Washington D.C., 516pp.

The 'process' is the management, implementation and monitoring of the codes. Review of this system component seeks to understand whether the application of the industry codes is managed efficiently, effectively and optimally. Key 'process' performance indicators will be inputs, activities and outputs that fall within the prescribed scope of the codes. For example, measures of in-house compliance management, the way in which complaints are handled and resolved and the manner in which the codes themselves are reviewed and reformed would be considered 'process' indicators.

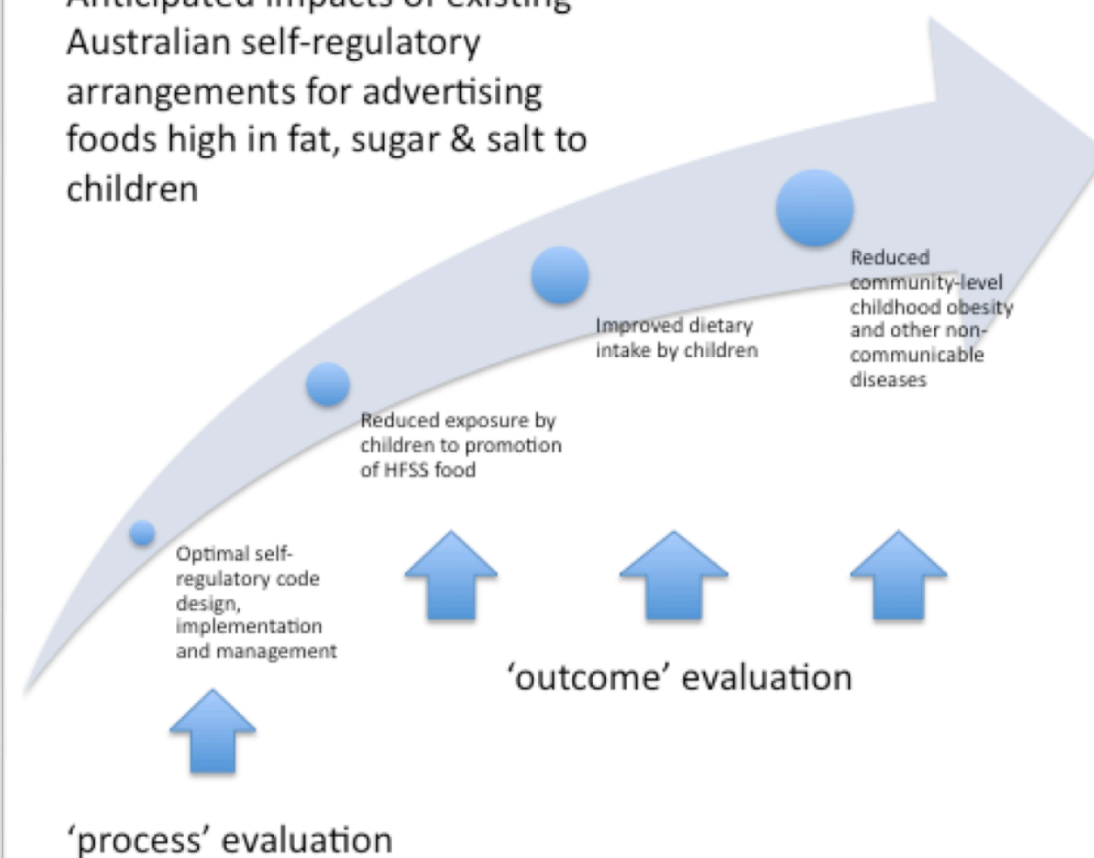
The 'outcomes' are multi-tiered impacts, as presented in Figure 1. Does the application of the codes in Australian food businesses result in firstly, reduced exposure by children to HFSS food advertisements? Secondly, does that in turn contribute to improvement in the usual dietary intake of children? And thirdly, does that lead to reductions in community-level non-communicable disease rates in children in this country? Key 'outcome' performance indicators will measure these step-wise links against known baseline data for each step, providing a clear picture of whether the policy instrument impacts the epidemics of non-communicable disease over time.

Both 'process' and 'outcome' indicators are critical for measuring the effectiveness of any policy instrument—legislative, co-regulatory or self-regulatory (such as the industry codes). While many other government, non-government and industry initiatives ('processes') feed into the second tier 'outcome' (improved dietary intake), this review focuses on the design and implementation of the Australian industry self-regulatory codes.

This review provides qualitative evidence and an analysis of the management, implementation and monitoring aspects of the codes—how they are implemented within signatory businesses, what steps, processes and actions the code secretariat (the AFGC) undertake in their management of the instruments, whether the compliance arrangements (undertaken by the ASB and the University of South Australia) are effective, efficient and optimal and whether reform in any of these areas would improve outcomes. Alongside the investigative aspects of the review, is the question of whether the RCMI and QSRI have the attributes of well-run and effective self-regulatory codes.

It is important to point out that measuring whether the codes have resulted in a significant change in the balance of food advertising to children in Australia towards healthier choices is outside the scope of this report, though what precise effects might reasonably be expected from the codes is discussed. Separate studies and epidemiological expertise are required to evaluate public health outcomes.

Figure 1: Evaluation pathway–
Anticipated impacts of existing
Australian self-regulatory
arrangements for advertising
foods high in fat, sugar & salt to
children



2 Methodology

Interviews with RCMI and the QSRI signatories (listed in Table 2, section 1.2) were conducted during March and April 2012 by an independent consultant contracted by the AFGC.⁵¹ Personnel from the ASB, the University of South Australia's NPRC and the AFGC were also interviewed.

With the exception of the AFGC and ASB, interviews were conducted by telephone during a one-hour time slot. AFGC and ASB personnel were interviewed in person due to the location of the consultant (i.e. Canberra).

A standard questionnaire developed by the AFGC was employed in order to ensure that data (responses to questions) was of a consistent enough nature to be logically analysed (questionnaires are at Appendices A to E). The review sought evidence about how the codes are implemented within signatory businesses, influences on business practice, what steps, processes and actions the code secretariat (the AFGC) undertake in their management of the instruments, whether the compliance arrangements (undertaken by the ASB and the NPRC) are effective, efficient and optimal and whether reform in any of these areas would improve outcomes.

Respondents were sent the relevant questionnaire prior to the interview in order to give consideration to succinct answers within the allotted timeframe. In each interview, all of the questions were discussed and answers documented for qualitative analysis. Discussion beyond the questionnaire framework was allowed for and documented where relevant.

Companies were offered anonymity in making their responses. Anonymity was thought to mediate (to some extent) the risks inherent in self-reported data and encourage candor.

Although this was not a scientific study, the methodology (i.e. the questionnaire) was designed with subsequent future reviews in mind so that the exercise can be repeated and data about the implementation of the codes can be transparently tracked over time.

Limitations

The use of self-report measures is open to bias. It is human nature to self-represent in a positive light and minimise problems or challenges. On the other hand, if the threat of further government oversight is present, the incentive to continuously improve upon voluntary self-regulation (and reveal information that would assist in doing that) is obvious. All but one of the signatories to the RCMI and QSRI were keen to participate in this review.

⁵¹ There are 16 RCMI signatories and 4 QSRI signatories. One of the 16 RCMI signatories elected to provide written responses to the review questionnaire rather than participate in a telephone interview, while another stated prior to the commencement of the review that their business had no issues with the current RCMI structure, reporting and management so no interview was conducted and no data from that company is included.

3 Interview findings

Qualitative data from the interviews is presented below in a discursive and descriptive analysis. Findings from 18 interviews with code signatories and 1 written response are presented first (numbers of respondents providing a particular view are given in brackets as N=x), followed by findings from interviews with each of the ASB, NPRC and AFGC. This was not a scientific study—no statistics were employed in analysing the data or drawing conclusions.

3.1 Signatory response

Five key themes emerged from the data:

- motivation for signing onto a code (Q1—see Appendices A and B);
- key tasks undertaken by food businesses to implement the codes and challenges arising (Q2-5 and Q11);
- views on the management and governance of the codes including compliance arrangements (Q7 and Q8);
- proposals for improving the codes or strengthening governance arrangements (Q9 and Q10); and
- overall value of the code to members (Q6).

3.1.1 Motivation for membership

Overwhelmingly, respondents stated that signing a code that seeks to address community concerns is a responsibility and an investment in company reputation (N=19). It is simply expected. It is crucial brand management and improves brand perception. Several respondents made the point that the RCMI/QSRI codifies existing values and practices but sets third-party parameters and penalties, making industry-wide commitments public and credible (N=6). Several stated a clear and unequivocal commitment to improving the health and well being of Australians (N=4) and three RCMI signatories stated that these limits on advertising are essential, given that children under 12 years are a potentially vulnerable group and find it difficult to discern complex messages about healthy lifestyles and diet.

The majority of signatories are part of global companies and abide by parent company values and marketing principles that have been recently articulated in response to the changing global context. Greater awareness of levels of obesity, the 2010 WHO recommendations for responsible marketing of food and beverages to children and consumer expectations for food companies to provide healthier food choices were cited as key drivers of new product development, reformulation and recent new global company marketing policies. Ratification of the local Australian RCMI and QSRI naturally followed.

One RCMI signatory reported a positive influence on staff morale resulting from formally adopting a code that seeks to enshrine socially responsible behaviour.

An additional motivation noted by 3 RCMI signatories was to standardise marketing behaviour across the sector—to ‘level the playing field’.

Some respondents stated that membership assists in advocating for the effectiveness and sufficiency of self-regulatory instruments (N=8). Some stated that self-regulation is the most effective means of demonstrating industry-wide responsible behaviour since it is more flexible, responsive (easier to amend and reform) and less expensive to implement than regulated arrangements (N=2). Others added that as long as signatories were held accountable, industry self-regulation could serve to avoid a regulatory framework that would inevitably restrict competition and innovation (N=3).

One QSRI respondent noted that the self-regulatory code cleaves a business to socially responsible behaviour while meeting community expectations for product availability.

Two others stated that although there was little commercial value in membership, the most valuable outcome from signing the QSRI code was bringing the industry together to recognise that there may be other issues worthy of group focus.

