

**LEGISLATIVE INTERVENTION
TO ADDRESS OBESITY
IN OVERSEAS JURISDICTIONS**

**A Report prepared for Fight the Obesity Epidemic (FOE) and
Diabetes New Zealand Inc
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EXECUTIVE SUMMARY

There is currently an ‘obesity epidemic’ in many developed countries, including New Zealand. This report identifies proposed and completed legislative measures that seek to address this trend, as a basis for discussion and implementation of such measures in Aotearoa New Zealand. The three key legislative measures found in prominent overseas jurisdictions are listed below.

Restrictions on the Sale of Certain Foods and Drinks in Schools

The United States, which has significant federal involvement in school lunch programmes, has strong federal regulation of foods sold in cafeterias during lunch period. However, US states have only recently begun targeting food and drink sold at other times and in other places, with the federal government and many states introducing bills to limit the sale of unhealthy foods. California provides an example of completed legislation that limits the sale of unhealthy foods in schools.

Restrictions on Television Advertising to Children

There is a wealth of proposed and completed legislation that restricts advertising to children in general, and some useful examples of restrictions targeting unhealthy foods. Many states such as Sweden, Norway, Belgium and Denmark, and the Canadian province of Quebec, prohibit advertising during children’s programmes, and many more have strict regulations. The United Kingdom and Ireland have both considered Private Member’s bills that seek to specifically prohibit the television advertising of unhealthy food and drink during children’s programmes.

Taxes on Certain Foods and Drinks to Fund Health Promotion

Taxation at the state level in the United States provides an excellent example of the revenue-gathering potential of small taxes on soft drink and snack foods for spending on public health. Although a small tax may not reduce the consumption of unhealthy foods, it may be more politically feasible than a steep tax. United State surveys found that 45% of adults would support such a tax if revenue was spent on health education, even before the current media furore over the ‘obesity epidemic’.

This report was written on behalf of Fight the Obesity Epidemic Inc. and Diabetes New Zealand. It was carried out in January 2004. The report gives a brief survey of prominent legislative measures to fight obesity in prominent overseas jurisdictions. As such, it does not purport to provide a comprehensive survey or detailed policy analysis. This survey was limited by the lack of English translations of non-English legislation and texts. This meant that secondary materials were relied on in the case of some countries.

I INTRODUCTION

This report discusses existing and proposed legislation relating to the control and reversal of the ‘obesity epidemic’ that is gripping Aotearoa New Zealand and many other developed countries.¹ It focuses on three main legislative and regulatory measures, that have been used internationally, which could be combined to create a comprehensive strategy to bring down the national obesity trends, particularly among young children.

This report is a basis for discussion and implementation of comprehensive legislative measures in Aotearoa New Zealand. The first method is a requirement for schools to implement nutritious food policies. The second method is control over television and ‘point of sale’ advertising of ‘unhealthy’² food to children. The third method is a requirement for the Health Sponsorship Council to fund community groups to work to improve school nutrition, funded by a nominal tax on fat-laden foods and soft drinks.

II LEGISLATIVE MEASURES TO FIGHT OBESITY

A Food in Schools

There is considerable concern at the foods that children and young adults have access to in primary and secondary schools, and also universities. Many schools and universities have vending machines that sell only foods high in added sugar and high in fat. In the United States there is also concern due to the prevalence of contracts between schools and companies that give exclusive advertising exposure and guarantee a certain number of annual sales of soft drinks to students.³ In response to this, United States federal legislators have taken steps to encourage healthy eating in schools, such as giving schools more powers to regulate the distribution of foods of minimal nutritional value.⁴ At the state level, there has been a huge amount of proposed legislation aimed at regulating or prohibiting the sale of foods of minimal nutritional value in schools, but only a few these bills have been passed.

(a) United States - Federal

The United States federal government has an interest in food served in schools because it subsidises certain school lunch and breakfast programs.⁵ Therefore, food served in the federal school lunch programme must meet minimum nutritional requirements prescribed by the Secretary on the basis of tested nutritional research.⁶ The United States Department of Agriculture (USDA) also promulgates rules on the

¹ See *The POD Report* (March 2003, Diabetes New Zealand and Fight the Obesity Epidemic Inc) available at www.diabetes.org.nz/publications/pod_report.doc, 3.

² The term ‘unhealthy’ is obviously quite indeterminate in itself, but in this paper it generally indicates foods and drinks with high concentrations of sugar, salt and fat, and with little nutritional value.

³ See Marion Nestle ‘Soft Drink “Pouring Rights”: Marketing Empty Calories’ (2000) <http://www.asu.edu/educ/eps/CERU/Documents/cace-00-03.htm>

⁴ Better Nutrition for School Children Act 2003 S1007 108th Congress

⁵ Through the National School Lunch Act of 1946 and the Child Nutrition Act of 1966.

⁶ United States Code 42 USC 1758 (a)(1)(a)

sale of ‘competitive’ foods in school cafeterias during lunch period.⁷ However, unhealthy food and drink is still sold in vending machines in schools.