Finding 1:

The majority of signatories to the RCMI and QSRI reported that ratifying the codes was important to their business. Signatories are motivated by acknowledged responsibility for shifting marketing principles towards proactive encouragement of a healthy lifestyle and balanced diet, particularly in relation to children. As a result of changing community expectations in Australia and globally, signing the codes is an investment in company reputation and brand.

3.1.2 Implementation issues

All signatories (N=19) reported that clear objectives for restricting advertising of HFSS food and beverages to children are set at the highest level of the company and permeate throughout. In one instance, the code is incorporated into an accredited externally audited Quality Management System; it is integrated into the internal audit process of another; while in all others it forms part of the comprehensive plan under which new products are developed and brought to market. Advertising promotions have to pass through new key 'check-points', such as in-house legal teams and/or corporate affairs 'sign-off', ensuring material is reviewed against regulatory, self-regulatory and other requirements prior to use (N=17).

While some signatories indicated that the RCMI or QSRI simply codified existing and new global practices (N=4), others reported implementing a variety of changes within their businesses as a direct result of signing the Australian codes, as follows:

- re-direction of company marketing strategy to eliminate all advertising directed to children for all brands across all media (including all television time slots, outdoor placements and company websites) (N=6)
- restricted advertising applying to an audience share of >35% children rather than >50% (N=3; a further RCMI signatory applies the code to an audience share of >30% children under 12)
- defining the age-limit of childhood for the RCMI as 14 years rather than 12 years (N=2)

- removal of all toys from all meal products (N=1; currently under consideration by one further QSRI signatory)
- re-direction of marketing spend from television to in-store-only (N=1 QSRI signatory)
- re-direction of marketing creative content from children to parents (N=5)
- re-direction of advertising placement from C, P and G-rated television programs to PG-rated programs only (N=2)
- product reformulation or new product development (N=6)
- re-design of creative materials to ensure that depictions of children always involve physical activity (N=3)
- creation of new division or engagement of new employee within a business to manage and oversee code implementation and compliance (N=2)
- creation of training materials and ongoing training programs (internal and externally sourced) with all relevant staff to promulgate understanding of code requirements (N=8)
- employment of child psychologist to assess marketing promotions for code compliance and ensure that promotions will appeal only to the over 12 age bracket (N=1)

Seventy-four percent of signatories are applying restrictions beyond the requirements of the codes—such as a decision to stop advertising directed to children altogether, defining audience share more strictly, raising the age-limit of childhood from 12 to 14 years or submitting all websites and billboards to the requirements of the RCMI code. This aim appears to be ongoing—one signatory reported giving current consideration to their activities relating to sport sponsorship, while two others are currently considering the way they use their own websites and outdoor advertising space.

Finding 2:

Signatories to the RCMI and QSRI have changed the way they operate and manage marketing strategies as a result of code membership. A shift in marketing principles has been formally embedded throughout all signatory companies from the highest level.

Finding 3:

The majority of signatories to the RCMI and QSRI are applying restrictions beyond the requirements of the codes. Some companies have extended the codes to cover a greater selection of media while others are applying restrictions to where a lower percentage of the audience are children or ceased advertising to children altogether.

Finding 4:

In some instances, the codes have served to initiate other innovative activities within signatory businesses, such as new product development or reformulation.

There have been challenges experienced during the first three years of implementation. Only 21% reported 'smooth sailing' with embedding the requirements throughout the business. The rest described some 'teething' problems that have taken time to resolve as well as issues of ongoing concern.

Four RCMI signatories reported some tension in meeting the requirements of the relevant code between the corporate affairs division and marketing branch of those businesses during the initial establishment phase of the RCMI. Two of those reported the ongoing challenge of embedding the message when marketing professionals routinely come and go from jobs. Constant vigilance, orientation and training programs mark the response to this challenge—an ongoing resource-intensive exercise.

All signatories (N=19) reported briefing their marketing and media buying agencies. For some, this involved written instructions, regular exchange of letters or addition to contractual arrangements, while for others, ongoing verbal briefings ensure consistent commitment. One RCMI signatory suggested that advertising companies needed to begin aligning their values with those of signatory food businesses such that the social responsibility sought in the codes becomes a pervasive industry-wide cultural shift present in all commercial arrangements. Another said that very carefully written briefs were critical, as marketing agencies are obligated to push the limit—to convert the highest number of consumers to purchase per dollar spent on promotion. Most signatories felt that three years down the track, their advertising and media buying agencies now understood the requirements of the relevant code.

Significant effort has been directed towards improving the understanding of television stations in relation to granting bonus air time for advertisements. Following several examples of advertisements going to air in time slots that resulted in code breaches (as well as related complaints that were subsequently dismissed), signatories have worked closely and consistently to rectify the potential for this unintended contravention. In particular the Free TV Commercials Advice (CAD) 'w' rating (G classification 'with care') has been introduced and used by several signatories on all television commercials. This rating acts as a warning for the television station to ensure the detailed information about placement restrictions are adhered to prior to airing it outside pre-scheduled time. The point was raised that some signatories would prefer to manage the risk by acquiring a PG rating for particular promotions, however CAD is not able to apply a PG rating when the advertisement contains only G content, despite the request. Due to the complexity of these issues, three signatories have gone as far as relinquishing rights to bonus air time (one across all television stations at all times; another on digital stations only and the third during Friday and Saturday night family movie timeslots). It was noted that the impact of such precautionary action is significant, as developing television commercials is costly and airing commercials in bonus air time is highly valuable for food businesses.

Finding 5:

During the first three years, signatories have experienced some challenges in implementing the codes:

1. Internal tensions between corporate affairs divisions and marketing divisions in-house were reported in some instances as code requirements have been embedded into business practices and staffing changes occur. Focused education and in-house training mark the general response to this challenge.
2. Educating external advertising, media buying and PR agencies is an ongoing effort for all signatories, taking the form of ongoing verbal and written briefings or including code compliance in contractual arrangements.
3. Educating broadcasting networks (both free-to-air and subscription) is critical to managing risk associated with bonus air time spots.
4. Other responses to the risk of breaching the codes in bonus air time have included a) working with Free TV Commercials Advice to the apply a 'with care' rating to television advertisements to ensure that placement restrictions are adhered to, b) relinquishing bonus air time spots for all Friday and Saturday night 'family movies', and c) relinquishing all rights to bonus air time altogether.

Signatories reported that these were initial 'teething' problems, now largely resolved.

The costs of implementing the codes were reported to be significant. Although signatories have not quantified detailed costs, some examples included:

- levy contribution for the arbitration arrangements
- new marketing strategies
- additional legal and corporate affairs resources for extensive and elaborate sign-off and approvals processes
- additional focused staff training
- additional services sought from advertising and media buying agencies to ensure compliance, including audits of television schedules prior to air-time and the regular collection of audience-share data to inform product placement (and the avoidance of timeslots that would be in breach)
- new product development or reformulation associated with meeting the requirements of the codes
- loss of revenue associated with withdrawal from advertising directed at children
- loss of revenue associated with relinquishing bonus air time television spots

Many of these costs cannot be passed on to the consumer in the highly competitive grocery marketplace, limiting commercial benefit from implementation, however all signatories are committed to ongoing ratification and code membership.

The burden of needing to comply with several codes and pledges both here and overseas was raised and is dealt with in the next section.

Finding 6:

Signatories identified a range of costs associated with implementation, most of which are unquantified but considered substantial.

3.1.3 Views on RCMI and QSRI management and governance

Most QSRI signatories generally felt that it is too early to make a clear statement about the role played by the AFGC (as they undertook the role of QSRI secretariat in 2011), but expressed initial positive views on stakeholder communication and management.

One QSRI signatory felt that the AFGC should play no role in compliance monitoring (see the AFGC annual reporting process outlined in section 3.4.1) but should instead commission third-party assessment on an annual basis to ensure that reporting is (and is seen to be) independent. It was felt that, as 'the voice of the industry', the AFGC may not be objective enough. This signatory suggested that legal as well as dietetics and nutrition expertise would be ideal for a third-party annual assessment and named the CSIRO as an organisation of appropriate reputation.

One QSRI signatory expressed some concern that at times the AFGC might be too far in advance of regulatory threats and could defend industry more effectively before introducing self-regulatory instruments.

Slightly more than 50% of RCMI signatories reported that the AFGC manages the code well, is appropriately proactive and is persistent as secretariat of the code (N=10). These signatories felt that the AFGC is a good conduit of information; runs useful workshops; and co-ordinates an appropriate annual reporting process. They also expressed satisfaction with the education and promotion activities undertaken by the AFGC. One signatory applauded the AFGC for bringing together a group of competing companies with highly varied corporate objectives and products and holding them together in healthy relationship to achieve a common goal.

Finding 7:

Approximately half of RCMI signatories reported that the AFGC manages the code well; is a good conduit of information; conducts useful workshops and co-ordinates an appropriate annual reporting process.

Slightly less than 50% of RCMI signatories reported 'neutral' feedback on the performance of the AFGC secretariat for a variety of reasons alongside constructive suggestions for improvement (N=9). Differing expectations of the role a code secretariat should play came to light.

One RCMI signatory is seeking the AFGC to play a greater advisory role as companies develop new creative campaigns. This signatory would like to be able to ring the AFGC and include their expert advice during the development phase, feeling that support of this nature is not currently available. This signatory feels that companies would benefit from some level of 'group think' about how to bring campaigns to life that are effective but still comply with the codes.

Another RCMI signatory is looking for more regular updates about the RCMI, its coverage, associated advocacy activities and recent interpretations of text. This signatory would like written updates to ensure that signatories who aren't able to participate in the AFGC teleconferences nonetheless obtain the information.

Another RCMI signatory suggested that the AFGC might consider taking up the issue of bonus air time placement with all television stations (particularly the digital stations), since this issue was common to many. This signatory was discouraged that ongoing frequent communication about code requirements with television stations had not prevented code breaches. As previously stated, this signatory has consequently relinquished all rights to bonus air time—a frustrating and costly but perhaps only temporary solution if a focused message was to be strongly advocated on behalf of all signatories by the industry representative body.

A further RCMI signatory suggested that including milestones to be met by signatories throughout the year, rather than just once, could strengthen the annual reporting process.

Two RCMI signatories reported that management by two different organisations—namely the AFGC and the AANA—of multiple voluntary codes relevant to advertising food and beverages is inefficient ('a mess'). It would improve overall governance and efficiency to have all these codes managed by a single organisation with appropriate media-buying, marketing and advertising experience and skills. One signatory expressed the view that the AANA would be the more capable entity for taking the codes into their next phase—linking the RCMI and the QSRI together and linking them more closely to the other self-regulatory codes under their existing custodianship, all arbitrated by the ASB. It was felt that the skills in optimising arrangements resided more prominently within the AANA. However the point was made by another RCMI signatory that the AANA codes don't currently require the level of reporting and transparency sought by the AFGC in their role as code secretariat and that the AANA would have to be prepared to take on this extra level of work, including external audits and public reporting, if they were to operate the RCMI and QSRI secretariat.

The majority of signatories across both codes would like the AFGC to continue to encourage greater participation from non-signatories in the requirements of the codes (N=14). Several called for greater effort made in promoting the code and educating key stakeholders across the food and health sectors (N=5). Furthermore, there is a greater role for the AFGC in promoting the contribution that the RCMI is making to the health of Australian households (N=1).

Finding 8:

The other half of RCMI signatories made the following suggestions for improving the role of the AFGC secretariat:

1. More regular updates on recent interpretations and clarifications of ambiguities in the code;
2. Provision of advice relating to code interpretation during advertisement campaign development;
3. Focused work with broadcasting networks to assist signatories manage risk associated with bonus air time;
4. Further effort directed towards code promotion and educating key stakeholders across the food and health sectors;
5. Consideration given to whether the RCMI and QSRI ought to be managed by the AANA along with all other advertising industry self-regulation; and
6. Further effort given to recruiting new members to increase food and beverage market share covered by the codes and to level the playing field.

The ASB was held in high regard by signatories who have had particular promotions subject to a complaint (58%). Whether those complaints have been dismissed or upheld, the ASB was considered to have managed a timely and highly professional process, involving clear communication, including concise and logical decisions. Although there is some concern about how to interpret some aspects of the codes and keeping abreast of new interpretations (issues dealt with in the next section), the apparent high level of trust between code members and the complaints handling body is of note.

Finding 9:

Signatories reported a high level of trust and regard for the operations of the complaints handling process.

3.1.4 Proposals for improvement

Experiences with complaints and non-compliance over the past three years has shed light on the need for defining terms and the intent of some of the wording in the codes more precisely in order to provide more certainty and limit subjective interpretation. Twelve signatories called for interpretive guidelines to clarify ambiguities in the codes. The 2010 FreeTV Australia 'Explanatory Note to the Commercial Television Industry Code of Practice'⁵² and the 2010 AANA Practice Note for the 'Food and Beverages Advertising and Marketing Communications Code'⁵³ were given as examples. Signatories sought greater definition of what constitutes 'physical activity', 'healthy lifestyle', 'good dietary habits' and child-like themes and language. Further clarification around the use of characters and toys was also sought. Some signatories sought explanatory notes in order to refine their own marketing behaviour, while others gave the impression that they wanted to see the behaviour of peers modified to achieve a

⁵² Source accessed 19 April 2012:

http://www.freetv.com.au/media/Code_of_Practice/2010_Code_-_Explanatory_Note.pdf

⁵³ Source accessed 19 April 2012:

<http://www.aana.com.au/data/Documents/Codes/AANAFoodandBeveragesCode-PracticeNote-FinalMarch2010.pdf>

consistent approach. One QSRI signatory felt that explanatory guidelines (providing case studies) would better inform external stakeholder groups about objectives and intent.

Finding 10:

The majority of signatories called for guidelines or explanatory notes to underpin the codes in order to clarify definitions and terms and remove ambiguities.

In this regard, some signatories perceive other signatories to be acting in a way that seeks to find 'loopholes' or do 'just enough' to implement a code. Some RCMI and QSRI respondents implored all signatories to comply with the 'spirit and intent' of the codes rather than seeking ways to appeal to children that (while complying with the letter of a code) could be seen to be sidestepping its objectives (N=4). One example given was the use by a QSRI signatory of banner boards on the back of taxis and awnings covering large transport trucks to advertise in a way that appeals to children, although 'outdoor billboards' and 'posters' are covered by the QSRI. Some respondents expressed regret that such marketing promotions reduce the credibility of self-regulation (N=2). Although a code of this nature represents minimum agreed benchmarks, company commitments often go further and those signatories expressed a level of frustration that not all signatories strive for what they define as best practice.

Respondents felt that the credibility of the industry is also challenged by marketing behaviour by non-signatories that does not meet the requirements of the codes. As previously stated, many signatories (N=12) sought greater participation by these peers and two suggested that membership of the AFGC ought to mandate ratification. It was acknowledged, however, that some food industry participants would be unlikely to ratify since their products are considered 'occasional' or 'treat' children's foods and would thus not be able to be advertised to children under either one of the codes (for example, some ice-creams and doughnuts). Serious impacts on competitiveness were noted.

One RCMI signatory noted with concern that the owners of private label products were not signatories. It was suggested that the expansion of private label products without the self-imposed control measures placed on promotion that the code signatories have adopted makes for an increasingly unlevel playing field. Although it is not clear how prevalent promoting private label products to children may be, this comment highlights perhaps more than any other, the challenge of imposing standardised and restrictive conditions on business activities that seek to limit competition in such a fiercely competitive space.

Finding 11:

Signatories reported feeling that the credibility of the codes is compromised, either by the intermittently disingenuous behaviour of some peer signatories, or by advertising behaviour of non-signatories that would breach the codes.

Signatories were on the negative side of ambivalent about merging the RCMI with the QSRI (N=16). Some RCMI signatories do not want grocery items aligned with 'fast food' in industry self-regulation (N=4). Another reason given was the perceived difficulty in working through differences in the codes, particularly in

relation to nutrient criteria (N=4). Some QSRI signatories felt that their standardised nutrient criteria was a unique strength of that code which would be weakened by merging with a code that did not demand such standardisation (N=3).

Three RCMI signatories felt that standardising the nutrient criteria of the RCMI was critical for lifting the reputation of the code and generating more respect from government and consumer groups. Another however could see intractable problems with standardising nutrient criteria in Australia when their parent company set nutritional profiles globally.

Differing attitudes were expressed about adding various media to the codes, for example company websites, brand websites, sports sponsorship and outdoor billboards (where they are not already covered). Three RCMI signatories submitted that all communications and all media in all locations be subject to the code, removing ambiguity and making the message clear throughout the company and the community. Others continue to want their own company websites and outdoor billboards to remain excluded from the RCMI (N=4). Two further RCMI signatories were happy for company websites to be covered but not billboards.

One RCMI signatory strongly called for the code to have greater penalties attached to non-compliance. While being named in an AFGC audit was 'unpleasant' it was suggested that it 'didn't really hurt anybody'. This signatory wants to ensure that the overarching management of the code demonstrates how carefully it is being 'policed' and that the code needs to prescribe clear and stiffer sanctions.

Finding 12:

No consensus emerged among signatories on the value of merging the RCMI with the QSRI, standardising nutrition criteria for the RCMI, or extending the codes to include a wider range of media.

3.1.5 Overall value and other issues arising

Sixty-nine percent of respondents feel that the code is of value to their businesses and the main reasons were given in section 3.1.1. A further 26% were neutral on this question and one respondent felt the code was not particularly valuable.

One RCMI signatory felt frustration that despite the efforts expended in implementing and sometimes going beyond the requirements of the codes, there was little positive feedback from the health industry or government. Some companies feel a level of 'fatigue' in relation to what they experience as heavy and sustained criticism without acknowledgement of the genuine efforts of industry to limit competition and behave responsibly.

One signatory noted that, although their food products would easily meet nutrient requirements suitable for promoting directly to children, the RCMI has acted to limit such marketing. In this case, where the promotion of fish and vegetables might in fact be promulgating precisely the messages about healthy eating that health experts are seeking, it has acted as a disincentive for this

activity. Advertising to children is now put in the ‘too hard’ basket. This is perhaps a perverse and unanticipated outcome of advertising restrictions and the sustained criticism of marketing to children.

It was noted that several major food industry players instigated self-regulation themselves well before any threat of government intervention and have been reformulating products over a lengthy period of time to align more closely with WHO expectations. Some signatories felt that the view of critics that business activities involve ‘smoke and mirrors’ is unjustified and untrue. There is a frustration that no matter how a code is drafted or implemented, it will never be considered enough. It was even suggested that some stakeholder groups appear to believe that profit-making enterprises are somehow not capable of contributing to the health and well being of the community.

Moreover, the view was expressed that no matter how strict the controls on marketing to children, other food industry matters warrant far greater attention in seeking to address any impact on multi-factorial childhood obesity. Product reformulation was one example given, however it was reported that price and food access strategies play the biggest role in purchase behaviour (N=3).

One RCMI signatory lamented that the code is defensive and reactive instead of proactive. This signatory exhorted the AFGC and industry peers to focus communication efforts on presenting all the positive work undertaken by companies to make the lives of Australian children better. This signatory would prefer resources to be spent on communicating product changes and enhancements, in particular efforts to reduce levels of fat, salt and sugar in the food supply. This signatory felt that the public might well be ‘astonished’ to know more about these sustained and ongoing healthy food initiatives and that this kind of whole-of-industry promotion would contribute more than promotion of codified advertising restrictions that are perpetually negatively scrutinised.

A salient comment from one RCMI signatory summed up the feelings of several members that the key challenge in moving forward in the evolution of the code is management of stakeholder expectations and alignment with similar international codes.

Finding 13:

Although code signatories understand that the multi-factorial nature of childhood obesity means a direct impact from restrictions on advertising to children will be difficult to measure, there is nonetheless a feeling of frustration that due recognition is lacking for their shift in marketing principles and their commitment to act responsibly.

3.2 Advertising Standards Bureau response

The ASB is contracted to independently arbitrate public complaints associated with the RCMI and QSRI⁵⁴. As they also administer the national system of advertising self-regulation, the Board of the ASB assesses each complaint

⁵⁴ The questionnaire used for this interview is found at Appendix C

received against all self-regulatory instruments to arbitrate once only on overall advertising compliance.