In 2003 there were many bills tabled in the 108th US Congress that sought to address obesity through the regulation of food that is distributed in schools. In the Senate, Senator Jeff Bingaman introduced a bill labelled the ‘Better Eating for Better Living Act of 2003’ that would amend the Child Nutrition Act of 1966 and the Richard B. Russell National School Lunch Act to raise subsidies for healthy lunches, review nutritional guidelines and provide the option of low-fat milk.⁸ It would also increase funding for nutritional education.⁹ Senator Patrick Leahy introduced a bill labelled the Better Nutrition for School Children Act that would amend the Child Nutrition Act of 1966 to give authorities more power to regulate the distribution of foods of minimal nutritional value in schools.¹⁰

Similarly, in the House of Representatives, Representative Lois Capps introduced a bill that would allow the Centers for Disease Control to make grants to educational agencies to support the purchase or lease of vending machines that offer for sale healthy foods and beverages in schools.¹¹ Representative Mike Castle introduced a bill labelled the Obesity Prevention Act that generally encourages school-based activities to help reduce and prevent obesity among children.¹²

However, given that the enactment rate of bills is around 5%,¹³ and the issues so controversial, and food industry pressure so strong, it seems that these bills are unlikely to be passed.

(b) United States - California

California has enacted legislation that specifies nutritional requirements for foods sold in morning or afternoon breaks at elementary schools.¹⁴ This section could provide a basis for a national nutritious food policy for New Zealand schools. The legislation reads:

49431 b(2) An individual food item sold to a pupil during morning or afternoon breaks at an elementary school shall meet all of the following standards:

(A) Not more than 35 percent of its total calories shall be from fat. This subparagraph does not apply to the sale of nuts or seeds.

(B) Not more than 10 percent of its total calories shall be from saturated fat.

(C) Not more than 35 percent of its total weight shall be composed of sugar. This subparagraph does not apply to the sale of fruits or vegetables.

⁷ Jeff Strnad ‘Conceptualising the “Fat Tax”’: The Role of Food Taxes in Developed Economies’ unpublished paper available at http://www.law.harvard.edu/programs/olin_center/corporate_governance/papers/03.Strnad.fat-tax.pdf, 5.

⁸ Better Eating for Better Living Act of 2003, S1750 108th Congress

⁹ Better Eating for Better Living Act of 2003, S1750 108th Congress

¹⁰ Better Nutrition for School Children Act 2003, S1007 108th Congress

¹¹ HR2225 108th Congress

¹² Obesity Prevention Act 2003, HR 2227 108th Congress

¹³ Indiana University Centre on Congress *The Legislative Process*

http://congress.indiana.edu/learn_about/legislative.htm

¹⁴ California Code (Education Code), Sections 49431(b)(2)

Schools must also make fruit and non-fried vegetables available wherever other food is sold.¹⁵ Furthermore, California also prohibits the sale of drinks other than water, milk, pure fruit juices and fruit drinks with 50% fruit juice at elementary schools.¹⁶ Similar restrictions apply to middle and junior high schools, with the addition of electrolyte replacement beverages that contain less than 42 grams of added sweetener per twenty-ounce serving.¹⁷ In any case, servings of fruit drinks are limited to 12 ounces, which is roughly one standard can.¹⁸ School districts are required to develop nutrition and physical activity policies.¹⁹ The law also requires schools to post a summary of nutrition and physical activity laws, and the school district's nutrition and physical activity policies, in public view in school cafeterias.²⁰

Many other states proposed similar legislation in 2003, but most of these bills died. To cite a few examples, Utah proposed limiting vending machines to those selling foods that meet the USDA standards.²¹ Virginia has proposed restrictions on unhealthy foods in vending machines.²² Texas proposed food and drink restrictions similar to the California law.²³

B Food Advertising to Children

There is much concern worldwide about the effect of television advertising on children.²⁴ In Britain, food advertisers spend huge amounts of money on television advertisements for chocolate and potato chips (fifty million pounds),²⁵ which shows that they believe that advertising to children does work. The American Public Health Association recently released new policies that support the prohibition of television food advertising to children,²⁶ and there are reports that a draft World Health Organisation report also recommended restricting food advertising to children.²⁷ A study recently completed by researchers at the University of Strathclyde and commissioned by the UK Food Standards Agency found that such food promotion does have significant effects on children's preferences, purchase behaviour and consumption.²⁸ There is evidence that television advertising of unhealthy foods that are high in added sugar and fat can lead to unhealthy eating patterns.²⁹ Children are

¹⁵ California Code (Education Code), Sections 49433.9(d)

¹⁶ California Code (Education Code), sections 49431.5(a)

¹⁷ California Code (Education Code), sections 49431.5

¹⁸ California Code (Education Code), sections 49433.9(a)(3)

¹⁹ California Code (Education Code), sections 49433(a)

²⁰ California Code (Education Code), sections 49432.

²¹ Utah HB186S4 (2003).

²² Virginia SB923 (2003).

²³ Texas SB343 (2003) section 7.

²⁴ See Broadcasting Commission of Ireland *Advertising and Children* (December 2002)

<http://www.irtc.ie/Advertising%20&%20Children.doc>.

²⁵ *Ibid*, 2.2.

²⁶ <http://www.apha.org/news/press/2004/policies.htm>

²⁷ *Obesity Policy Report* January 2004 volume 2 no 1, available at www.obesitypolicy.com.

http://www.obesitypolicy.com/ejournals/issues/issue_km.asp?cf=periodicals/1125/V2.I1.20040101.47EF4A28-864F-45D5-8E3D-329E440F46FB.pdf 4

²⁸ Gerard Hastings, Martine Stead, Laura McDermott, Alasdair Forsyth, Anne Marie MacKintosh, Mike Rayner, Christine Godfrey, Martin Caraher and Kathryn Angus *Review of Research on the Effects of Food Promotion to Children* (22 September 2003, Centre for Social Marketing, University of Strathclyde, Glasgow) 3.

²⁹ The Pod Report *The POD Report* (March 2003, Diabetes New Zealand and Fight the Obesity Epidemic Inc) available at www.diabetes.org.nz/publications/pod_report.doc, 9.

particularly susceptible to television advertising, being the main advertising medium for children between 6 and 13.³⁰

Some states have acted on this evidence to prohibit advertising to children in general or for specific products and services.³¹ Many other states have debated child advertising restrictions at the highest level. This section examines both the legislation that has been enacted so far and proposed legislation in order to provide a model for such legislation in Aotearoa New Zealand.

Many states regulate television advertising to children. Such limitations usually follow a similar pattern that falls short of general prohibition of advertising to children. Many European states have enacted such restrictions in order to implement the Television Without Frontiers Directive.³² Article 16 of the directive reads:

Television advertising shall not cause moral or physical detriment to minors, and shall therefore comply with the following criteria for their protection:

- (a) it shall not directly exhort minors to buy a product or a service by exploiting their inexperience or credulity;
- (b) it shall not directly encourage minors to persuade their parents or others to purchase the goods or services being advertised;
- (c) it shall not exploit the special trust minors place in parents, teachers or other persons;
- (d) it shall not unreasonably show minors in dangerous situations.³³

This directive regulates advertising to children on television without imposing a complete ban. States have generally implemented the article 16 of the directive in similar language, with many states providing that advertisements should not exploit children's inexperience and credulity.³⁴

1 Completed Legislation

(a) Sweden

The most comprehensive ban on advertising aimed at children exists in Sweden. Sweden has a clear ban on television advertising of any kind aimed at children under 12 years old. The ban is based on the view that children under 12 are not as able to distinguish between advertisements and programmes as adults, and are

³⁰ Broadcasting Commission of Ireland *Advertising and Children* (December 2002)

<http://www.irtc.ie/Advertising%20&%20Children.doc>, 2.2.

³¹ For a good overview of European legislation regulating advertising to children see European Audiovisual Observatory *Regulation on Advertising Aimed at Children in EU-Member States and Some Neighbouring States* (2000, EAO, Strasbourg) located at

http://www.obs.coe.int/online_publication/reports/childadv.pdf.en, and the various country reports located at the European Union's Audiovisual Policy website <http://europa.eu.int/comm/avpolicy/>

³² Television Without Frontiers Council Directive of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (89/552/EEC) located at

http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31989L0552&model=guichett

³³ *Ibid*, Article 16.

³⁴ See Irish Code of Standards, Section 14; Norwegian Executive Order no 489 of 11 June 1997 on Radio and Television Advertising and Programme Sponsoring; Spanish Law 25/1994

http://www.obs.coe.int/online_publication/reports/childadv.pdf.en, 17; French Decree of 27 March 1992, article 7 http://www.obs.coe.int/online_publication/reports/childadv.pdf.en, 25; Italian 30/11/91, no 425, article 3 http://www.obs.coe.int/online_publication/reports/childadv.pdf.en, 38.

thus misled by television advertising.³⁵ Advertising in radio and television is governed by the Radio and Television Act 1996.³⁶ Chapter 7, section 4 of the Radio and Television Act 1996 prohibits advertising in television broadcasting directed at children under 12 years old.³⁷ The relevant legislation reads:

Commercial advertisements in a television transmission may not have the purpose of attracting the attention of children under the age of twelve.³⁸

In deciding whether the advertisement is directed at children under 12 years old, it is important to consider the type of product or service, the design of the advertisement and the context in which it occurs.³⁹

Advertising is similarly prohibited immediately before or after television programming that is directed towards children younger than 12 years old.⁴⁰ The relevant legislation reads:

Commercial advertisements may not occur immediately before or after a programme or part of a programme which is principally intended for children under the age of twelve except when it is a message referred to in Section 8.⁴¹

The exception referred to allows the sponsorship of a television programme to be indicated in a suitable way either before or after the programme.⁴² Furthermore, television advertisements may not include people or characters that play prominent roles in programmes primarily intended for children under twelve years old.⁴³ The legislation reads:

Persons or characters who play a prominent role in programmes primarily intended for children under the age of twelve may not appear in commercial advertisements in a television transmission.⁴⁴

(b) Norway

Like Sweden, Norway also bans advertising during children's programmes and advertising that is aimed at children. The legislation that provides for this ban is the Broadcasting Act 1992.⁴⁵ The relevant legislation reads:

Advertisements may not be broadcast in connection with children's programmes, nor may advertisements specifically target children.⁴⁶

³⁵ Broadcasting Commission of Ireland *Advertising and Children* (December 2002), section 5

³⁶ Sw Radio och TV-lagen (1996:844) Chapter 7; *Study on the Impact of Advertising and Teleshopping on Minors - Sweden* http://europa.eu.int/comm/avpolicy/stat/studpdf/minadv_se.pdf.