A single written complaint is sufficient to commence a formal investigation. Full details of the complaint process can be found on the ASB website.⁵⁵ In summary, once a complaint has been assessed by the ASB to determine whether it can go to the Board, the advertiser/marketer is notified and a response requested. The Board meets twice per month. Following notification of the determination, a company is given five days to reply and seek review. Independent legal reviewers are contracted in this instance (again, details can be found on the ASB website), however 'very few' RCMI or QSRI complaints have progressed to this stage. When a complaint is upheld, the ASB advises the advertiser/marketer that the advertisement must be removed or amended. All case reports are published online. The onus is then on the advertiser/marketer to comply with the determination.

Published during the course of this review in May 2012, the AFGC's '*RCMI 2011 Compliance Report*' shows that of nine RCMI complaints last year, two were upheld.⁵⁶ One of these determinations was appealed and the ASB Board ultimately dismissed this appeal early in 2012. The AFGC's first '*QSRI 2011 Compliance Report*' shows that the ASB Board upheld one of ten QSRI complaints in 2011.⁵⁷ Details of these cases are available on the ASB website.⁵⁸

While the 'vast majority'⁵⁹ of companies act to rectify an upheld complaint in a timely manner, there is no legal compulsion in this voluntary system to remove or amend an offending advertisement. The highest level of compliance must accompany self-regulation, or a role for government may emerge. In a case of continued non-compliance, the ASB can refer to a relevant government agency for legal enforcement as well as publish the case on the ASB website and forward material to media proprietors. This has not occurred in any complaints related to the RCMI or QSRI.

Finding 14:

In contracting the ASB to handle and arbitrate complaints, the AFGC has ensured access to a best practice model for complaint resolution, including independent review of determinations. Although determinations by the ASB Board cannot be legally enforced, stated actions are available to act as a disincentive for this type of breach behaviour.

⁵⁵ Source accessed 16 May 2012:

www.adstandards.com.au/process/theprocesssteps/initiatingacomplaint

⁵⁶ Australian Food and Grocery Council (2012). *Responsible Children's Marketing Initiative 2011 Compliance Report*. Canberra, 32pp.

⁵⁷ Australian Food and Grocery Council (2012). *Australian Quick Service Restaurant Industry Initiative for responsible advertising and marketing to children 2011 Compliance Report*. Canberra, 17pp.

⁵⁸ www.adstandards.com.au/casereports/determinations

⁵⁹ Advertising Standards Bureau (2012). *Review of Operations 2011*, Canberra, 97pp. Source accessed 16 May 2012: issuu.com/cre8ive/docs/asb_review_of_ops_2011?mode=embed

The ASB receives a 'modest income' from the AFGC for the provision of this service, however challenges arising in making determinations have shown that current resources may not be adequate to rigorously discharge the task.

In particular, verifying that television advertisements were screened at the time a complainant claims has involved purchasing television schedules for analysis. Not only is this resource-intensive, but the ASB reported that further careful investigation has uncovered inaccuracies in schedule documents. The ASB believes an increase in fees is necessary for investigative work and writing complex determinations. Initial budgeting has underestimated these aspects of the task.

Further, more resourcing than is optimal goes towards determining whether a dismissible complaint originates from a genuine misunderstanding of the precise obligations of the codes or is in fact 'troublesome'. The ASB is concerned that the majority of complaints under the codes are made by a small number of people from public health organisations. At times, it seems that complainants who do in actual fact understand the limits and prescriptions of the codes very well nonetheless make complaints they know the ASB will dismiss. While the motives for doing this are a matter of conjecture, the ASB is of the view that this constitutes an inefficient use of resources.

Finding 15:

Arbitration of complaints has involved more investigative work than initially anticipated, requiring a higher level of resourcing into the future.

The ASB expressed the view that the intent and overarching objectives of the codes should be made more explicit to 'ensure that only healthy foods are marketed directly to children'. While some sectors of media remain outside the obligations of the codes, these omissions can be seen as 'loopholes' and the codes remain open to criticism. The reputation of the codes would be improved by extending requirements to outdoor advertising (in the case of the RCMI) and company-owned and brand websites (in both the RCMI and the QSRI).

The definitions within the codes need to be consistent with other legal instruments and the ASB highlighted that a new interpretation of 'premium offer' is now used by ACMA that differs from that of the RCMI and QSRI. ACMA now considers that a 'competition' (the chance to win prizes) can also be a 'premium offer', in which case it must be merely incidental to the advertised product, rather than the key message.⁶⁰ This new interpretation of the *Children's Television Standards 2009* needs to be made explicit in the RCMI and QSRI.

The ASB is also of the view that the document would benefit from being re-drafted in a clearer legal style. This would assist in clarifying obligations, which the ASB feels some signatories are struggling to understand.

⁶⁰ See ACMA media release sourced 18 May 2012: www.acma.gov.au/WEB/STANDARD/pc=PC_312400 and the relevant Investigation Report: www.acma.gov.au/webwr/_assets/main/lib311264/channel-10_reports-2379_2385-2388.pdf

Finding 16:

The ASB favours extending the requirements of the RCMI and QSRI to outdoor advertising and company-owned and brand websites.

Finding 17:

The ACMA interpretation of the *Children's Television Standards 2009* that a 'competition' can also be a 'premium offer', is not clarified in the RCMI and QSRI.

Finding 18:

The ASB believes the RCMI and QSRI would be improved by re-drafting in a clear legal style.

3.3 Nutritional Physiology Research Centre response

The Nutritional Physiology Research Centre (NPRC)⁶¹ at the University of South Australia is contracted to determine whether the nutrient criteria of a product that is the source of a complaint in fact meets the food manufacturers published nutrient criteria for a 'healthy choice' or is in breach.

The ASB has made only one referral to the NPRC in the two years it has held the contract as independent 'healthy choice' arbiter. The NPRC indicated that in that case, the ASB provided all material relevant to the complaint (including comprehensive nutrient data and a video of the television advertisement featuring the product in question) enabling the NPRC to provide advice within the stipulated two-week turnaround. In that instance, the NPRC advised that the product advertised in the television commercial was not in breach of the food manufacturer's nutrient criteria for a healthy choice.

The NPRC indicated that it was outside its formal role to make any further comment on the particular requirements of the codes for this review.

Finding 19:

Only one referral has been made to the NPRC during the two years it has held the contract as independent 'healthy choice' arbiter. The ASB provided all materials necessary for a rapid and efficient analysis and response.

3.4 Australian Food and Grocery Council response

The Australian Food and Grocery Council (AFGC)⁶² has managed the RCMI since its introduction in 2009 and the QSRI since 2011. A Code Administration Manager is appointed to act as secretariat to both the codes. The secretariat communicates with signatories, oversees the compliance mechanism (including associated contract management), undertakes advocacy and associated communications activities and publishes an Annual Compliance Report.

⁶¹ The questionnaire used for this interview is found at Appendix D

⁶² The questionnaire used for this interview is found at Appendix E

3.4.1 Annual Compliance Report and communication activities

The AFGC code secretariat reports on the performance of signatories against the codes on an annual basis. To date, the Annual Compliance Report relates only to the RCMI, however from 2012 it will include a QSRI analysis as well.

Data for the report is derived from three sources: signatory reports against Company Action Plans, advertising data from an external audit and the complaints determination data provided by the ASB. From this, the AFGC code secretariat is able to report on code implementation and influence on the business practices of the signatories. It is also able to make recommendations about improving signatory practices as well as any reforms of the codes themselves. The report is available on the AFGC website and is also delivered to all federal, state and territory health ministers in June each year.

This review has made the following findings about the processes undertaken to develop the report:

- Signatories must lodge reports against Company Action Plans with the AFGC code secretariat by February each year. A template (found at Appendix F) is provided to ensure consistent data provision however the quality of company responses varies widely—some provide comprehensive information about marketing activities aimed at children and other initiatives that go beyond the requirements of the codes, while others report concisely against each point on the template. Since a long report does not necessarily demonstrate a higher commitment to a code than a concise one, the AFGC code secretariat seeks to remove that possible misinterpretation by publishing a summary of signatory reports rather than each individual report itself. The AFGC code secretariat has formed the view that it is the extent of compliance with the codes that ought to be judged; not the length of reports against Company Action Plans. Nonetheless the collation of this data by the secretariat is not without its challenges. Sometimes companies do not meet the February deadline for submission, requiring ongoing encouragement and follow-up from the secretariat, making it a more resource-intensive exercise than is optimal and making it difficult for the AFGC code secretariat to publish the Annual Compliance Report on time. Furthermore, staff changes within signatory companies are not always communicated to the AFGC code secretariat, increasing response time while new arrangements for code responsibility are put in place. Prior to publishing the report, signatories have the opportunity to comment on a draft. As the deadline approaches, the AFGC code secretariat must judge how closely to follow signatories up for their comments. As this stage is also proving resource-intensive, the AFGC code secretariat now assumes that no comments constitute approval of the draft.
- Since the reports against Company Action Plans are a self-reporting tool, the AFGC purchases television food and beverage advertising data from Commercial Monitors, an independent Australian advertising information service provider. Three months of data are collected across five capital cities (Adelaide, Brisbane, Melbourne, Perth and Sydney). In 2010 and 2011 those months were March, April and May, however in 2012 the months for

audit will be March, July and December. It is the view of the AFGC code secretariat that the data may be more rigorous and illuminating since these months will capture campaigns leading into Easter and Christmas. The AFGC code secretariat identifies all advertisements sponsored by code signatories and assesses whether any products are advertised during children's programming that do not meet company nutrient criteria. The secretariat includes a qualified nutritionist able to make this determination. The AFGC code secretariat has found a number of instances of code breach that have not been the subject of formal complaints received by the ASB. In fact, it is this independent monitoring activity that has identified the problem of advertisements for non-core food being shown as bonus spots during children's programming. The AFGC code secretariat has contacted the relevant signatory companies with whom this problem has been found during the past three years and responses have been discussed in an earlier section. The AFGC has also attempted discussion of identified breaches with non-signatories who hold AFGC membership in order to encourage aligned behaviour. Discovery of bonus air time breaches highlights the importance of the AFGC code secretariat's analysis of independent television advertising data in a rigorous code compliance monitoring program.

- The Annual Compliance Report also reports on the outcomes of the ASB complaints handling process for that year. The ASB provides a summary of all case reports and the AFGC code secretariat cross-references this with case data accessed from the ASB website.