³⁷ *Study on the Impact of Advertising and Teleshopping on Minors - Sweden* http://europa.eu.int/comm/avpolicy/stat/studpdf/minadv_se.pdf, 21.

³⁸ Radio and Television Act 1996, chapter 7 section 4.

³⁹ *Study on the Impact of Advertising and Teleshopping on Minors - Sweden* http://europa.eu.int/comm/avpolicy/stat/studpdf/minadv_se.pdf, 21.

⁴⁰ Radio and Television Act 1996, chapter 7 section 7.

⁴¹ Radio and Television Act 1996, chapter 7 section 7.

⁴² Radio and Television Act 1996, chapter 7 section 8.

⁴³ Radio and Television Act 1996, chapter 7 section 4. *Study on the Impact of Advertising and Teleshopping on Minors - Sweden* http://europa.eu.int/comm/avpolicy/stat/studpdf/minadv_se.pdf

⁴⁴ Radio and Television Act 1996, chapter 7 section 4.

⁴⁵ Act No. 127 of 4 December 1992 Relating to Broadcasting, located at <http://odin.dep.no/kkd/engelsk/media/018041-200005/index-dok000-b-n-a.html>.

Furthermore, there is also a prohibition on television advertisements that contain people or characters that are known from programmes directed to children.⁴⁷ The relevant legislation reads:

No advertisements may be broadcast for products or services of special interest to children and young people which involve the participation of persons or figures who regularly or over a long period of time in the preceding 12 months have appeared as important elements of programmes for children or young people on a radio or television channel that is received in Norway.⁴⁸

(c) Denmark

Denmark does not have a general ban on advertising to children. However, it does have some controls over television advertising aimed at children. In Denmark the Danish Broadcasting Act regulates television advertising.⁴⁹ Protection of children is contained in Executive Order no 489 of 11 June 1997 on Radio and Television Advertising and Programme Sponsoring.⁵⁰ The Executive Order prevents advertisement aimed at children from exploiting the inexperience of natural incredulity, or the fact that they are easily influenced.⁵¹ It also provides that no advertisements can be shown during the course of programmes.⁵²

(d) The Netherlands

The Netherlands does not have legislation that prohibits television advertising for food that does not meet certain nutritional criteria. However, it does have some restrictions on advertising to children. The Media Act⁵³ and Media Decree⁵⁴ provide that advertisements to children must be clearly distinguished from programmes. National broadcasters cannot broadcast advertising messages.⁵⁵ On commercial broadcasting, only the Radio and Television Advertising Foundation (STER) may broadcast advertisements.⁵⁶ Commercially broadcast programmes that are addressed to minors under the age of 12 can be interrupted on commercial broadcasting only if they last for longer than 30 minutes.⁵⁷ Programmes directed to children under 12 may not have product placement or sponsoring.⁵⁸

⁴⁶ Ibid, chapter 3 section 3-1.

⁴⁷ *Study on the Impact of Advertising and Teleshopping on Minors - Norway*

http://europa.eu.int/comm/avpolicy/stat/studpdf/minadv_no.pdf 16

⁴⁸ Regulations No. 153 of 28 February 1997 relating to broadcasting, chapter 3 section 3-6.

http://odin.dep.no/kkd/engelsk/acts_regulations/018001-990111/index-dok000-b-n-a.html

⁴⁹ *Study on the Impact of Advertising and Teleshopping on Minors - Denmark*

http://europa.eu.int/comm/avpolicy/stat/studpdf/minadv_dk.pdf

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

⁵³ “Mediawet”, Stb 1987, 249.

⁵⁴ “Media Besluit”, Stb 1987, 249.

⁵⁵ Media Act Article 52, sections 1 and 2 *Study on the Impact of Advertising and Teleshopping on Minors - Netherlands* (2001) 15 http://europa.eu.int/comm/avpolicy/stat/studpdf/minadv_nl.pdf

⁵⁶ Media Act Article 26 and 52 section 1; *Study on the Impact of Advertising and Teleshopping on Minors - Netherlands* (2001) 15 http://europa.eu.int/comm/avpolicy/stat/studpdf/minadv_nl.pdf

⁵⁷ Media Decree, article 52 e section 3. *Study on the Impact of Advertising and Teleshopping on Minors - Netherlands* (2001) 15 http://europa.eu.int/comm/avpolicy/stat/studpdf/minadv_nl.pdf

⁵⁸ Ibid.

(e) Canada - Federal

Television advertising to children is highly regulated in Canada.⁵⁹ At the federal level, the Broadcast code for Advertising to Children (Broadcast Code) governs television advertising to children.⁶⁰ Although the rules are developed by the Canadian Association of Broadcasters, and not by legislation, they have legal force because broadcasting licences carry the condition of all content conforming to the Broadcast Code.⁶¹ The Broadcast Code contains varying provisions that generally prohibit content that exploits children's vulnerability by preventing undue pressure, presentation by programme characters, and inferences of superiority in the case of purchase.⁶² The code also limits scheduling of advertisements, providing that advertisements may not be shown more than once per half hour, and limiting advertising to four minutes per hour.⁶³ Advertisements broadcast during the early school-morning hours should be aimed at the family rather than children, due to pre-schoolers' inability to distinguish between advertising and programme content.⁶⁴ Furthermore, the state broadcaster has voluntarily undertaken not to accept advertising directed to children under 12.⁶⁵

(f) Canada - Quebec

Quebec is the only province in Canada that has legislated for a complete ban on commercial advertising to children under the age of 13 years old.⁶⁶ The legislative provisions are contained in the Quebec Consumer Protection Act, and they read:

248. Subject to what is provided in the regulations, no person may make use of commercial advertising directed at persons under thirteen years of age.

249. To determine whether or not an advertisement is directed at persons under thirteen years of age, account must be taken of the context of its presentation, and in particular of

(a) the nature and intended purpose of the goods advertised;

(b) the manner of presenting such advertisement;

(c) the time and place it is shown.⁶⁷

Various exemptions to this prohibition exist to allow advertising aimed at children under 13 in children's magazines, advertising a children's show or

⁵⁹ See generally Wendy S Reed, Catherine Bate and Douglas Simovic *Kid Law: Advertising to Children in Canada* located at <http://www.gala-marketlaw.com/pdf/kidlaw.pdf>, 63.

⁶⁰ Ibid, 63-64.

⁶¹ Ibid, 64.

⁶² Ibid, 64.

⁶³ Ibid, 64-65.

⁶⁴ Broadcast Code for Advertising to Children, III:2, located at <http://www.adstandards.com/en/clearance/childrencode.asp#preSchoolers>.

⁶⁵ Wendy S Reed, Catherine Bate and Douglas Simovic *Kid Law: Advertising to Children in Canada* (2003, World Advertising Research Centre), located at <http://www.gala-marketlaw.com/pdf/kidlaw.pdf> 65.

⁶⁶ Ibid, 66.

⁶⁷ Quebec Consumer Protection Act R.S.Q., chapter P-40.1, sections 248 and 249.

advertisements promoting a product in a store.⁶⁸ Quebec also dissuades advertising in schools by prohibiting the receipt of gifts, grants or other contributions from commercial solicitations, if conditions incompatible with the mission of the school are attached.⁶⁹ This provision has stopped some prominent promotions from proceeding.⁷⁰ There is some evidence that this legislation has had positive impacts, with French-speaking children who watch Quebec television showing less increase in household expenditure on advertised cereals than English-speaking children with access to American television.⁷¹

(g) Other European States

Other European countries have restrictions on television advertising during children's programmes, often as a part of implementing the European Union's Television Without Frontiers directive. Austria does not permit advertising during children's programmes, and Italy prohibits cartoon films from being interrupted by advertisements.⁷² In Belgium, the Flemish community has a complete ban on television advertising during or within five minutes of children's programmes.⁷³ In Germany, private television may not broadcast advertising during programmes for children,⁷⁴ and there are extensive guidelines regarding the method of advertising to children.⁷⁵

2 Proposed Legislation and Debates

(a) United Kingdom

The United Kingdom does not currently have a prohibition on the television advertising of certain foods to children. However, there is currently some restriction on advertising to children. The Broadcasting Act 1990 gives the Independent Television Commission (ITC) the power to draw up and enforce a code of standards for television advertisements.⁷⁶ Advertisements that use personalities or other characters (such as puppets or cartoon characters) who appear regularly in any

⁶⁸ Wendy S Reed, Catherine Bate and Douglas Simovic *Kid Law: Advertising to Children in Canada* (2003, World Advertising Research Centre), located at <http://www.gala-marketlaw.com/pdf/kidlaw.pdf> 67-68.

⁶⁹ Quebec Education Act R.S.Q., chapter I-13.3, s 94.

⁷⁰ Wendy S Reed, Catherine Bate and Douglas Simovic *Kid Law: Advertising to Children in Canada* (2003, World Advertising Research Centre) <http://www.gala-marketlaw.com/pdf/kidlaw.pdf> 68.

⁷¹ Gerard Hastings, Martine Stead, Laura McDermott, Alasdair Forsyth, Anne Marie MacKintosh, Mike Rayner, Christine Godfrey, Martin Caraher and Kathryn Angus *Review of Research on the Effects of Food Promotion to Children* (22 September 2003, Centre for Social Marketing, University of Strathclyde, Glasgow) 14.

⁷² Broadcasting Commission of Ireland *Advertising and Children* (December 2002), located at <http://www.irtc.ie/Advertising%20&%20Children.doc>; Italian law of 30/08/90, No 223, Article 8(1), located at http://www.obs.coe.int/online_publication/reports/childadv.pdf.en 38.

⁷³ Flemish Broadcasting Law, Article 82-6; European Audiovisual Observatory *Regulation on Advertising Aimed at Children in EU-Member States and Some Neighbouring States* (2000, EAO, Strasbourg) located at http://www.obs.coe.int/online_publication/reports/childadv.pdf.en , 6.

⁷⁴ Broadcasting Treaty (Rundfunkstaatsvertrag) article 41 section 1; *Study on the Impact of Advertising and Teleshopping on Minors - Germany*, located at http://europa.eu.int/comm/avpolicy/stat/studpdf/minadv_de.pdf, 18.

⁷⁵ *Ibid*, 19-21.