Further to developing the Annual Compliance Report, the AFGC code secretariat undertakes to inform signatories throughout the year about current threats to self-regulation as well as associated government work, such as policy development and the activities of the Australian National Preventative Health Agency (ANPHA).

As the industry peak body, the AFGC advocates for the positive and meaningful impact of the codes. Efforts are not only directed at managing external stakeholders such as ANPHA, AANA, ACMA, the Outdoor Media Association, the Communications Council and the Foundation for Advertising Research, but also towards advocating for the codes more broadly, including with stakeholders who are sceptical of the effectiveness of self-regulation. To this end, the AFGC funds, undertakes and publishes research aimed at defending the codes (i.e. that they are effective in achieving their prescribed objectives) and presents that research at conferences and to various arms of government including ministers.

Finding 20:

The structure of the AFGC Annual Compliance Report is sound (and the value of purchasing television advertising data is clear) however some administrative challenges relating to the signatory self-reports against Company Action Plans are apparent. In particular, timely delivery of these reports is not pervasive, resulting in inefficient use of resources by the AFGC in following signatories up for response. As well, staffing changes within signatory businesses are not always communicated to the AFGC, making it challenging to follow up on responses to requests.

Finding 21:

As the AFGC code secretariat is also the industry peak body representing signatory interests and involved in defending the effectiveness of the codes, the Annual Compliance Report is not an entirely independent monitoring exercise.

3.4.2 Proposals for improvement

The AFGC code secretariat reported some concern that signatories remain unclear about their precise obligations under the codes. While some of the ambiguities identified through the formal complaint process have been the subject of well-attended workshops, it was felt that experiences with interpreting requirements over the past three years have highlighted a need for carefully addressing uncertainties relating to definitions and creative content. Moreover, the AFGC code secretariat expressed frustration that some independent (critical) studies of the codes are not measuring their impacts against their precise stated objectives. To this end, it was suggested those precise objectives be further clarified in order to properly educate not only code signatories but also external stakeholders about what the codes in fact set out to achieve.

At this stage, the codes set out to:

- “ensure that a high level of social responsibility in marketing communication and marketing food and beverage products in Australia is maintained”;
- “provide a framework for food and beverage companies to help promote healthy dietary choices and lifestyles to Australian children”; and
- market “to children only when it will further the goal of promoting healthy dietary choices and healthy lifestyles”.

The codes then go on to define what is meant by ‘advertising’, ‘media’ and ‘children’, however the written style of the codes is open to interpretation and requires a more legal approach to drafting. This is something the AFGC code secretariat would support.

Finding 22:

The AFGC code secretariat suggests re-drafting the codes in a legal style to ensure clearer understanding of objectives and to remove ambiguities throughout.

The AFGC code secretariat is also mindful of the need for self-regulatory instruments to be responsive to changes in community attitudes over time. Indeed, the secretariat made the point that one of the strengths of a voluntary code is its flexibility and the relative ease by which it can be amended (compared with a lengthy statutory process). While the RCMI has not been extended beyond its initial scope, the QSRI is shortly to be extended to cover placement of advertisements (where previously it only applied to the creative content) and food or voucher ‘giveaways’ at children’s sporting events. The coming version also clarifies that messaging to children must encourage ‘good dietary habits’ AND ‘physical activity’ (previously ‘and/or’). This brings these particular

requirements in line with those of the RCMI, with an implementation date of 1 November 2012.

With ongoing extension of voluntary arrangements occurring elsewhere, the AFGC code secretariat favours certain further amendments. For example, the RCMI could cover a broader range of media, in particular billboards and posters, and increase the definition of the age of childhood to 14 years. The AFGC code secretariat believes this would strengthen the code and increase its credibility. It is also interested in further exploring aligning the nutrition criteria within the RCMI (suggesting it would like to work with ANPHA to generate appropriate category-based criteria, as is under investigation in the US). While the AFGC is not in favour of applying the codes to an evening television timeslot, as some external stakeholders are advocating, the secretariat is interested in applying restrictions to television audiences where >35% are made up of children in both the RCMI and QSRI (in line with the new arrangements under both the EU Pledge and the IFBA).

In fact, the AFGC code secretariat would like to combine the RCMI with the QSRI (which already covers billboards and posters and defines the age of childhood as under 14 years). While this would streamline their administrative processes, it would also make communications clearer.

Finding 23:

The RCMI has not yet been extended beyond its initial scope. The QSRI has recently been amended to increase coverage to include the placement of television advertisements as well as food and vouchers at children's sporting events.

Finding 24:

The AFGC code secretariat favours an ongoing program of code enhancement, benchmarked against global peers. This could include increasing media coverage, increasing the age of childhood and aligning the nutrient criteria in the RCMI. It has also discussed with signatories the possibility of applying further restrictions where the television audience is made up of a minimum of 35% of children in both codes.

Finding 25:

The AFGC code secretariat favours merging the RCMI and the QSRI to streamline administrative processes and present a clearer message about the objectives and intent of the Australian food and beverage industry in relation to marketing to children.

The AFGC code secretariat has struggled to increase code membership since the codes came into force. Since 2009 only two further companies have ratified, bringing the RCMI signatories to 16. While the AFGC estimates that 2012 membership constitutes a market share of 80%, there is no verifiable data to substantiate this, and increasing code membership has proven difficult. One idea, to make AFGC membership contingent upon ratification of the relevant code, has been raised within the code secretariat.

Finding 26:

The membership base of the codes has not substantially increased over the first three years. Two new members have signed on to the RCMI, while there has been no growth in membership of the QSRI since inception.

The findings of these interviews show that a) clarifying code objectives and definitions of terms; b) increasing the credibility of self-regulatory measures and c) enhancing codes over time emerge as key issues for signatories as they embark on the next three years of self-regulation.

4 Discussion & recommendations

The key objective of this review was to assess whether the Australian food and beverage industry's Responsible Children's Marketing Initiative (RCMI) and Quick Service Restaurant Initiative (QSRI) have the attributes of well-run and effective self-regulatory codes.

Twenty-two interviews were conducted to investigate how the RCMI and QSRI are implemented within signatory businesses; what steps, processes and actions the code secretariat (the Australian Food and Grocery Council) undertake in their management of the instruments; whether the compliance arrangements (undertaken by the Advertising Standards Bureau (ASB) and the Nutritional Physiology Research Centre of the University of South Australia (NPRC)) are effective, efficient and optimal and whether reform in any of these areas would improve outcomes.

Results of the 22 interviews conducted for this review, including 19 with signatories to the RCMI and QSRI, indicate that the food and beverage industry is willing to limit its advertising directed to children, such that it relinquishes some of its power to compete in a highly aggressive marketing space. This is commendable, though three years on there are undoubtedly improvements to be made and a useful framework is now at hand for a rigorous analysis.

In July 2011, the Australian Competition and Consumer Commission (ACCC) released new *"Guidelines for developing effective voluntary industry codes of conduct"*. While these guidelines are designed to help industries improve compliance with the *Competition and Consumer Act 2010*, the principles within provide the food and beverage industry with a best practice framework for critiquing and benchmarking the design of their self-regulatory instrument into its next phase.⁶³ The ACCC guidelines can be found at Attachment 1 for cross-reference to section 4 of this review.

Of all the issues emerging in the interviews, the most potent related to industry frustration about due recognition for effort, the behavioural credibility of peer-signatories and non-signatories alike and the desire to engender wider stakeholder trust in the codes. A complex data set of stated experiences, opinions and exhortations came to light that has served to identify where the codes can in fact be better aligned with the best practice guidelines of the ACCC.

4.1 Purpose and Objectives

At times during the interviews, it seemed that signatories were not always united in their understanding of the objectives and intent of the codes. Noting the actual wording in the documents, this is not surprising—for example, "ensure a high level of social responsibility" and "demonstrate commitment to responsible marketing" are imprecise terms and subjective in meaning. These objectives are difficult to measure and loosely conceived and therefore allow for

⁶³ ACCC (2011). *Guidelines for developing effective voluntary industry codes of conduct*. Canberra, 28pp.

wide ranging interpretation. It is not surprising that signatory expectations of each other are not always aligned.

The purpose and objectives of the codes should be written to place clear measurable evidence-based expectations on signatories, such that its success can be accurately assessed.⁶⁴

Best practice in self-regulation (or in fact anywhere in the regulatory spectrum) involves setting requirements where players have direct control over circumstances. These points of direct control are where objectives and key performance indicators can be credibly set. Figure 1 (on page 31) conceptualises the step-wise levels of impact a code that limits advertising directed to children is widely expected to contribute to.

While the links to dietary intake and childhood obesity depicted in Figure 1 are unclear, it is reasonable to expect industry to achieve significant changes to marketing strategies that lead to measurable reduction over time in the amount and type of food and beverage promotions directed to children. These parameters are within the direct control of industry (where television habits, purchase habits and dietary habits are the purview of parents and carers) and therefore constitute appropriate key performance indicators that can contribute to a broader community health strategy.

A code intended to a) shift marketing principles towards proactive encouragement of a healthy lifestyle and balanced diet; and b) reduce the amount and type of food and beverage advertising directed to children, would provide a clear basis for assessing impact and measuring trends against baseline data over time. A further objective must relate to a commitment to ongoing enhancement of arrangements, in demonstration of the principle of continuous improvement.

4.1.1 Shift in marketing principles

In this review, signatories said unequivocally that the codes (and similar international pledges) have changed the way they do things.⁶⁵ This review has found evidence of a significant list of key tasks undertaken by companies to implement the codes. Marketing principles have shifted and the impact on marketing strategies is substantial. Commitments to responsible marketing of food and beverages to children are formally enshrined in all processes involved in generating and bringing new promotions to market. Staff training and orientation (to manage risk associated with frequent staff turnover), extensive new sign-off procedures involving multiple teams (marketing/legal/corporate affairs) form part of the extra resourcing in place in Australian signatory companies. Ongoing and formal briefing of external advertising agencies, media

⁶⁴ *Ibid.*

⁶⁵ As many signatories are global enterprises, it is difficult to precisely discern the true origin of these shifts in marketing principles and practices, however it is fair to say that both domestic and global-level discussions are together impacting heavily on company actions in this area. The Australian divisions of signatory companies are not responding to community concerns in isolation. This complicates the design of methods for monitoring the impacts of the Australian codes.

buying agencies and PR firms are now also the norm. Intense communication with broadcasting networks, both free-to-air and subscription, has been taking place to ensure compliance and rectify problems arising. Signatory companies have submitted Company Action Plans to the AFGC and attended workshops to improve their understanding of the latest ASB determinations and code interpretation.