⁷⁶ *Study on the Impact of Advertising and Teleshopping on Minors - United Kingdom* http://europa.eu.int/comm/avpolicy/stat/studpdf/tab_uk.pdf

children's television programme to endorse or present a product or service of particular interest to children may not be shown before 9 pm.⁷⁷ Advertisements for merchandise of a programme may not be shown for two hours before or after the relevant programme.⁷⁸ Furthermore, no advertisement shown during hours that large numbers of children are likely to be watching may use a method of advertising, which "takes advantage of the natural credulity and sense of loyalty of children".⁷⁹

There has been a significant movement to introduce legislation that would ban television advertising of foods high in fat, sugar and salt. The Labour MP Debra Shipley has tabled a bill "to ban the advertising of high fat, high sugar and high salt content food and drinks during pre-school children's television programmes and related scheduling."⁸⁰ The bill has the support of Diabetes UK, the British Heart Foundation, the Food Commission and the National Heart Forum.⁸¹ Ms Shipley supported her bill with reference to the UK Food Standards Agency's report *Does Food Promotion Influence Children? A Systematic Review of the Evidence*, which reviewed 118 research papers and concluded that advertising "does have an effect on their preferences, purchase behaviour and consumption."⁸² The chairman of the Food Standards Agency has also expressed concern over the marketing of food to children.⁸³ In spite of this popular support there was a view that the bill was doomed to fail,⁸⁴ and it eventually ran out of time in Parliament.⁸⁵

(b) Ireland

Advertising to children has been widely discussed in Ireland. In 2002 the Broadcasting Commission of Ireland released a report examining children and advertising.⁸⁶ In 2003, the Broadcasting Amendment Bill was brought as a Private Member's bill by Deputy Eamon Ryan before the Irish parliament. It was defeated at the second stage.⁸⁷ This bill would have required the Irish Broadcasting Commission to restrict the advertising of certain products to certain age categories of children.⁸⁸ The Commission would have been required to introduce measures to prohibit the advertising to children of unhealthy foods, with the legislation reading:

(2A) A direction of the Minister under subsection (1) may also specify that the Commission shall introduce measures which allow for the restriction of the advertising of certain classes of products and the restriction of advertising to children under certain age categories 15 including, *inter alia*, measures to:

⁷⁷ *Study on the Impact of Advertising and Teleshopping on Minors - United Kingdom*

http://europa.eu.int/comm/avpolicy/stat/studpdf/tab_uk.pdf

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ House of Commons Hansard 4 November 2003 column 668, located at

<http://www.publications.parliament.uk/pa/cm200203/cmhansrd/cm031104/debtext/31104-06.htm>

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ <http://news.bbc.co.uk/2/hi/health/3254375.stm>

⁸⁴ <http://media.guardian.co.uk/mediaguardian/story/0,7558,1081289,00.html>

⁸⁵ <http://www.epolitix.com/debra-shipley/campaigns>

⁸⁶ Broadcasting Commission of Ireland *Advertising and Children* (December 2002) located at

<http://www.irtc.ie/Advertising%20&%20Children.doc>

⁸⁷ <http://www.irlgov.ie/oireachtas/>

⁸⁸ Broadcasting (Amendment) Act 2003, No. 54 of 2003, located at <http://www.irlgov.ie/oireachtas.>

- (a) prohibit the promotion as part of children’s television broadcast schedules of the sale and/or consumption of foodstuffs or beverages with high concentrations of-
- (i) sugar,
 - (ii) salt,
 - (iii) fat,⁸⁹

The bill would have also required the Commission to introduce measures allowing the restriction of toy advertising in children’s programmes,⁹⁰ and allowing the restriction on advertising during programmes whose ‘viewing profile’ is below certain age limits.⁹¹ These sections of the bill read:

- (b) restrict the promotion as part of children’s television broadcast schedules of the sale and promotion of children’s toys,
- (c) restrict the inclusion of advertising during programming where the viewing age profile is designated as being below certain age limits.’’;⁹²

The bill would have set up a comprehensive action plan to improve children’s protection from undue advertising influence, and would have also supported the acquisition of media literacy skills for children.⁹³

3 Conclusion

Many states have seen fit to highly regulate or prohibit advertising to children and pre-schoolers. Therefore, there should be discussion and implementation of such regulation in Aotearoa New Zealand. It must be acknowledged that there are important issues surrounding the definitions that would be used in such child advertising legislation. Terms such as ‘child’, ‘advertising’, ‘children’s advertising’ and ‘sponsorship’ would need to be accurately defined for the legislation to work well.⁹⁴

This report will now briefly address one common argument against child advertising bans in Europe. It is argued that, as the Television Without Frontiers Directive suggests, television programmes are increasingly being broadcast into countries from another jurisdiction in Europe.⁹⁵ Because European advertisements are governed by the law of the jurisdiction they originate in, there is a power imbalance for local advertisers if restrictions or bans are in place.⁹⁶ However, although this is a fairly powerful argument in Europe, it does not carry much weight in New Zealand where a vast majority of televisions can receive only domestic channels and programming.

⁸⁹ Broadcasting (Amendment) Act 2003, No 54 of 2003, s1.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Broadcasting Commission of Ireland *Advertising and Children* (December 2002), <http://www.irtc.ie/Advertising%20&%20Children.doc>, section 3

⁹⁵ Ibid, section 5.1.1.

⁹⁶ Ibid, section 5.1.1.

C Health Education Funding through Taxation

FOE proposes a minimal tax on foods high in fat and added sugar. The World Health Organisation was reported to have endorsed such taxes in a draft report on obesity.⁹⁷ The most concerted use of taxes on soft drinks and unhealthy foods has occurred at the state level in the United States.

Many states in the United States currently have taxes on soft drinks and snack foods.⁹⁸ Most of these taxes have been in place for ten or more years, enacted long before the current concerns about the ‘obesity epidemic’.⁹⁹ The taxes usually take the form of either a fixed tax per volume of product or a percentage of sales price.¹⁰⁰ The taxes are usually relatively small - between five and eight per cent or one dollar per gallon of soft drink syrup - but they raise substantial revenues.¹⁰¹ Arkansas’s 2 cent per can tax raises around \$40 million a year, and California’s 7.25 per cent sales tax on soft drinks raises around \$218 million dollars annually.¹⁰² It is unknown whether such taxes have a significant effect on the sale and consumption of soft drinks and snack foods.¹⁰³

However, the soft drink and snack food industry vehemently opposes and campaigns against these taxes.¹⁰⁴ Against such lobbying, Jacobson and Brownell, researchers from the Center for Science in the Public Interest and Yale University respectively, argue that small taxes of around 2 New Zealand cents per can of soft drink or pound of snack food would generate huge revenues.¹⁰⁵ Jacobson and Brownell also found that many American adults would support such a tax if the revenues were used to fund health and education programmes.¹⁰⁶ They conclude that small taxes on soft drinks and snack foods are politically feasible and are supported by consumers when the revenues are applied to health programmes.¹⁰⁷ Importantly, there is evidence that such health education programmes do work.¹⁰⁸

⁹⁷ *Obesity Policy Report* January 2004 volume 2 no 1. Located at http://www.obesitypolicy.com/ejournals/issues/issue_km.asp?cf=periodicals/1125/V2.I1.20040101.47EF4A28-864F-45D5-8E3D-329E440F46FB.pdf, 4.

⁹⁸ Michael F Jacobson and Kelly D Brownell ‘Small Taxes on Soft Drinks and Snack Foods to Promote Health’ *American Journal of Public Health*, June 2000, Vol. 90, No. 6 page 854. See also Jeff Strnad ‘Conceptualising the “Fat Tax”: The Role of Food Taxes in Developed Economies’ unpublished paper available at http://www.law.harvard.edu/programs/olin_center/corporate_governance/papers/03.Strnad.fat-tax.pdf, 4.

⁹⁹ *Ibid*, 4.

¹⁰⁰ Michael F Jacobson and Kelly D Brownell ‘Small Taxes on Soft Drinks and Snack Foods to Promote Health’ *American Journal of Public Health*, June 2000, Vol. 90, No. 6, 854.

¹⁰¹ *Ibid*, 854.

¹⁰² *Ibid*, 854.

¹⁰³ *Ibid*, 854.

¹⁰⁴ *Ibid*, 855.

¹⁰⁵ *Ibid*, 856.

¹⁰⁶ *Ibid*, 856.

¹⁰⁷ *Ibid*, 857.

¹⁰⁸ *Ibid*, 857.

There are many models of these small taxes. Virginia's soft drink tax provides one model. It is a small excise tax on wholesalers and distributors based on their total sales of carbonated drinks.¹⁰⁹ The tax amounts to between 0.05 and 0.066 per cent of gross receipts, meaning that a wholesaler that sells 10 million dollars worth of drink must pay \$4,500.¹¹⁰ The scheme is relatively simple, with the amount paid being fixed between upper and lower revenue limits.

Tennessee provides another model. It has a tax of 1.9 per cent of gross receipts from soft drinks and soft drink ingredients paid by manufacturers and bottlers.¹¹¹ The legislation reads:

(b) *Imposition of Tax.* A person manufacturing or producing and selling within this state any bottled soft drinks and a person importing or causing to be imported bottled soft drinks into this state from outside the state and selling such imported bottled soft drinks within this state shall, for the privilege of engaging in such business, pay to the state for state purposes an amount equal to one and nine-tenths percent (1.9%) of the person's gross receipts derived from such business.¹¹²

These small taxes would be simple to apply and, as seen above, are politically feasible. Jeff Strnad offers some interesting criticisms of such taxes,¹¹³ which will have to form part of the overall discussion and implementation of this measure in Aotearoa New Zealand.

III CONCLUSION

This brief survey has shown that the three measures proposed by Fight the Obesity Epidemic Inc. have significant international precedents. There are clear examples of legislation from overseas jurisdictions that seeks to prevent and control obesity. The United States provides examples of taxes on soft drinks and unhealthy foods, and of the regulation of foods that are sold or distributed in schools. In Europe and Canada there have been significant prohibitions and restrictions on television advertising to children, and there is significant debate in the United Kingdom and Ireland regarding the specific issue of food and drink television advertising. This paper is intended to be a foundation for further discussion and implementation of legislative measures that seek to prevent and control obesity in New Zealand, and it is vitally important for the health of our country that this intention be fulfilled.

¹⁰⁹ Michael F Jacobson and Kelly D Brownell 'Small Taxes on Soft Drinks and Snack Foods to Promote Health' *American Journal of Public Health*, June 2000, Vol. 90, No. 6 855; Virginia Soft Drink Excise Tax Act, Virginia Code §58.1 - 1702

¹¹⁰ Virginia Soft Drink Excise Tax Act, Virginia Code §58.1 - 1702.