The majority of signatories have implemented marketing restrictions that go beyond the requirements of the codes. This has included extending the media coverage, lowering the audience share threshold, increasing the age definition of childhood or ceasing to advertise to children altogether.

Some marketing groups within signatory companies were invigorated by the advertising restrictions and are identifying opportunities for further activities and innovations. In some instances, the codes have served to initiate new product development or reformulation, though this was not reported to the extent of US peers.⁶⁶

4.1.2 Reduction in amount and type of food and beverage advertising directed to children

Evidence in support of a descending trend in the amount of food and beverage advertising directed to children in Australia is in its infancy. As outlined in section 1.3 of this review, Australian studies have stood at variance on methodologies as well as metrics for measurement and drawn inconsistent conclusions. Studies sponsored by the food and beverage industry make the point that the number of non-core food advertisements screened during P, C and G-rated television programming is very low. Studies by community health specialists remain concerned that they do not impose restrictions during the complete range of children's viewing times, are ambiguous in wording and that company nutrition standards are too lenient—in effect making any reduction in the amount and type of food and beverage advertising viewed by children questionable.

There appears to be incongruity between stakeholders about appropriate metrics for measuring code performance and a strong case for eliminating any ambiguities that currently exist in their stated objectives—by making them measurable as opposed to oblique. Including a binding commitment by signatories to extend and enhance the codes over time will also increase code credibility with external stakeholder professionals who remain skeptical about their impact.

4.1.3 Nutritional profile of food marketed to children

Also within direct control of the food and beverage industry is the enhancement of the nutritional profile of foods marketed to children. Reductions in fat, sugars and sodium and increases in positive nutrition components are described by the

⁶⁶ In 2010 alone, US signatories to the BBB “*Children’s Food and Beverage Advertising Initiative*” reformulated or created over 100 new products meeting specified nutrient criteria in response to the voluntary rules (Council of Better Business Bureaus (2011). *Children’s Food and Beverage Advertising Initiative in Action*, Arlington, VA, 52pp).

US code secretariat, the Council of Better Business Bureaus, in their compliance and implementation reports.⁶⁷ Setting such objectives in an industry code might allow for compelling (and measurable) trends to emerge about the effort undertaken by the food industry to improve the Australian diet, whether or not the code is the only impetus for it. This is discussed further in section 4.3.

Recommendation 1:

The purpose and objectives of the codes should be stated in clear measurable terms that are within the direct control of signatories. For example, the codes may be intended to a) shift marketing principles towards proactive encouragement of a healthy lifestyle and balanced diet; and b) reduce the amount and type of food and beverage advertising directed to children. A further objective linked to demonstrating a commitment to ongoing extension of the codes should be included.

4.2 Definitions

Definitions in the codes should be clear (using plain English) and consistent with the law so that stakeholders can easily understand their obligations.⁶⁸

Moreover, the RCMI and QSRI should be re-named as ‘codes’ rather than ‘initiatives’. The term ‘initiative’ suggests a project or program with a discrete timeline and funding arrangement, rather than a document that enshrines particular binding obligations of signatories into the future. The term ‘code’ immediately conjures an understanding that requirements come with a public complaints-handling mechanism and associated penalties—an altogether more serious document.

The AFGC and ASB favoured re-drafting both documents in a clear legal style. Signatories reported uncertainties associated with some of the terms within the codes, such as ‘physical activity’, ‘healthy lifestyle’, ‘good dietary habits’ and what constitutes child-like themes and language. They also sought guidelines or explanatory notes to assist with comprehension and compliance. The ASB has produced several ‘Determination Summaries’ relevant to other advertising self-regulation that explains their latest interpretation of requirements in clear unambiguous terms and this might be useful initially.

Definitions in the codes also need to be consistent with other legal instruments. The ASB highlighted the need to align the wording of the codes with the new ACMA interpretation of the *Children’s Television Standards 2009* that a ‘competition’ can also be a ‘premium’.

Recommendation 2:

The codes would benefit from being drafted in a clear plain English legal style.

⁶⁷ Council of Better Business Bureaus (2011). *Children’s Food and Beverage Advertising Initiative in Action*, Arlington, VA, 52pp.

⁶⁸ ACCC (2011). *Guidelines for developing effective voluntary industry codes of conduct*. Canberra, 28pp.

Recommendation 3:

The RCMI and QSRI should be re-named as ‘codes’ rather than ‘initiatives’.

Recommendation 4:

Key terms and phrases in the codes need to have precise requirements ascribed to them, either within the code documents or in underpinning explanatory guidelines. The AFGC should consider resourcing the ASB to develop a ‘Determination Summary’ initially.

Recommendation 5:

Definitions in the codes need to be consistent with other legal instruments. Currently, the ACMA interpretation of the *Children’s Television Standards 2009* that a ‘competition’ can also be a ‘premium’ needs to be clarified in the RCMI and QSRI.

4.3 Rules

The code documents should prescribe the rules necessary to achieving the objectives.⁶⁹ In other words, the obligations set out in the codes have to be binding and rigorous enough to shift the emphasis of marketing away from non-core food and beverages towards promotion only of those products representing a healthy choice, leading to a measurable reduction over time in the amount and type of food and beverage promotions directed to children.

Re-drafting the codes to improve legibility and clarify definitions provides signatories with the opportunity to simultaneously enhance the ‘core principles’ of the codes. While the QSRI has recently been amended to increase coverage to include the placement of television advertisements as well as food and vouchers at children’s sporting events, the RCMI has not been extended beyond its initial scope since its introduction.

During interviews conducted for this review, both the AFGC and ASB favoured extending the coverage of the codes (and aligning them with each other). Seventy-four percent of signatories reported going beyond the requirements of the codes, however, no consensus emerged about formal code enhancement, despite a pervasive concern that the credibility of the codes is in doubt and a unanimous aspiration to improve their reputation.

At the very least, Australian self-regulatory arrangements should harmonize with other international voluntary rules such as those articulated by the IFBA and the EU Pledge. This should be relatively straightforward to execute given that many of the signatories are the same global enterprises already agreeing to strengthened arrangements in other global forums.

For example, the EU Pledge includes a clearly stated commitment to ongoing enhancement of arrangements. This objective being binding and measurable, the EU Pledge has recently been strengthened to apply to all online marketing (including company-owned and brand websites) and where >35% of the

⁶⁹ *Ibid.*

audience is under 12 years old—receiving in doing so, the commendation of the European Commission.

The IFBA has amended its “*Global Policy on Advertising and Marketing to Children*” to give effect to the same enhancements.

In the US, the core principles of the “*BBB Children’s Food and Beverage Advertising Initiative*” were enhanced to include social media in 2009, to apply where >35% of the audience is under 12 years old in 2011 and have just been enhanced again to incorporate standard nutrition criteria, an arrangement that will come into effect in December 2013.

This latest enhancement to US self-regulatory arrangements followed a Nutrition Science Review undertaken by initiative signatories. A subsequent agreement was reached to introduce standard nutrition criteria. The new uniform nutrition criteria establish, for 10 product categories, limits on calories, saturated fat, trans fat, sodium and sugars.⁷⁰ Against this standard, US signatories will be able to provide evidence of product reformulation and development. The new standard thereby in effect establishes a new objective for the code—namely that calories, fat, salt and sugar will be reduced over time in all food advertised directly to children. This sets a new measurable benchmark for industry self-regulation in this area, directly responding to those external stakeholder groups who consider self-regulation to be a façade and not really addressing community concerns.

The US standard nutrition criteria provides the Australian food and beverage industry with a starting point for their own scientific consideration of feasible uniform nutrition criteria for the RCMI, bearing in mind that actions aimed at increasing code credibility and building reputation will require extra dedicated resources. QSRI signatories should consider reporting against the standard criteria for that code in a way that makes manifestly clear specific improvements to the nutrition profile of products advertised to children over time.

Enhancements that would go beyond harmonization with current international arrangements, to bring together the RCMI and QSRI, include increasing the age of childhood to under 14 years and extending the rules to cover outdoor advertising and children’s sporting events (under the RCMI). A staged approach to these enhancements might be appropriate and would ultimately result in a single Australian food and beverage industry self-regulatory code.

Recommendation 6:

Australian self-regulatory codes should align with international best practice. In particular, the Australian membership should extend the rules of the RCMI and QSRI to cover company-owned and brand websites and where >35% (or lower) of the audience are children.

⁷⁰ Sourced accessed 22 May 2012:

www.bbb.org/us/storage/16/documents/cfbai/CFBAI%20Nutrition%20Chart%20March%202012.pdf. Note that it differs from the principles proposed by the US Trade Commission’s Interagency Working Group on Food Marketed to Children. Source accessed 22 May 2012: www.ftc.gov/os/2011/04/110428foodmarketproposedguide.pdf

Recommendation 7:

The AFGC should commence a review of nutrition criteria with a view to underpinning the RCMI rules with appropriate externally-validated category-based aligned criteria within a specified timeframe. The criteria should be used as the benchmark for product reformulation and development, allowing industry to report on improvements to the nutritional profile of products marketed to children over time as part of the code reporting process.

Recommendation 8:

QSRI signatories should commence tracking and reporting on improvements to the nutritional profile of products developed to meet the standard nutrition criteria established by the code.

Recommendation 9:

An ongoing staged approach to harmonizing the RCMI with the QSRI such that the two documents can be merged into a single Australian food and beverage industry code will further increase the credibility of self-regulatory arrangements.

4.4 Code administration

To ensure the rules are applied effectively, a committee should be established to administer the codes and its operations written into code documentation. As the ACCC advises—“The code administration committee needs to have representatives of all stakeholder groups and, where appropriate, complaints handling strategies in place. Such representation provides transparency to the scheme by providing a ‘public window’ into its operations”.⁷¹

4.4.1 Stakeholder involvement

Results from the interviews conducted in this review show that engendering wider stakeholder trust in the codes was a unanimous desire. The aspiration to be in partnership with government, rather than considered adversaries, was plain and is clearly what some of the signatories are experiencing and participating in overseas. Recent communications from European stakeholders of the similar EU Pledge are noteworthy.⁷² The European Commission has supported and endorsed the effort of the signatories to the Pledge. In turn, the signatories have continued to monitor, evaluate and strengthen the requirements of the code, as previously described. The relationship between government and industry is positive and evidence of impact is emerging. The European Commission is not expecting the food industry to solve public health problems, but has made it clear that enlisting them in partnership is one of a number of critical steps towards achieving its goals. In this partnership, due regard to ongoing and meaningful effort is proffered.