¹¹¹ Tennessee Code Title 67-4-402.

¹¹² Tennessee Code Title 67-4-402(b)

¹¹³ Jeff Strnad 'Conceptualising the "Fat Tax": The Role of Food Taxes in Developed Economies' unpublished paper available at

http://www.law.harvard.edu/programs/olin_center/corporate_governance/papers/03.Strnad.fat-tax.pdf.

APPENDIX I

Irish Broadcasting (Amendment) Bill 2003, Section 1

1.—Section 19 of the Broadcasting Act 2001 is amended—

(a) by the insertion of the following subsection after subsection (2):

“(2A) A direction of the Minister under subsection (1) may also specify that the Commission shall introduce measures which allow for the restriction of the advertising of certain classes of products and the restriction of advertising to children under certain age categories including, *inter alia*, measures to:

(a) prohibit the promotion as part of children’s television broadcast schedules of the sale and/or consumption of foodstuffs or beverages with high concentrations of—

(i) sugar,

(ii) salt,

(iii) fat,

(b) restrict the promotion as part of children’s television broadcast schedules of the sale and promotion of children’s toys,

(c) restrict the inclusion of advertising during programming where the viewing age profile is designated as being below certain age limits.”;

(b) by the insertion of the following paragraph after paragraph (b) of subsection (3):

“(b) Support for the acquisition of media literacy as a tool to combat the effect of advertising on children, aiming to give young people analytical tools to understand how the media influences their thoughts and actions.”;

(c) by the substitution of the following subsection for subsection (7):

“(7) In preparing a code under paragraph (c) of subsection (1) the Commission shall, taking into account any relevant instrument made or relevant guidelines issued by any body in which are vested functions in relation to the welfare and physical health of children, have regard to—

(a) any research which it considers appropriate (including research under subsection (8)) conducted with respect to the effect of activities referred to in that paragraph on children, and

(b) the merits or otherwise and the feasibility of such a code containing a prohibition on a specified class or classes of such activity in so far as those activities relate to children in general or children under a particular age.”;

(d) by the insertion of the following subsection after subsection (10):

“(10A) The Minister shall prepare a response to the Commission’s periodic review in consultation with the Minister at the Department of Health and Children. The Minister shall cause copies of the response to be laid before both Houses of the Oireachtas.”.

APPENDIX 2

Californian School Food Measures

49431.5. (a) Commencing July 1, 2004, regardless of the time of day, beverages, other than water, milk, 100 percent fruit juices, or fruit-based drinks that are composed of no less than 50 percent fruit juice and have no added sweeteners, may not be sold to a pupil at an elementary school.

49431.5. (c) Commencing July 1, 2004, from one-half hour before the start of the schoolday to one-half hour after the end of the schoolday, only the following beverages may be sold to a pupil at a middle or junior high school:

- (1) Fruit-based drinks that are composed of no less than 50 percent fruit juice and have no added sweeteners.
- (2) Drinking water.
- (3) Milk, including, but not limited to, chocolate milk, soy milk, rice milk, and other similar dairy or nondairy milk.
- (4) An electrolyte replacement beverage that contains no more than 42 grams of added sweetener per 20-ounce serving.

49432. By January 1, 2004, every public school may post a summary of nutrition and physical activity laws and regulations, and shall post the school district's nutrition and physical activity policies, in public view within all school cafeterias or other central eating areas. The State Department of Education shall develop the summary of state law and regulations.

49433. (a) A school district maintaining at least one elementary or middle school or high school that is participating in the pilot program pursuant to Section 49433.7 may convene a Child Nutrition and Physical Activity Advisory Committee that shall develop and recommend to the governing board of the school district for its adoption, school district policies on nutrition and physical activity. [...]

49433. (b) The policies shall address issues and goals, including, but not limited to, all of the following:

- (1) Implementing the nutritional standards set forth in Section 49431.
- (2) Encouraging fundraisers that promote good health habits and discouraging fundraisers that promote unhealthy foods.
- (3) Ensuring that no pupil is hungry.
- (4) Improving nutritional standards.
- (5) Increasing the availability of fresh fruits and vegetables, including provisions that encourage schools to make fruits and vegetables available at all locations where food is sold.
- (6) Ensuring, to the extent possible, that the food served is fresh.
- (7) Encouraging eligible pupils to participate in the school lunch program.
- (8) Integrating nutrition and physical activity into the overall curriculum.
- (9) Ensuring regular professional development for food services staff.
- (10) Ensuring pupils a minimum of 30 minutes to eat lunch and 20 minutes to eat breakfast, when provided.

- (11) Ensuring pupils engage in healthful levels of vigorous physical activity.
- (12) Ensuring pupils receive nutrition education.
- (13) Improving the quality of physical education curricula and increasing training of physical education teachers.
- (14) Enforcing existing physical education requirements.
- (15) Altering the economic structures in place to encourage healthy eating by pupils and reduce dependency on generating profits for the school from the sale of unhealthy foods.
- (16) Developing a financing plan to implement the policies.
- (17) Increasing the availability of organic fruits and vegetables and school gardens.
- (18) Collaborating with local farmers' markets.

49435. The State Department of Education, with advice from the Child Nutrition Advisory Council, shall design and implement a financial incentive grant program to help and encourage schools to implement the school district policies and meet the goals described in subdivision (b) of Section 49433.