Many of the food and beverage companies that have signed the EU Pledge are global companies whose Australian divisions are also signatories of the

⁷¹ page 8: ACCC (2011). *Guidelines for developing effective voluntary industry codes of conduct*. Canberra, 28pp.

⁷² Source accessed 19 May 2012: www.advertisingwecare.org/

Australian RCMI and QSRI. The interviews conducted as part of this review would suggest that they do not experience such a partnership with the Australian Government at this time. In fact, there was some evidence to suggest a feeling of ‘fatigue’ that nothing they strive to do will be acceptable or trustworthy.

A code administration committee could be established to formalise an authentic partnership and oversee the direction and development of the codes into the future (including ensuring that signatories have in-house compliance systems in place, the challenging task of choosing criteria for inclusion and appropriate metrics for measuring performance). At this time, the RCMI and QSRI are managed only by dedicated staff within the AFGC. If the food and beverage industry is serious about implementing and enforcing a best practice self-regulatory instrument, industry peak body representatives should be accompanied on a code oversight committee by signatory, consumer and regulatory affairs representatives.

Given that there is no actual legislation that the codes are seeking to comply with, a regulatory representative may be a full voting member or a non-voting participant. Consumers could be represented in like fashion by the consumer peak body. Allocating full voting rights to these stakeholders would create the committed partnership sought by signatories interviewed for this review. Signatories from the major food and beverage categories should be represented on the code committee and a chairperson elected from this group.

There was some discussion about the burdensome nature of complying with all the AANA codes and the separate AFGC codes, with a view expressed that management of all these self-regulatory instruments should be brought under one umbrella. At this stage the priority should be establishing a better governance framework around the RCMI and QSRI, particularly in light of the careful government scrutiny these codes in particular are receiving. Efficiency gains from merging secretariat arrangements with the AANA might be appropriate down the track.

4.4.2 Coverage

The wider membership a code has in an industry the more effective it will be. The ACCC states—“The level of coverage should be measured in terms of number of actual code signatories against potential signatories within the industry, as well as in terms of coverage of the issue that the code is attempting to address”.⁷³

Coverage of the issues that the codes attempt to address has been dealt with in sections 4.1 and 4.3. However, interviews conducted for this review revealed that the activity of non-signatories was felt to be a significant hindrance to the reputation of the codes. Some signatories felt that increasing participation from non-signatory businesses was critical.

⁷³ page 9: ACCC (2011). *Guidelines for developing effective voluntary industry codes of conduct*. Canberra, 28pp.

The membership base of the RCMI and QSRI has not substantially increased over the first three years. Two new members have signed on to the RCMI, while there has been no growth in membership of the QSRI since inception.

No data is available quantifying either the percentage of total *marketing promotions* for food and beverages directed at children across Australian media that are sponsored by code signatories OR what percentage of food and beverage *products* marketed to children are advertised by signatories. This makes it difficult to discern the significance of code coverage. Addressing these data gaps will provide insight for the development of a recruitment strategy to increase code membership.

It was suggested during the interviews that AFGC membership ought to require code ratification. This is certainly an approach adopted by other industry sectors.⁷⁴ The implications for the AFGC of making compliance with the obligations of RCMI/QSRI a binding requirement for peak body membership should be explored. Levels of AFGC membership such as full and affiliate might be developed, where full peak body membership includes mandatory code compliance and full voting and participation rights, while affiliate membership comes without code ratification but lesser benefits, such as the right to participate and speak but not vote or nominate for council positions.

4.4.3 Complaints

In contracting the ASB to arbitrate complaints, the AFGC has ensured access to a best practice model for complaint resolution for the RCMI and the QSRI. Complaints can be initiated by a single individual; signatories are invited to respond to the complaint in the first instance; the Board then considers the complaint and makes a determination either to dismiss or uphold it with sanctions; and signatories can seek an independent review of the determination—a process outlined as best practice by the ACCC.⁷⁵

Not only has this aspect of the Australian codes has been particularly well designed but, importantly, the AFGC website's clear hyperlink to the complaints process represents worlds best practice in complaints communication. The general public in Australia can navigate from the AFGC website to the ASB website to find instructions for making a complaint with relative ease. In contrast, the EU Pledge dedicated website makes no mention of a complaints resolution process and the way complaints against the US BBB "*Children's Food and Beverage Advertising Initiative*" are handled is also unclear.

4.4.4 Sanctions for non-compliance

Sanctions need to be commercially significant and commensurate with the rigour of code obligations in order to ensure a meaningful incentive to comply. Weak or non-existent sanctions are often held up as a weakness of self-regulation.⁷⁶

⁷⁴ See for example: www.acfid.asn.au/about-acfid

⁷⁵ ACCC (2011). *Guidelines for developing effective voluntary industry codes of conduct*. Canberra, 28pp.

⁷⁶ In fact, there is no mention of sanctions in the EU Pledge commitments or on the EU Pledge dedicated website.

At the moment, compliance with the Australian codes is high and signatories reported that the threat of having an advertisement removed altogether is a commercially significant disincentive to finding 'loopholes' in requirements. Only one signatory expressed the view that the current incentives to comply are weak. Once restrictions on advertising are increased and their impacts on business goals are felt more keenly, food and beverage companies will weigh up the benefits of compliance in light of profit margins and penalties. Demonstrating the sufficiency of self-regulation in an environment where this question is receiving much scrutiny will demand a commitment to proper penalties for non-compliance to ensure the codes continue to perform well.

Current sanctions involve either amendment to rectify the problem with the advertisement or removal of the promotion altogether. Further sanctions for consideration may include expulsion from the codes, expulsion from the industry peak body, or fines.⁷⁷

There may be a role for government in enhancing the benefits of compliance with more rigorous self-regulatory advertising restrictions. Increased rights over intellectually property associated with new product formulation, a contribution to R&D associated with meeting the agreed targets for reducing fat, salt and sugar in the Australian food supply⁷⁸ or reductions in the tax deductibility of advertising are examples of government-generated incentives. The precedent for government incentives to comply with industry codes exists elsewhere and constitutes a strong partnership between government and industry on issues where costs borne by industry benefit the public interest.⁷⁹

4.4.5 Consumer awareness

The AFGC publishes all code documents on its website, including a list of code signatories and clear direction to the ASB complaints handling process, as per ACCC recommendations.⁸⁰ As previously mentioned, the ease with which a member of the Australian public can make a complaint against the code is superior to the ability to do the same against the EU Pledge or the US BBB "*Children's Food and Beverage Advertising Initiative*".

4.4.6 Industry awareness

The ACCC guidelines advise self-regulatory instruments should include a written provision requiring staff within signatory businesses to be formally instructed in the principles and rules in order to manage risk associated with staff turnover.

⁷⁷ ACCC (2011). *Guidelines for developing effective voluntary industry codes of conduct*. Canberra, 28pp.

⁷⁸ See the Food and Health Dialogue:

www.foodhealthdialogue.gov.au/internet/foodandhealth/publishing.nsf/Content/food-category-action-plans

⁷⁹ For example, farm businesses in the UK who have demonstrated 100% compliance with an industry-managed food safety assurance scheme over a specified period of time (e.g. years) benefit from substantially fewer Government inspections of premises than those who are not assured. In Australia, signatories to the Australian Council For International Development Code of Conduct benefit from access to AusAid grants (see www.acfid.asn.au).

⁸⁰ ACCC (2011). *Guidelines for developing effective voluntary industry codes of conduct*. Canberra, 28pp.

As the majority of signatories reported that formal orientation and training already include the obligations of the code, amending the RCMI and QSRI accordingly and reporting against this requirement ought to create little in the way of extra burden.

4.4.7 Monitoring

The AFGC monitors compliance on an annual basis and seeks to measure impact as referenced in previous sections.

Its reporting process could be improved in three ways. Firstly, this review has found that at times signatories miss reporting deadlines and AFGC must use its scarce resources to follow up this critical data. Signatories must provide the AFGC with annual reporting data by the nominated date each year. Secondly, as the peak body representing the food and beverage industry, engaging an independent expert to develop the Annual Compliance Report in its entirety may improve transparency and credibility, particularly in relation to analysing and summarising the signatory reports. Thirdly, the Annual Compliance Report would benefit from being transparent about costs—resources associated with operating a secretariat, contracting the ASB and NPRC to discharge functions, and costs associated with monitoring and reviews. Signatories have not quantified their own compliance costs, although this too would be valuable information, particularly for government stakeholders.

One important finding of the Annual Compliance Reviews published to date is the recognition that third-party mistakes, such as bonus air time granted by broadcasting networks without prior consent of advertisers for placement, constitute a systemic risk leading to inadvertent breaches of the code. This data has enabled signatories to put in place corrective action on breaches that were not identified through the complaints process and this risk is likely to be mitigated in the near future.

4.4.8 Accountability and review

As well as the annual reporting process, the AFGC has commissioned this independent review of the operation of the codes, three years following their introduction. Such periodic assessment is critical for ensuring that the objectives remain relevant and responsive to current community expectations and the instruments are working effectively.⁸¹

Recommendation 10:

The AFGC should seek to broaden governance arrangements for the codes making involvement more inclusive of key stakeholders. The AFGC should establish a code administration committee comprising of representatives from key stakeholder groups including signatories, consumers and government to monitor code development, adherence to and evaluation of the codes and oversee future direction.

⁸¹ *Ibid.*

Recommendation 11:

The AFGC in collaboration with its members should gather data measuring a) the extent of code ratification among all food and beverage manufacturers operating in Australia and b) the extent of code coverage in terms of the percent of all food and beverage promotions and products directed to children across Australian media. Addressing these information gaps will provide the baseline data necessary for developing a code recruitment strategy and monitoring progress against objectives over time.

Recommendation 12:

As part of a code recruitment strategy, the AFGC should explore the implications of making code ratification a requirement of peak body membership. New levels of peak body membership may need to be developed.

Recommendation 13:

As the codes are enhanced and advertising restrictions are increased, incentives for compliance, including commercially significant sanctions, warrant consideration. There may be a role for government in setting positive incentives.

Recommendation 14:

The RCMI and QSRI should include a provision requiring staff within signatory companies to be instructed in the principles and procedures.

Recommendation 15:

Signatories should prepare their annual reports in a timely manner.

Recommendation 16:

The AFGC should consider engaging an independent organisation to undertake and develop the Annual Compliance Report for the codes.

Recommendation 17:

The Annual Compliance Report should include a transparent account of costs associated with operating the code secretariat, contracting the ASB and NPRC to discharge their complaints handling functions and those costs associated with preparing the Report itself.

4.5 Concluding remarks

The effectiveness of the Australian food and beverage industry's self-regulatory restrictions on advertising to children is currently under scrutiny not only from external health expert groups but also a government with a stated commitment to monitor its impact with a view to further intervention if necessary.

Imposing conditions on promotion restricts competition. In the Australian food and beverage industry the fight to fill the supermarket basket is fierce. The issues examined in this review serve to highlight how challenging it is to impose agreed control measures in a space that is so aggressively competitive. Relinquishing control of being able to differentiate food and beverage products to a key segment of the marketplace is laudable, demanding and costly.

Nonetheless a unanimous, emphatic and enduring commitment to ratification of these Australian codes that limit marketing activity and opportunity was reported—conveying a clear sense of exigent obligation.

In light of this, the review is able to make 17 recommendations for enhancing the codes by clarifying objectives, strengthening the rules and making code administration arrangements more inclusive. Acceptance of these recommendations will serve to increase the credibility of the codes—a stated aspiration of all stakeholders.

Underpinning all these recommendations is the concern that the pathway of anticipated impacts described in Figure 1 is not altogether evident. Uncertainties about whether advertising restrictions, among other interventions, share a meaningful contribution to improved juvenile dietary habits and children's weight outcomes makes them difficult to design.

Nonetheless these recommendations will bring the Australian industry codes into alignment with international best practice and the recommendations for best practice design of self-regulatory codes of conduct promulgated by the ACCC. Indeed the provisions around complaints already represent world's best practice.

With the right incentives in place for ongoing achievement of the highest levels of compliance, including commensurate sanctions for breaches, these codes will provide a sound basis for shifting the emphasis of marketing away from high energy, low nutrient food and beverages towards promotion of healthier dietary choices, making these instruments one of a suite of effective tools responding to the complex policy problem of childhood overweight and obesity.

Appendix A: RCMI review questionnaire

1. Why did your business sign up to the RCMI?

2. Has your company formally adopted the RCMI into your business process?

Yes/No

If yes, what specific steps have been taken?

3. What specific actions have been implemented within your business to ensure adherence to your commitment to the RCMI?

4. Have you gone beyond the requirements of the RCMI e.g. implemented more 'stringent' criteria?

Yes/No

If yes, what specific steps have been taken?

5. Please indicate on a scale of 1-5, with 1 being strongly agree and 5 being strongly disagree:

Our business has not experienced any challenges in implementing the initiative

1	2	3	4	5
Strongly agree	Agree	Neutral	Disagree	Strongly disagree

Please specify challenges (if any).

6. Please indicate on a scale of 1-5, with 1 being strongly agree and 5 being strongly disagree:

Being a signatory to the RCMI is of value to the business.

1	2	3	4	5
Strongly agree	Agree	Neutral	Disagree	Strongly disagree

Please specify the value (if any).

7. Please indicate on a scale of 1-5, with 1 being strongly agree and 5 being strongly disagree:

AFGC has played an effective role in managing the RCMI.

1	2	3	4	5
Strongly agree	Agree	Neutral	Disagree	Strongly disagree

Please articulate your views on AFGC's management of the initiatives.

8. Has one of your company's advertisements been involved in an official complaint i.e. through involvement of the Advertising Standards Bureau (ABS)?

Yes/No

If yes, what is your view of the ASB's management of complaints?

9. Do you have any views on how the RCMI could be strengthened?
10. Would you like to propose any textual amendments to the RCMI in relation to content, implementation, compliance or management?
11. Is your business also a signatory to similar codes in other jurisdictions?

Yes/No

If yes, how do you manage the implementation of several codes?

What are the key differences between the codes?

Are any of these responsible marketing codes of more value to your business than others? Why?

Appendix B: QSRI review questionnaire

1. Why did your business sign up to the QSRI?

2. Has your company formally adopted the QSRI into your business process?

Yes/No

If yes, what specific steps have been taken?

3. What specific actions have been implemented within your business to ensure adherence to your commitment to the QSRI?

4. Have you gone beyond the requirements of the QSRI e.g. implemented more 'stringent' criteria?

Yes/No

If yes, what specific steps have been taken?

5. Please indicate on a scale of 1-5, with 1 being strongly agree and 5 being strongly disagree:

Our business has not experienced any challenges in implementing the initiative

1	2	3	4	5
Strongly agree	Agree	Neutral	Disagree	Strongly disagree

Please specify challenges (if any).

6. Please indicate on a scale of 1-5, with 1 being strongly agree and 5 being strongly disagree:

Being a signatory to the QSRI is of value to the business.

1	2	3	4	5
Strongly agree	Agree	Neutral	Disagree	Strongly disagree

Please specify the value (if any).

7. Please indicate on a scale of 1-5, with 1 being strongly agree and 5 being strongly disagree:

AFGC has played an effective role in managing the QSRI.

1	2	3	4	5
Strongly agree	Agree	Neutral	Disagree	Strongly disagree

Please articulate your views on AFGC's management of the initiatives.

8. Has one of your company's advertisements been involved in an official complaint i.e. through involvement of the Advertising Standards Bureau (ABS)?

Yes/No

If yes, what is your view of the ASB's management of complaints?

9. Do you have any views on how the QSRI could be strengthened?
10. Would you like to propose any textual amendments to the QSRI in relation to content, implementation, compliance or management?
11. Is your business also a signatory to similar codes in other jurisdictions?

Yes/No

If yes, how do you manage the implementation of several codes?

What are the key differences between the codes?

Are any of these responsible marketing codes of more value to your business than others? Why?

Appendix C: Advertising Standards Bureau review questionnaire

ASB manages complaints in relation to both the RCMI and the QSRI. The responses may be separated according to the separate initiatives.

1. Provide an outline of the complaints management process. Including:

- a. receipt of complaints
- b. liaising with signatories
- c. liaising with the Healthy Choices Arbiter
- d. reporting to stakeholders

2. Please indicate on a scale of 1-5, with 1 being strongly agree and 5 being strongly disagree:

ASB has not experienced any challenges in managing the initiatives.

1	2	3	4	5
Strongly agree	Agree	Neutral	Disagree	Strongly disagree

Please specify the challenges (if any).

3. Please indicate on a scale of 1-5, with 1 being strongly agree and 5 being strongly disagree:

The RCMI and QSRI have the characteristics of effective advertising codes of practice.

1	2	3	4	5
Strongly agree	Agree	Neutral	Disagree	Strongly disagree

Please articulate your views on the structure of the initiatives.

4. Do you have any views on how the RCMI/QSRI could be strengthened?

5. Would you like to propose any textual amendments to the RCMI/QSRI in relation to content, implementation, compliance or management?

Appendix D: Health Choices Arbiter (Nutritional Physiology Research Centre, University of South Australia) review questionnaire

The University of SA is the referral agency contracted by the AFGC to arbitrate when the healthiness of a product requires determination in a complaint resolution process.

1. Provide an outline of the arbitration process. Including:

- a. receipt of complaints
- b. liaising with signatories
- c. liaising with ASB
- d. reporting to ASB

2. Please indicate on a scale of 1-5, with 1 being strongly agree and 5 being strongly disagree:

As the Healthy Choices Arbiter you have not experienced any challenges in managing the initiatives.

1	2	3	4	5
Strongly agree	Agree	Neutral	Disagree	Strongly disagree

Please specify the challenges (if any).

3. Do you have any views on how the RCMI/QSRI could be strengthened?

4. Would you like to propose any textual amendments to the RCMI/QSRI in relation to content, implementation, compliance or management?

Appendix E: Australian Food and Grocery Council review questionnaire

The Australian Food and Grocery Council manages both the RCMI and the QSRI.

1. Provide an outline of the management process. Including:

- a. compliance monitoring
- b. annual compliance report
- c. communicating with stakeholders
- d. risk management

2. Please indicate on a scale of 1-5, with 1 being strongly agree and 5 being strongly disagree:

AFGC has not experienced any challenges in managing the initiatives.

1	2	3	4	5
Strongly agree	Agree	Neutral	Disagree	Strongly disagree

Please specify the challenges (if any).

3. Do you have any views on how the RCMI/QSRI could be strengthened?

4. Would you like to propose any textual amendments to the RCMI/QSRI in relation to content, implementation, compliance or management?

Appendix F: Template provided by the AFGC for annual reporting by signatories against their Company Action Plans

COMPANY NAME:

STATEMENT OF COMPLIANCE: [Outline the steps taken to comply with the company action plan – checks and controls etc – and describe level of compliance]

DETAILS OF MARKETING COMMUNICATION ACTIVITY TARGETING CHILDREN: [Provide a list of the marketing communication activity targeting children for the period of 1 January 2011 to 31 December 2011. If none was undertaken, make a statement as such]

COMPLIANCE AGAINST THE CORE PRINCIPLES: [Provide details of how each activity complied with the core principles. Leave blank if none was undertaken]

Advertising messaging 1 & 2

Use of popular personalities and licensed characters

Product placement

Use of interactive games

Advertising in schools

Use of premium offers

SCIENTIFIC OR GOVERNMENT STANDARDS: [Outline steps taken to test products against the nominated standards and provide a statement of compliance]

MEDIA: [Provide details on media placement for each advertisement. This should include a detailed log showing ad placement against the media requirements.]

ADDITIONAL ACTION: [Provide details of any additional action or activities undertaken in support of this initiative. This may include product reformulation, removing website etc]

OTHER COMMENTS:

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Submitted by:

Name:

Position:

Company Name:

Date: