

obesity
policy
coalition



a
comprehensive
approach to

protecting children from
unhealthy food advertising
and promotion

Prepared by the Obesity Policy Coalition

The Obesity Policy Coalition (OPC) is a partnership between Cancer Council Victoria, Diabetes Australia – Victoria, VicHealth and the World Health Organization Collaborating Centre for Obesity Prevention at Deakin University, formed in 2006. The OPC is concerned about rates of overweight and obesity in Australia, particularly in children.

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This proposal is endorsed by:

- Australian Chronic Disease Prevention Alliance
- Australian Medical Association
- Coalition on Food Advertising to Children



Coalition on Food Advertising to Children

Coalition on Food Advertising to Children (CFAC)

The Coalition on Food Advertising to Children (CFAC) was formed in July 2002 and includes key organisations that recognise that the commercial promotion of unhealthy foods and beverages high in fat, sugar and salt to children is a significant concern in relation to their nutrition and future health. The Coalition's goal is to improve the diets and overall health of Australian children through a marked reduction in the commercial promotion of foods and beverages to children.

The member organisations of the CFAC are:

- Australian and New Zealand Obesity Society
- Australian Dental Association
- Australian Dental and Oral Health Therapists Association
- Australian Health Promotion Association
- Australian Medical Association
- Cancer Council Australia
- Home Economics Institute of Australia
- Nutrition Australia
- Public Health Advocacy Institute of Western Australia
- Public Health Association of Australia
- Royal Australian College of General Practitioners
- Young Media Australia
- Ms Kaye Mehta, Senior Lecturer in Nutrition and Dietetics, Flinders University
- Dr Rosemary Stanton OAM



Australian Chronic Disease Prevention Alliance

The Australian Chronic Disease Prevention Alliance (ACDPA) is an alliance of five non-government health organisations who are working together in the primary prevention of chronic disease, with particular emphasis on the shared risk factors of poor nutrition, physical inactivity and overweight and obesity.

The members of the ACDPA are:

- Cancer Council Australia
- Diabetes Australia
- Kidney Health Australia
- National Heart Foundation of Australia
- The National Stroke Foundation



AMA

Australian Medical Association

Preface



Overweight and obesity in children and adolescents has dramatically increased since the 1980s and it now affects around a quarter of Australian children. Many of these children are already suffering from negative psychological, social and physical impacts such as teasing, low self-esteem, social isolation, orthopaedic problems, and reduced quality of life. They also have a much greater chance of becoming obese adults, and consequently facing increased risks of developing chronic diseases, such as diabetes, heart disease and cancer, which are already burdening our health system.

Recent evidence points very strongly towards the powerful 'push' factors from the food environment that are driving up energy intake and thus the global epidemic of obesity. Highly palatable, processed food has never been as widely accessible, cheaper or more heavily marketed than it is now. The globalisation of the food industry and increasingly dominant market-driven economic policies have made obesity a global problem, even affecting low and middle income countries where under-nutrition has traditionally been the dominant nutrition problem.

Society has a particular responsibility to protect children from harm and this includes commercial exploitation.

The food and media industries have spent an enormous amount of money and effort to institute self-regulatory codes of practice for marketing to children. They typically target very narrow marketing exposures, apply only to young children, contain vague and ineffective provisions, have ineffectual complaints systems, cover only some purveyors of obesogenic foods, and apply no sanctions if these weak codes are ever breached. As public health experts know from other areas, such as tobacco, alcohol and gun control, self-regulation by the very industries that profit from the sales does not work. They have too much vested interest in perpetuating ineffectual strategies.

Last year, the World Health Assembly endorsed the World Health Organization's recommendations for countries to reduce children's exposure to marketing of obesogenic foods. Australia has a responsibility to ensure that effective mechanisms are introduced to achieve this.

It is also the responsibility of governments to regulate where the market approach is failing and it is clearly failing in this area. Opinion polls consistently show that around 90% of the public support strong regulations to limit food marketing to children, but the countering force of industry lobbying has been able to carry more sway on government policy, delaying much-needed regulatory intervention to protect children. Indeed, this issue is the litmus test of a government's commitment to reducing childhood obesity.

This document sets out precisely what needs to be done – what regulations are needed, their scope and definitions, the marketing strategies to be included and so on. All the details needed for strong, effective regulations are in these pages and they show how it can be done. All that is needed is that it is done.

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Summary



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Childhood overweight and obesity is one of Australia's most serious public health problems. With up to one in four Australian children now estimated to be overweight or obese, urgent action is required across all levels of government and the broader community. Failure to act now will lead to devastating public health consequences, as well as significant economic costs for individuals, families, the community and Australian governments.

Australian children are exposed to enormous amounts of advertising and promotion of unhealthy food and beverages on television, and through other media and forms of promotion, such as the internet, popular children's magazines, food packaging, supermarket displays and sponsorship of children's sports. There is sound evidence that this influences children's food choices and contributes to weight gain and obesity. It also raises serious ethical issues, as many children cannot properly understand or interpret advertising messages, or recognise that their intent is to persuade rather than entertain or inform.

While there are some limited restrictions on food advertising to children in Australia (mostly in self-regulatory codes), these restrictions provide little protection to children, as they do not adequately restrict the volume of unhealthy food advertising reaching children or effectively address marketing techniques used by food companies to target children, such as free toy offers, competitions, internet games and activities, and endorsements by popular characters and celebrities. The food industry has already been given sufficient opportunity to demonstrate that it is able to protect children from the influence of unhealthy food marketing through self-regulation and has been shown to be incapable of doing so.

This report proposes comprehensive national legislation (introduced by the Commonwealth and/or all states and territories) to restrict all forms of unhealthy food advertising that are directed to children or to which children are exposed to a significant degree.

Key aspects of proposal

The proposal has seven key aspects.

First, the legislation should be comprehensive; it should apply to all forms of advertising of unhealthy food that is directed to children, or to which children are likely to be exposed, in all forms, media and locations, including the following:

- Free-to-air television
- Subscription television
- Radio
- Internet
- Print publications
- Direct electronic marketing (email, SMS)
- Direct mail
- Unsolicited documents
- Characters and personalities
- Product placement
- Public places and transport
- Point-of-sale advertising
- Cinemas and theatres
- Children's institutions, services, events and activities (e.g. sponsorship of schools and children's sport)
- Competitions and premiums (free toys)

Second, the legislation should apply to advertising of *unhealthy* food, and nutrient profile criteria (based on the nutrient profile model developed by the UK Food Standards Agency and adapted for use in Australia by Food Standards Australia New Zealand) should be used to identify unhealthy food.

Third, the legislation should also apply to advertising of food brands, unless one or more *healthy* food products is the dominant feature of the advertising. Healthy food should also be identified using nutrient profile criteria

The aim of the legislation should be to minimise children's *exposure* to unhealthy food product and brand advertising to the greatest extent possible, as well as restrict unhealthy food product and brand advertising that specifically targets children.

To this end, it is proposed that the restrictions should apply where the circumstances in which an advertisement is communicated (i.e. the media, location, timing or placement of advertising), the nature of the advertisement, or the nature of the product advertised indicates that the advertisement is intended or designed for children, or that children are likely to see or hear the advertisement.

In addition, the legislation should prohibit unhealthy food product and brand advertising on television during times when significant numbers and/or a significant proportion of children are likely to be watching, and during G classification periods (when only material suitable for viewing by children is supposed to be shown). It is proposed that the restricted time periods should be: weekdays 6–9am and 4–9pm, and weekends and school holidays 6am–12pm and 4–9pm.

Fourth, compliance with the legislation should be regularly

monitored so that identification of breaches is not entirely dependent on complaints from the public.

Fifth, the legislation should be administered and strictly and actively enforced by an independent agency with a range of enforcement powers, including the power to seek significant penalties for breaches.

Sixth, the legislation should be regularly reviewed and evaluated to ensure that it is effective for reducing children's exposure to unhealthy food advertising, and that it covers emerging media, technologies and advertising techniques used to reach children.

Seventh, the legislation should carefully define key terms, such as 'children', 'unhealthy food', 'unhealthy food advertisement', 'broadcasting', 'publishing' and 'directed to children'.

The report proposes the following definitions for key terms:

- The definition of '**children**' should cover, at a minimum, children younger than 16 years (and consideration should be given to extending this definition to children younger than 18 years).
- '**Unhealthy food**' should be defined as any food or beverage that fails to meet 'nutrient profile criteria', which should be designed to disqualify energy-dense, nutrient-poor foods from the types of foods that may be advertised to children.
- '**Healthy food**' should be defined as any food or beverage that meets 'nutrient profile criteria'.
- '**Food brand**' should be defined as a trade mark or design registered in respect of a food product or food range; the name of a manufacturer of a food product or food range; or the name of a food range, or any other words, designs or images, that are closely associated with a food range.
- '**Unhealthy food advertisement**' should include any visual or audio message that publicises or promotes one or more unhealthy food products. It should also include any visual or audio message that publicises or promotes a food brand, unless one or more healthy food products is the dominant feature of the message (i.e. a food brand advertisement).
- An unhealthy food advertisement '**directed to children**' should include any unhealthy food advertisement that is intended or likely to appeal to children (whether or not the advertisement is also intended or likely to appeal to older age groups), and any unhealthy food advertisement that is likely to be seen or heard by children. Assessment of whether an unhealthy food advertisement is directed to children should involve consideration of the circumstances in which the advertisement is published, broadcast, displayed or communicated, the nature of the advertisement and the nature of the food product advertised.

By acting now to comprehensively regulate unhealthy food advertising to children, as recommended in this report, Australian governments could make significant progress towards improving the health of all Australian children and reducing the economic costs of overweight and obesity in the future.

Introduction



The need to halt and reverse the rapid increase of childhood overweight and obesity in Australia is urgent.

Overweight and obesity among Australian children has escalated rapidly in recent years, to the point that around one-quarter of Australian children (aged 5–17 years) are now estimated to be overweight or obese.^{1,2} It has been estimated that if current obesity trends continue, the life expectancy of Australian children alive now will fall 2 years by the time they are 20 years old,³ and there will be approximately 1.75 million deaths at ages 20+ years and 10.3 million years of life lost at ages 20–74 years caused by overweight and obesity in Australia from 2011 to 2050.⁴

At the same time, advertising of unhealthy food to children is becoming increasingly pervasive and sophisticated. Food advertisers are constantly developing new techniques and technologies to target children, and subjecting children to huge amounts of advertising for fast food, confectionery, soft drinks and other unhealthy products. Food advertisers target children in nearly all facets of their daily lives: when they watch television, read magazines, go to the movies, surf the internet, go to the supermarket with parents, communicate and interact with friends, and when they are at school or playing sport. Food advertisers use a range of techniques to persuade children to ask for, choose and eat advertised products, such as offers of free toys, competitions, games, tie-ins with popular children’s movies, and endorsements by children’s favourite personalities and characters. By far the majority of this advertising is for unhealthy products.

There is clear and robust evidence that unhealthy food advertising influences the types of foods children prefer, request and eat, has a negative influence on children’s diets, and contributes to increasing rates of childhood overweight and obesity. Unhealthy food advertising also undermines the effectiveness of strategies to improve children’s diets, such as healthy eating media campaigns and school-based nutrition programs.

In recognition of the evidence of the effects of unhealthy food advertising on children, in 2010 the World Health Assembly endorsed recommendations by the World Health Organization for countries to develop policy mechanisms to reduce children’s exposure to unhealthy food advertising and to eliminate this advertising from children’s settings.

We do not suggest that restricting unhealthy food advertising to children is the solution to the childhood overweight and obesity epidemic. Since obesity is a multi-factorial problem, no single intervention alone can reasonably be expected to have a substantial impact on obesity rates. A range of measures is required to address the range of factors contributing to the problem.

However, as part of a multi-strategy approach to addressing overweight and obesity in children (and consequently adulthood), one of the most effective and cost-effective steps Australian governments could take would be to introduce comprehensive legislative restrictions on

all forms of unhealthy food* advertising** that is directed to children, or to which children are exposed to a significant degree.³

Some restrictions do currently apply to food advertising to children in Australia. However, these restrictions are mostly contained in self-regulatory codes developed by the advertising and food industries, which fail to impose meaningful limits on potentially harmful advertising practices.

There is no justification for further delaying introduction of legislation, given the well-documented failure of current self-regulatory and co-regulatory schemes to reduce children's exposure to unhealthy food promotion,^{32,34,36,38,41-46,48} the inherent limitations of self-regulation for doing so,^{60,74-76} the overwhelming community support for government regulation,^{64,70,71} and the widely recognised need for urgent action to address the overweight and obesity epidemic.^{17,25,77,78,79}

Providing further opportunity for advertisers to prove self-regulation capable of protecting children will be futile and will further delay introduction of the legislative protection that children and parents urgently need.

A fundamental change is needed in the way that unhealthy food advertising to children is regulated, and now is the time for Australian governments to act.

This report sets out a comprehensive proposal for the introduction of legislation to restrict all forms of advertising of unhealthy food to children in Australia by the Commonwealth and/or state and territory governments.

Sections 1-6 of the report provide an overview of the rationale for introducing such legislation. Sections 1 and 2 describe the size of the childhood overweight and obesity problem in Australia, and the health impacts of being overweight or obese as a child. Sections 3-6 describe the amount and types of food advertising to which Australian children are exposed, the influence of this advertising on children's eating patterns and increasing overweight and obesity rates, the ethics of advertising unhealthy food to children, and the economic benefits of restricting this advertising.

Section 7 of the report describes the high level of support among the Australian public and experts for government regulation of unhealthy food advertising to children.

Section 8 reviews current advertising regulations and explains why they are inadequate, and section 9 describes steps that have been taken internationally to reduce the impact of unhealthy food advertising on children.

Finally, section 10 of the report sets out a proposal for legislation designed to comprehensively restrict all forms of advertising and promotion of unhealthy food products and brands to children.

* Any reference to 'food' in this paper includes food and beverages unless otherwise stated or indicated by its context.

** References to 'advertising' in this paper include any method used to advertise, promote or publicise unhealthy food products or food brands.

The report proposes definitions for key terms such as 'children', 'unhealthy food', 'unhealthy food advertisement', 'broadcasting' and 'publishing', and a method for assessing whether advertisements are directed to children. It identifies the types of unhealthy food advertising that need to be regulated (in different forms, media and locations), including advertising on free-to-air and subscription television and the internet; promotions on product packaging; and marketing techniques commonly used to target children, such as free toys and competitions. And it describes how specific restrictions should apply to each of these advertising forms, media and locations. It also makes brief recommendations as to how the legislation should be implemented, monitored and enforced.

It is hoped that this proposal will provide a basis for further work and debate as to how legislative restrictions on unhealthy food advertising to children should be implemented in Australia. All Australian governments are urged to consider this proposal and to begin taking the necessary steps to develop and introduce appropriate legislation.

This is a world in which some 43 million pre-school children are obese or overweight. Think of what this means in terms of life-long risks to their health. Think about the life-long demands for care at a time when most health systems are already overburdened, underfunded, and dangerously understaffed.

Agreements at World Health Assembly
– a gift to public health
Dr Margaret Chan
Director-General of the
World Health Organization

Closing remarks at the Sixty-third
World Health Assembly
Geneva, Switzerland
21 May 2010

http://www.who.int/dg/speeches/2010/WHA_closing_20100521/en/index.html



1 Childhood overweight and obesity

To suggest that the problem of childhood overweight and obesity is exaggerated, or that the prevalence of these conditions has not been rising, ignores the clear evidence of an increase in the entire distribution of childhood weight over the past 20 years.⁶⁻⁸ A comparison of overweight and obesity levels among children aged 7–15 years shows that the prevalence of overweight and obesity in boys has risen from 11.0% in 1985 to 20.0% in 1995 and 23.7% in 2007. Among girls in this age group, the prevalence of overweight and obesity has increased from 12.2% in 1985 to 21.5% in 1995 and 25.8% in 2007 (see Figure 1).⁷

It will not be possible to turn the tide of childhood overweight and obesity unless comprehensive action to address the problem is taken by all Australian governments.⁸

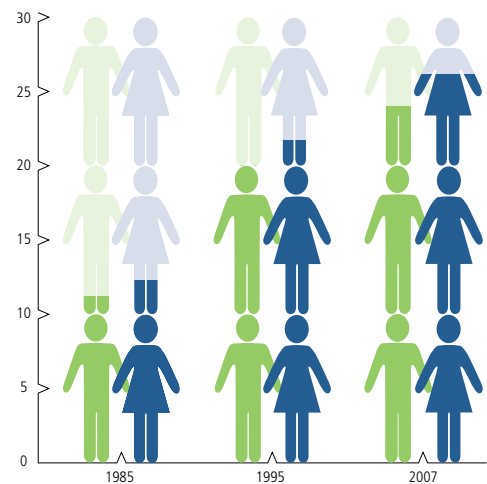


Figure 1
Prevalence of overweight and obesity in Australian children aged 7–15 years, 1985–2007

Source: Roberts L, Letcher T, Gason A, Lobstein T. (Letter to the editor) Childhood obesity in Australia remains a widespread health concern that warrants population-wide prevention programs. *Medical Journal of Australia* 2009; 191(1):45–47.

1.1

Causes of overweight and obesity

Overweight and obesity primarily result from imbalances between energy intake and energy expenditure, but modelling indicates that energy intake is a more important determinant of body weight than energy expenditure.⁹ A key cause of the recent rapid increase in overweight and obesity prevalence is increased energy intake through increased consumption of energy-dense (high fat and/or sugar) foods.¹⁰

Australian data indicate that increasing energy consumption is a more important contributor to increasing overweight and obesity prevalence than declining physical activity levels. A study of 5,500 school children (aged 5–16) in NSW found children's physical activity levels increased between 1985 and 1997, despite a dramatic increase in children's overweight and obesity levels over that time. Energy consumption increased by 13–15% over the same time period. This increase in energy consumption was explained by an increase in consumption of energy-dense foods (such as cakes, sweet biscuits, pies, pizza, confectionery and soft drinks) rather than an increase in total food consumption.¹¹

It is not surprising that energy intake would be a more important determinant of weight gain in children than energy expenditure; for the average 8 year old, 10% energy intake equates to about 450 ml of soft drink, whereas 10% of energy expenditure equates to about 2.5 hours of extra walking per day.⁹

Data indicate that Australians' consumption of energy-dense foods has increased. For example, the average volume of soft drink consumed annually by children and adults has increased from 47 litres per person in the 1970s to an average of 113 litres per person annually in recent years.¹² In Victoria, almost a quarter of children (aged 2–12) have been reported to drink more soft drink every day than water and between 40–65% of children (aged 5–16) have been reported to consume more than 250ml of soft drink every day.¹³

1.2

Australian children's diets and nutrition

Nutritious foods are essential for optimal growth, development and health throughout life, and contribute to physical vitality, mental health and social wellbeing.^{14,86} People who consume diets high in vegetables, legumes and fruit have a substantially lower risk of many diseases, and it is believed that the protective effect of these foods against disease begins early in life.¹⁵ Particularly for children, a healthy diet including nutritious foods is essential for normal growth and development, maintaining a healthy weight, and reducing the risk of developing chronic disease in the future.¹⁶ The early years of childhood are critical for establishing healthy eating in childhood and later in life.¹⁶

It is of serious concern, then, that data indicate that many Australian children and adolescents have unhealthy eating patterns and inadequate nutrition. For example, the results of the Australian National Children's Nutrition and Physical Activity Survey, conducted in 2007, indicate that Australian children consume inadequate amounts of fruit and vegetables, and too much saturated fat and sugar.²

Only a tiny proportion of respondents to the survey met the recommended 2–4 for daily serves of vegetables (excluding potatoes): 3% of 4–8 year olds, 2% of 9–13 year olds, and no 14–16 year olds. Around 40% of children aged 4–8 years, around half of children aged 9–13 years, and 99% of 14–16 year olds did not meet the recommendations for 1–3 daily serves of fruit (excluding juice).²

The vast majority of children were consuming more sugar than recommended: 79% of young children aged 2–3 consumed more than the recommended amount of sugar, and this figure was only slightly lower in older age groups, with 61% of 14–16 year olds exceeding recommended levels.² (It should be noted that the recommended level of sugar used in the survey was 'no more than 20% of energy from sugar', whereas the World Health Organization recommends that total sugar intake should comprise no more than 10% of a healthy diet).⁸⁶

Most children also consumed more saturated fat than recommended: 84% of 2–3 year olds exceeded recommended levels, and this declined only slightly over the age groups to 78% of 14–16 year olds.²

It is clear that significant improvements in the eating patterns of Australian children are needed to curtail rising levels of overweight and obesity, and to avoid serious health impacts.

2 The health impacts

Childhood overweight and obesity is associated with a range of very serious health problems and increases the risk of premature illness and death later in life. Children who are overweight or obese are more likely to suffer from the following problems.

- **A shorter lifespan.**

A recent Australian study conservatively estimated that the life expectancy of an obese person aged 20 years is likely to be around 4 years less than a person with normal body mass, and the lifespan of an overweight person is likely to be 1 year less than a person with normal body mass.³

- **A range of medical conditions and health complications.**

Overweight and obese children are at a significantly higher risk of cardiovascular disease risk factors, high blood pressure, type 2 diabetes, inappropriately fast growth and development, hepatic and gastric complications, abnormal glucose metabolism, orthopaedic complications, asthma and sleep apnoea.^{17,86}

- **Poor psychological and social wellbeing.**

Obese and overweight children are more likely to suffer poor self-esteem, negative self-image, social difficulties, bullying, anxiety, sadness, loneliness and depression.¹⁷ Research in the US found that more stigma is attached to obesity in children than any physical disability, across all socio-economic and ethnic groups.¹⁸

- **Overweight and obesity in adulthood.**

Obese children have a 25–50% chance of becoming obese adults, and this chance increases to 78% for older obese adolescents.¹⁹ It is well known that adult obesity carries an increased risk of a broad range of diseases, including diabetes and cancers of the colorectum, kidney, pancreas, oesophagus, endometrium and breast (in post-menopausal women), as well as other health and psychological problems.¹⁷

3 Food advertising to children in Australia

Australian children are exposed to vast amounts of unhealthy food advertising in their day-to-day lives. Free-to-air television remains the major vehicle through which children are subjected to food advertising, but they are increasingly exposed to food advertising through other media, including subscription television, the internet, children's magazines and direct electronic marketing.^{26,41,42,45,46,48}

The food media and advertising industries argue against restrictions of unhealthy food advertising to children on the basis that it is for parents to monitor and control what their children watch on television, how they engage with other types of media, and which products they ultimately consume. However, this argument fails to acknowledge the extraordinary difficulties parents face in trying to protect their children from the overwhelming volume and influence of this advertising. Unhealthy food advertising constantly surrounds children and reaches them when they are away from their parents' direct supervision – when they are surfing the internet, at school or playing sport. It seriously undermines health messages from governments and schools, as well as parents' efforts to encourage children to eat healthy foods.

3.1

Unhealthy food advertising on free-to-air television

The media environment in Australia is rapidly changing, but free-to-air television continues to play a central role in children's lives and remains the primary vehicle for reaching large numbers of children.²⁷ Children are exposed to television from birth. It reaches children at a younger age and for longer than all other socialising institutions except school and the family.²⁸ Significant numbers of children (as many as 20% of children aged 7–8 years and 30% of those aged 15–17 years) now have a television in their bedroom and parents lead increasingly busy lives. It is more difficult than ever for parents to monitor what their children are watching, exercise control over their children's viewing patterns, and discuss program and advertising content with them.²⁷

Figures 2 and 3 show the average numbers of children (aged 0–4, 5–12, 13–17 and 0–14) in the free-to-air commercial television viewing audience from in January–June

2006 on weekdays and weekends (respectively). As shown in these figures, the average number of children in the free-to-air television viewing audience is highest from 7–9am and 5–11pm on weekdays and 7am–12pm and 4–11pm on weekends (with very high numbers of children continuing to watch throughout the day on weekends).²⁹ Significantly fewer children watch specifically classified children’s programs (i.e. C and P rated programs) that are broadcast most commonly between 4pm and 5pm on weeknights (on average, around 80,000).^{29,30}

Figures 4 and 5 (over page) show the average proportions of children (aged 0–4, 5–12, 13–17 and 0–14) in the free-to-air commercial television viewing audience from January–June 2006 on weekdays and weekends (respectively). As the figures show, the average proportion of children in the audience is 10% or more from 6.30–11am and 6.30–9.30pm on weekdays, and 6am–9.30pm on weekends. Between 6pm and 9pm on weekdays, the number of viewers aged 0–14 years averages more than 400,000.²⁹

Children are exposed to an enormous amount of food advertising on television. Australian studies have found that levels of food advertising are highest during children’s peak viewing times, and that the vast majority of food advertising is for unhealthy foods (most commonly sugary breakfast cereals, fast foods, confectionery, savoury snacks and soft drinks).^{31–36}

Australian studies on the extent and nature of food advertising on television during children’s viewing hours have reported that 55–81% of food advertisements are for unhealthy foods.^{31,32,36} A recent study conducted by the consumer group Choice found that the programs most popular with children, such as *So You Think You Can Dance*, *The Simpsons* and *Bondi Rescue*, featured the highest number of unhealthy food advertisements on television during the week studied. It also found that while the number of unhealthy food advertisements during the day was between two and four advertisements per hour, this number rose to an average of 10 between 6–6.30pm and between four and seven per half hour for the remainder of the evening.³³ A study conducted in NSW in 2006–07 found that the proportion of food advertisements containing premium offers, such as competitions, and the use of promotional characters, celebrities and cartoon characters, was also higher during children’s peak viewing times. The majority of these advertisements were for unhealthy foods.³⁷

Modelling undertaken by the Australian Communications and Media Authority indicates that children’s exposure to advertisements for foods high in fat, sugar and/or salt is highest between 5pm and 10pm. Figure 6 (over page) shows the average number of high fat, sugar and salt food advertisement ‘impacts’ for children aged 0–14 in Australian metropolitan areas in 2006 (based on calculations by the Australian Communications and Media Authority using

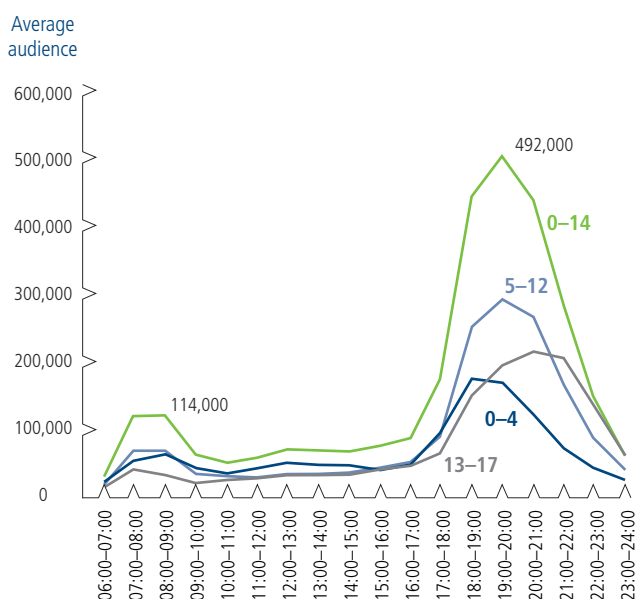


Figure 2 Free-to-air commercial television viewing – average audience (Monday–Friday) size by hour (6.00am to midnight) and age group (0–4, 5–12, 13–17, 0–14), January–June 2006

Source: Australian Communications and Media Authority. *Children’s viewing patterns on commercial, free-to-air and subscription television*. Canberra: Australian Communications and Media Authority, Commonwealth of Australia, 2007.

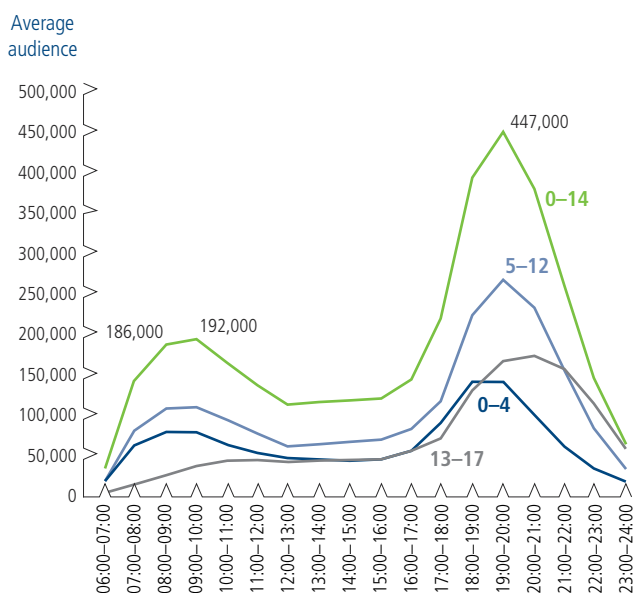


Figure 3 Free-to-air commercial television viewing – average audience (Saturday–Sunday) size by hour (6.00am to midnight) and age group (0–4, 5–12, 13–17, 0–14), January–June 2006

Source: Australian Communications and Media Authority. *Children’s viewing patterns on commercial, free-to-air and subscription television*. Canberra: Australian Communications and Media Authority, Commonwealth of Australia, 2007.

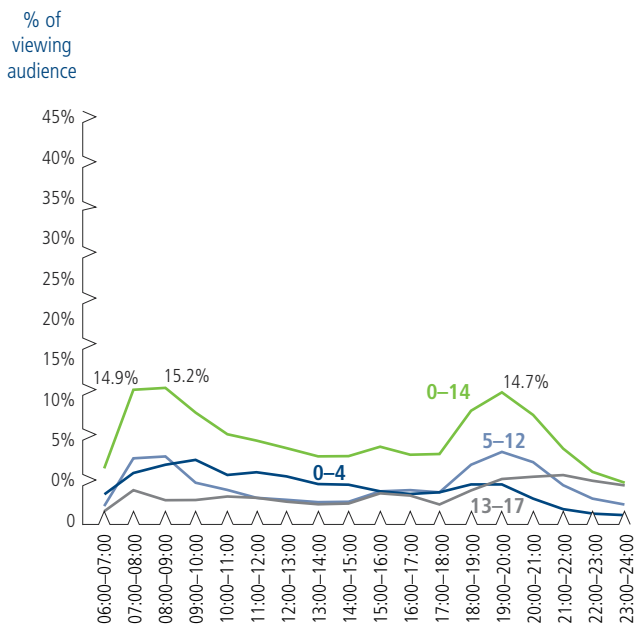


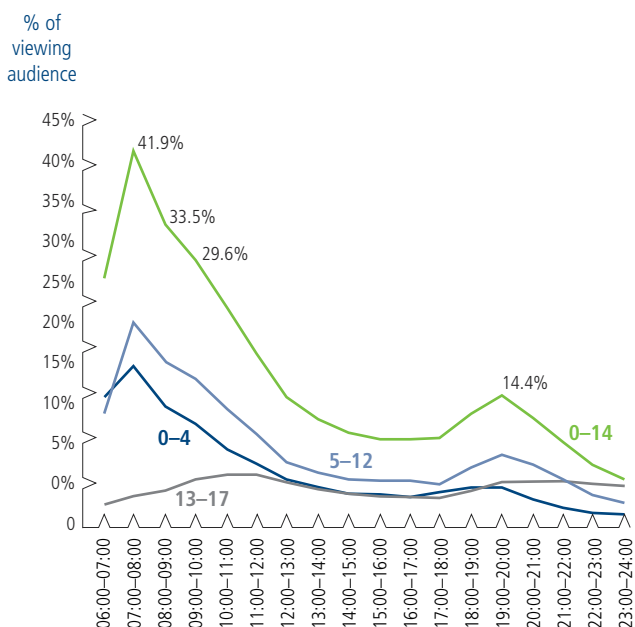
Figure 4
Free-to-air commercial television viewing – percentage of viewing audience (Monday–Friday) by age group (0–4, 5–12, 13–17, 0–14), January–June 2006

Source: Australian Communications and Media Authority. *Children’s viewing patterns on commercial, free-to-air and subscription television*. Canberra: Australian Communications and Media Authority, Commonwealth of Australia, 2007.

Nielsen Media Research data and OzTAM ratings data). An ‘impact’ is defined as one child viewing one high fat, sugar or salt food advertisement.

In Australia, it has been estimated that restricting unhealthy food advertising between 7am and 8.30pm could reduce children’s exposure to unhealthy food advertising by as much as 79.2%.³⁸

In the UK, where there are some restrictions on advertising high fat, sugar and salt foods in and around children’s programs, the Office of Communications (Ofcom) estimated that these restrictions have led to a 37% reduction in high fat, sugar and salt food advertisements seen by children, compared to the amount seen by children in 2005.³⁹ However, the UK restrictions apply only to programs where the *proportion* of children aged 4–15 years in the audience is at least 20% higher than the proportion of children in the general UK population. The restrictions did not apply to programs that are watched by the highest *numbers* of children and that are also popular among all age groups, such as *Coronation Street* and *The X Factor*. As a result, huge numbers of children are still exposed to unhealthy food advertising. Prior to the introduction of the restrictions, Ofcom estimated that a pre-9pm watershed ban on food advertising (one of the alternative regulatory options considered by Ofcom) would have reduced the exposure of children in this age group to television food advertising by 82%.⁴⁰



Free-to-air commercial television viewing – percentage of viewing audience (Saturday–Sunday) by age group (0–4, 5–12, 13–17, 0–14), January–June 2006

Source: Australian Communications and Media Authority. *Children’s viewing patterns on commercial, free-to-air and subscription television*. Canberra: Australian Communications and Media Authority, Commonwealth of Australia, 2007.

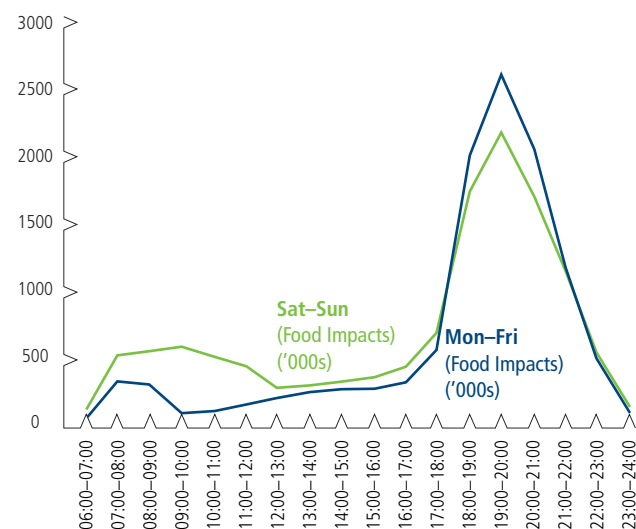


Figure 5
Average number of high fat, sugar, salt food advertisement impacts for children aged 0–14 (2006)

Source: Australian Communications and Media Authority. *Economic impact of restrictions on television food and beverage advertising*. Canberra: Australian Communications and Media Authority, Commonwealth of Australia, 2008.

3.2

Other forms of unhealthy food advertising

The media environment in Australia is rapidly changing and children are using many different media platforms. While free-to-air television remains the main source of unhealthy food advertising to children, food advertisers are increasingly reaching children through other broadcast, non-broadcast, electronic and digital media.²⁷ Recent Australian studies have confirmed that there is a very high level of promotion of unhealthy food to children through the internet, popular children's magazines, food packaging, supermarket displays, and signage near schools.^{41,42,45,46,48}

Subscription television

Subscription television, introduced in 1995, has spread rapidly across Australian households. An Australian Communications and Media Authority study in 2007 found subscription television was watched by 33% of children aged 8–11 years, 29% of children aged 12–14 years and 28% of those aged 15–17 years.²⁷ The introduction of digital television has also resulted in greater advertising opportunities. While there have not yet been any studies conducted on unhealthy food advertising on subscription television in Australia, any viewer would know that there is a large amount of this advertising on dedicated children's channels (with the exception of the Disney Channel and Disney Playhouse, which do not show any advertising) as well as other channels that are popular with and appealing to children, such as Foxtel's Fox8.

Internet

More and more children are using the internet on a daily basis, with time spent on the internet increasing with age. Children aged 8–11 years are estimated to use the internet for an average of 30 minutes per day and those aged 12–14 years are estimated to use it for an average of one hour and 32 minutes per day.²⁷ It is very difficult for parents to monitor and supervise the types of advertising to which children are exposed on websites and through email. Promotions through these media enable marketers to interact directly with children without the involvement of parents. A range of promotional techniques are used to advertise unhealthy food to children on food websites, popular children's websites, and social networking sites such as Facebook and MySpace. Many food company websites feature competitions, branded education, promotional characters, branded games, email greeting cards (known as 'e-cards'), downloadable items, viral marketing and designated children's sections.⁴¹ Each of these techniques captures the attention of children for extended periods of time, enhances their brand awareness and can blur the distinction between advertising and other web content.^{41–44} Food references on children's websites are predominantly for unhealthy foods: a recent study found that up to three times more branded food references on websites are for unhealthy foods than healthy foods.⁴¹

For example, the colourful McDonald's Happy Meal website (at www.happymeal.com.au) has a range of fun games and activities aimed at young children. The website features a 'My Happy Meal' section, where children can become a My Happy Meal member by registering with their date of birth and gender. This enables children to personalise the website by adding favourite games and activities, recording high scores and sending McDonald's branded email greeting cards to their friends. The 'Games' section of the website has a

Screen capture of
McDonald's Happy
Meal website at
www.happymeal.com.au





Screen capture of the Welcome to the Kids Corner page on Donut King's website at http://www.donutking.com.au/index.php?option=com_content&view=article&id=65&Itemid=54

wide range of children's games, including 'Cosmic Survivor', 'Spy Adventure' and 'River Rafting', and the 'Activities' section has a number of children's activities, including 'Keyboard Castle', 'Tongue Twister' and 'Tennis Techniques'. The 'Toys' section of the website features promotions and previews of the free toys available at McDonald's – currently 'Hello Kitty' and 'Hot Wheels Battle Force 5' plastic toys.

The Donut King website (at www.donutking.com.au) has a 'Members Club' section, which children can join to receive Donut King offers and promotions by entering their name, postcode, email address, mobile phone number and favourite Donut King product. The website also has a 'Kids Corner' with a branded colouring-in page, word puzzle activity and PacMan game, and a 'Tell a Friend' section where children can enter their friends' email addresses to invite them to join the Donut King Members Club.

Children's magazines

Children's magazines in Australia have very high rates of readership and include large numbers of food references, most of which are for unhealthy foods.⁴⁵ The majority of branded food references in children's magazines have been found to be for ice-cream and iced confection, fast food meals, high sugar drinks and snack foods.⁴⁵ Websites for popular children's magazines are also very popular and feature high levels of unhealthy food advertising – often via games and competitions.⁴²

Schools and children's sport

Unhealthy foods are commonly advertised near primary schools in Australia through signage, billboards and posters.⁴⁶ Unhealthy foods are advertised at a rate significantly higher than healthy foods, with the most common advertisements near schools being for soft drinks, alcoholic beverages, coffee and ice-cream/iced confectionery. Promotion of unhealthy foods to children also occurs within Australian schools (e.g. through fundraising and branded educational materials) and unhealthy food brands are popular sponsors of children's sports, taking the opportunity to promote their branding to children at training and sporting events.⁴⁷

For example, McDonald's is the major sponsor of Little Athletics in most states and territories, and the sponsor of McDonald's Hoop Time in Victoria, a series of one-day basketball round robin tournaments for primary school teams. As part of this sponsorship, children wear McDonald's branded uniforms and are given McDonald's product vouchers. There is McDonald's signage and promotional material at events, including large plastic yellow 'M's, and sometimes appearances by Ronald McDonald.

Nestlé (the owner of Milo) is the sponsor of Milo Kanga Cricket, a program designed to introduce cricket to children



Birthday card and vouchers for monthly 'special free treats' sent to members of Hungry Jack's kids club that kids can join online at <http://www.hungryjacks.com.au/join-kids-club.php>



Advertising for a McDonald's competition. The prize was to walk on the field with the Australian players at the 2010 World Cup. Women's Day

at kindergarten and primary school level which involves more than 300,000 children each year. Nestlé is also the sponsor of 'MILO in2CRICKET', the Australian cricket Junior Development Program, designed to introduce children to cricket. Children who participate in the program receive Milo products and Milo-branded clothes and equipment, including a bat, ball, t-shirt, bucket hat and activity book.

Companies such as Cadbury and Mars provide chocolate and other confectionery products for fundraising in schools. This is highly profitable for the companies, and also provides opportunities to promote brands and products to children in schools.

The World Health Assembly recently endorsed a set of recommendations by the World Health Organization on marketing of food and non-alcoholic beverages to children. One of the major recommendations was that countries should take steps to ensure that settings where children gather (e.g. schools) are free of marketing of food and beverages high in saturated fats, trans-fatty acids, free sugars or salt.

Food packaging

Promotional material on food packaging directed to children often features premium offers, such as giveaways and competitions and cartoon and movie character promotions. The majority of these promotions have been found to be for unhealthy food products (most commonly confectionery, sweet biscuits, chips/savoury, dairy snacks and ice-cream), and depiction of cartoon characters and well-known television and movie characters is the most common method of promotion used.⁴⁸

Supermarket displays

Unhealthy foods, most commonly chocolates and confectionery, dominate supermarket checkouts in Australia. They are also usually situated in reach and sight of children and promoted in a way that encourages 'pester power' (i.e. by targeting children and encouraging them to pester their parents to buy the products for them).⁴⁹ Promotions for products and competitions and movie tie-ins are also commonly featured in supermarkets, grocery stores and milk bars to encourage pester power for foods located in-store.

For example, when the children's movie *Shrek the Third* was released in 2007, Coles supermarkets had large green Shrek footprints on the floors directing customers from supermarket entrances to the vast array of Shrek the Third-branded food products on their shelves. Many Coles supermarkets also displayed huge blow-up Shrek dolls and large cardboard figures of Shrek characters.

Screen capture of information about the Milo Kanga Cricket program for children at www.milo.com.au/milo-and-sport/cricket/milo-kanga-cricket.html



A range of unhealthy food products using the cartoon movie character Shrek.



Fundraising combining sport and unhealthy products.





Fundraising using the Shrek character.

Direct marketing

Direct marketing to children is also common via the post, e-mail, downloads and mobile phone SMS.^{26,51} This marketing often results from food companies using children's personal information that they have provided for the purposes of entering a competition or giveaway or entering a company website. For example, children who register with the Hungry Jack's Kid's Club online receive an array of direct marketing material on their birthday. This material includes a voucher for a free Kids Club Meal on their birthday and vouchers entitling them to a free or discounted food item or beverage every month for the year ahead. In the future, the creation of 'virtual worlds' will continue to result in new avenues for advertisers to market to children through avatars (virtual people) and interactive online activities. Coca-Cola, Kellogg's and Pizza Hut are among the food companies that already engage in avatar-based advertising.⁵⁰

Integrated campaigns

Food companies are increasingly finding ways to integrate advertising campaigns through television advertising, in-store displays, product packaging, print advertising and websites.^{26,50} For example, television advertisements and product packaging often urge children to visit purpose-built websites of the types described above.^{41,43} Recent McDonald's advertisements, featuring movie tie-ins, have referred viewers to the 'Happy Meal' website (described above). The *Shrek the Third* promotion involved the use of Shrek to promote unhealthy food products to children (including McDonald's 'Happy Meals', M&M's chocolates and a range of snack foods and sugary cereals) via television advertisements, supermarket catalogues, in-store promotions, product packaging, websites and premium offers, including competitions and free toys.



Free toy promotion on Nesquik cereal.

4 The contribution of food advertising to childhood overweight and obesity

Childhood overweight and obesity is caused by excessive consumption of energy-dense, nutrient-poor foods and inadequate levels of physical activity. It is well recognised that there are many individual, social and environmental factors that influence what children eat and how they live and play.

There is substantial local and international evidence that unhealthy food advertising contributes to childhood overweight and obesity by influencing children's food preferences, purchases, requests and consumption. Accordingly, unhealthy food advertising has been identified in research commissioned by the World Health Organization as a probable cause of weight gain and childhood obesity.^{26,51,53} While no one would suggest that unhealthy food advertising

is the sole cause of overweight and obesity in children, addressing this element is recognised to be a critical part of any comprehensive strategy to address the problem.^{8,26,73,86}

That unhealthy food advertising is a contributor to childhood overweight and obesity is also a matter of common sense. Food manufacturers spend millions of dollars a year advertising to children and adolescents.⁵² Clearly they would not make this investment in advertising if it did not have a significant effect on children's food choices and consumption.

4.1 The effects of food advertising on children

Several comprehensive reviews of the literature on the effects of food advertising on children have been undertaken in recent years,^{26,51,53-55} including a number of systematic reviews.^{26,51,53,55} All have reached similar conclusions: that food advertising influences children's food preferences, purchase requests and consumption. They have resulted in a growing consensus from expert commentators that food advertising is harmful to children's health, and contributes to weight gain and obesity in children.

The findings of reviews on the effects of food promotion on children are summarised in Table 1.

Table 1
Findings of reviews of the literature on the effects of food promotion on children

Finding	Review
Effect of food promotion on children	Cairns et al. (2009) ²⁶ (updating Hastings et al. (2006) ⁵³ and Hastings et al. (2003) ⁵¹) (Systematic review) Livingstone (2006) ⁵⁴ US Institute of Medicine (2005) ⁵⁵ (Systematic review)
Influences food preferences	Modest evidence that food promotion influences food preferences Modest direct effect on children's food preferences (also likely to have indirect effect) Strong evidence: influences children to prefer high-calorie and low-nutrient foods and beverages
Influences purchase requests	Strong evidence that food promotion influences children's food purchase-related behaviour Evidence not reviewed Strong evidence: influences children to request high-calorie and low-nutrient foods and beverages
Influences consumption	Modest evidence that food promotion influences consumption behaviour Modest direct effect on children's food choices/eating habits (also likely to have indirect effect) Strong evidence that food advertising influences children's short-term consumption
Influences diet and health status	Small but significant correlation between television viewing and diet quality, obesity and blood cholesterol levels Research examining associations between food promotion and food behaviour and diet-related health outcomes has found 'modest but consistent evidence that the link is causal' The effects of food advertising are independent of, and just as significant as, other influences on food preferences, requests and consumption and diet and health status Modest but consistent association between overall television exposure and weight/obesity This applies among children and teenagers Moderate evidence that food promotion influences the 'usual dietary intake' of children aged 2–5 years, with weaker evidence for those aged 6–11 years Strong evidence that exposure to television advertising is associated with adiposity in children aged 2–11 years and teens aged 12–18 years Food promotion is a 'likely contributor' to less-healthy diets

This evidence of the effects of food advertising on children is based on children's exposure to food advertising per se, not just children's exposure to food advertising that is intended or designed specifically for a child audience. There is no reason to assume that advertisements designed specifically for a child audience are the only types of advertisements that influence children. Many advertisements designed for adolescents or adults may in fact be particularly intriguing for children. There is also evidence that food advertising not only encourages brand switching (as often claimed by the food industry), but also affects the categories of foods that children prefer.^{26, 53, 56}

The Australian Communications and Media Authority commissioned a further review of the evidence in 2007 for the purpose of its review of the Children's Television Standards. The review found that there is evidence of a correlation, but no clear causal relationship, between food advertising and obesity.⁵⁷ However, this review was not systematic or peer-reviewed, and has been widely criticised for its failure to consider the two leading systematic reviews of the evidence at that time – the systematic review by the US Institute of Medicine (2005)⁵⁵ and the systematic review by Hastings and colleagues (2006).⁵³ The review also failed to acknowledge that the multitude of factors influencing overweight and obesity means that a conclusive cause and effect relationship between food advertising and obesity is methodologically impossible to establish. Researchers have cautioned policy-makers not to wait for such evidence before acting to restrict unhealthy food advertising to children.^{53, 54, 58}

It is well established in Australia that measures to protect children (and adults) from potentially serious or irreversible risks of harm should not be delayed because there may be a lack of incontrovertible evidence. Instead, governments should act on a precautionary basis and introduce preventive measures that may reduce the risks of harm.⁵⁹ As discussed above, children who are overweight or obese are more likely to suffer from a shorter lifespan, a range of medical conditions and health complications, poor physiological and social wellbeing and overweight and obesity in adulthood. A precautionary approach to protecting children from unhealthy food advertising is clearly justified in these circumstances.

4.2 The impact of marketing techniques used to target children

There is evidence that marketing techniques used to target children (such as the use of fun, personalities and characters, premium offers and give-aways) can affect children's food preferences and the products they pester their parents

to purchase for them.^{26, 57, 62} There is also evidence that promotions using popular personalities can create positive associations with a brand or product, improve children's long-term product and brand memory and lead children to ascribe certain values to a product.^{57, 60, 61} For example, promotion of a food product by a well-known sports person may lead children to believe that eating the product enhances sporting performance, and endorsement by a popular personality may lead children to believe a product is socially desirable.⁶⁰ There is also evidence that premiums (including free toys, competitions and give-aways) influence children's preferences⁵⁷ and encourage them to pester parents to buy advertised products.^{26, 62}

In addition, it is reasonable to assume that food companies have collected plenty of direct evidence that children are influenced by food advertising (for example, through market research and monitoring of the impact of marketing campaigns on product sales) based on the fact that they continue to invest huge amounts of money in this advertising. Therefore, this investment can be regarded as indirect evidence that food advertising influences children's food consumption for the purposes of policy decision-making.⁶³

4.3 The size of the impact of food advertising on childhood overweight and obesity

The size of the impact of food advertising on childhood obesity levels has been estimated in a number of studies.

Livingstone (2006) found that while estimates vary, exposure to food advertising may account for 2% of the variation in food choice/obesity.⁵⁴ It is important to realise, however, that when an influence is ubiquitous and quite uniform, as exposure to junk food ads is for children, it may have a large influence on increasing unhealthy weight across the board without explaining much of the variation between individuals.

Importantly, Livingstone emphasises that even if food advertising does account for only 2% of this variation, this could make a significant difference to the number of children who are obese—small effects in statistical terms can equate to large numbers of children in absolute terms and sizeable cumulative effects over the period of a child's development.⁵⁴ In addition to direct measures, food advertising is also likely to have much wider indirect effects on children's food preferences and choices.^{53, 54}

A recent study found that, given a baseline prevalence of 17%, as many as one in seven, or even one in three, obese children in the US would not have been obese in the absence of food advertising on television.⁶⁵

5 The ethics of advertising unhealthy food to children

Advertising potentially harmful products, such as unhealthy food, to children is unethical given that children are too young to understand the persuasive intent of advertising, cannot properly understand or interpret advertising messages and are heavily persuaded by them. Children cannot be expected to make informed choices based on advertising if they cannot properly understand or interpret it, and regard it simply as information or entertainment.

There is substantial evidence that children lack the cognitive ability necessary to comprehend advertising messages and assess them critically.⁶⁹ In order to properly comprehend and interpret advertising, children need to be able to distinguish between commercial and non-commercial content, understand that the purpose of advertising is to persuade, and interpret advertising critically with this in mind. These abilities develop over time as functions of cognitive growth and intellectual development.⁶⁹ Studies have found that children younger than 4–5 years cannot distinguish between advertisements and programs on television. By about 4–5 years of age, most children develop the ability to make this distinction using perceptual cues (e.g. advertisements are short and programs are long), but most children do not understand the persuasive intent of advertising until at least the age of eight. This means that they do not have the ability to effectively evaluate advertising claims and appeals, and tend to accept advertising as truthful, accurate and unbiased. Even by this age, children's ability to understand advertising's purpose tends to be only rudimentary; they may understand that advertisements are intended to sell products, but this does not necessarily mean that they will recognise the bias inherent in persuasive messages and therefore interpret such messages with scepticism.⁶⁹ Even if children were aware of the intent of advertising (as teenagers are), this would not make them immune to its influence.

Given the particular vulnerability of children to advertising, and its potentially harmful impacts, it may arguably be regarded as a form of exploitation. Under the United Nations *Convention on the Rights of the Child* (to which Australia is a signatory), countries have a responsibility to protect children from all forms of exploitation prejudicial to any aspects of their welfare (Article 36), and to encourage guidelines to be developed to ensure children are protected from information that may be injurious to their wellbeing (Article 17).



For most children and teens, to see the face of an identity they respect, either real or fictional - endorsing a product is enough motivation for them to purchase it, or to influence their parents to purchase it for them.

**Kids Listen to Celebrities
Cubito, A.**

AdNews
7 April 2006
page 27



6 Economic benefits of restricting unhealthy food advertising to children

The financial and non-financial costs of overweight and obesity in Australia significantly affect individuals, governments and the community.

The total cost of obesity in 2008 was estimated to be \$58.2 billion, comprising \$8.3 billion in financial costs and \$49.9 billion in net costs of lost wellbeing.²⁰ These estimates were based on the cost of obesity alone. The cost of overweight in Australia is likely to be even higher because a much larger proportion of the population is overweight (albeit with lower risks than obese people). In the long term, the economic costs of overweight and obesity are expected to rise significantly, driven largely by the projected rise in diabetes.^{20,21}

The estimated direct cost of treating chronic conditions associated with overweight and obesity in adolescents is also alarming. It has been estimated that the Medicare expenditure for managing the three main chronic conditions associated with overweight and obesity among people aged 15–19 years (if only cases among overweight and obese adolescents are identified and treated) could be as high as \$164.8 million per year.²² These costs could rise by as much as \$10 million per year if the prevalence of overweight and obesity increases by an average of 0.6% per year.²² A failure to treat these cases will delay but increase the potential health-care expenditure; it will also result in greater morbidity and more years of life lost.²²

To reduce costs related to health care alone in the future, significant reductions in overweight and obesity are urgently needed. The final report of the National Health and Hospitals Reform Commission released in 2009 estimated that a reduced rate of increase in obesity could provide a net saving to health and residential aged care expenditure of \$624 million by 2022–3 and \$2566 million by 2032–3.²³ It has been estimated that savings from reducing the rate of increase in obesity would provide the most significant savings of all identified reforms that could impact upon health and

residential aged care expenditure (including savings from faster declining smoking rates and improved treatment of diabetes).²³

A healthy economy requires a healthy workforce. Inevitably, declines in health and wellbeing lead to declines in productivity and participation in the economy and society.^{24,25} The prevention of obesity and related chronic diseases, together with the promotion of better wellbeing, is essential to workforce participation and productivity, and a strong economy in the future. This is particularly important given Australia's ageing population.

Restricting unhealthy food advertising to children has been estimated to have significant cost-saving potential. It was estimated in the ACE-Obesity economic modelling study ('Assessing cost-effectiveness of obesity interventions in children and adolescents'), funded by the Victorian Government Department of Human Services, that banning unhealthy food advertising on television during popular children's viewing times would cost as little as \$3.70 per disability-adjusted life year (DALY) saved and result in a \$300 million per year saving when the cost-offsets of reduced illness were included in the analysis.^{5,67} This was higher than the cost-effectiveness of any of the other 12 potential interventions modelled in the study.

Broadcasters contend that restrictions on unhealthy food advertising will unfairly affect their revenue, but a recent evaluation by Ofcom of the restrictions on unhealthy food advertising to children in the UK demonstrated that this concern is unfounded. Ofcom reported that although there had been a significant decline in food and advertising revenue, data provided by broadcasters indicated that total advertising revenue on children's channels had increased overall. On the main commercial channels, a 6% decline in food and drink advertising revenue was recorded. However, they had also experienced a reduction in overall advertising revenue. Most other digital channels had in fact increased their revenue from food and drink advertising, mitigating the effects of the restrictions to an extent even greater than anticipated.³⁹

This was also the case when tobacco-advertising restrictions were introduced in Australia. Advertising revenue for radio and television continued to increase after the ban on tobacco advertising came into effect in September 1976, as tobacco-advertising revenue was replaced with revenue from advertising in other sectors.⁶⁸

Even if broadcasters in Australia were to suffer some loss of revenue, this would be justified by the overwhelming health and economic benefit of restricting unhealthy food advertising to children. It would be reasonable for broadcasters to incur some loss as part of the responsibility to the public that comes with the privilege of a broadcasting licence.

7 Public and expert support

Consumers and parents strongly support government regulation of the methods used to advertise and promote unhealthy food to children.^{64,70-73} The most recent national Australian survey, conducted in September 2010 by the Centre for Behavioural Research in Cancer, Cancer Council Victoria, found that 89% of consumers surveyed were in favour of the government introducing stronger restrictions to reduce the amount of unhealthy food advertising seen by children, with 76% strongly in favour.⁶⁴ Specifically, it found that:

- 83% of consumers believed governments should ban advertising of unhealthy food at times when children watch television, with 66% strongly supporting a ban.
- 89% of consumers were in favour of governments restricting the use of unhealthy food products in games and competitions on websites aimed at children.
- 97% of consumers believed governments should regulate unhealthy food marketing via email or SMS after children have provided their contact details, with 79% believing the practice should be stopped completely.
- 93% of consumers believed governments should regulate the use of children's magazines to market unhealthy food to children, with 53% in favour of stopping it completely.

Consumers are also fed up with the tactics used by food companies to influence children to 'pester' their parents for unhealthy food products. In particular, the 2010 national survey found that:

- 86% of consumers believed governments should restrict or stop the use of toys and giveaways to market unhealthy food and drink to children.
- 84% of consumers believed the use of popular personalities or characters should be restricted or stopped altogether.
- 82% of consumers believed governments should restrict or stop the use of competitions to market unhealthy food and drinks to children.⁶⁴

A survey conducted in NSW in 2007 found similar levels of parental support for regulating unhealthy food advertising in broadcast and non-broadcast media. It also found a very high level of concern among parents in relation to marketing at point of sale, including the positioning of food at supermarket checkouts.⁷⁰

In 2009, the National Preventative Health Taskforce made a number of recommendations to the Commonwealth Government to address overweight and obesity in Australia. Recognising that there is compelling evidence of a link between food advertising and children's knowledge, attitudes, food preferences and consumption, one of the taskforce's recommendations was that unhealthy food advertising to children should be phased out over 4 years. Specifically, it recommended that unhealthy food advertising should be phased out before 9pm, together with the use of premium offers, toys, competitions and the use of promotional characters, including celebrities and cartoon characters to market food to children across all media.⁷⁷

Many health and consumer groups in Australia, in addition to the Obesity Policy Coalition, have called for legislation to restrict food advertising to children. These groups include the Australian Medical Association, the Australian Dental Association, Cancer Council Australia and Cancer Councils in all states and territories, the National Heart Foundation of Australia, Diabetes Australia, the Australian Chronic Disease Prevention Alliance, NSW Health, the Australia New Zealand Obesity Society, the New South Wales Centre for Overweight and Obesity, the Dietitians Association of Australia, the Parents Jury, the Coalition on Food Advertising to Children, Young Media Australia and Choice.

An online maths tutoring programme for Australian secondary school students sponsored by the fast food chain McDonald's has been attacked by public health experts as a 'disgraceful exercise in advertising junk food.'

Sweet M. Public health doctors angry over McDonald's tutoring programme for students. *BMJ* 2009;339:b4174 (12 October)

8 Current regulation of food advertising to children

Currently in Australia, there are very limited government regulations dealing with food advertising to children on television, and no government regulations dealing specifically with food advertising to children through media other than television. There are a number of self-regulatory codes covering advertising to children, which are developed and administered by the advertising industry.

These existing regulations do not adequately restrict the vast amount of unhealthy food advertising to which children are exposed, or the techniques used to promote unhealthy foods to children across broadcast and non-broadcast media. Some limited restrictions on advertising to children apply, but they are largely ineffective due to their limited scope and application, complexity and lack of enforcement.⁷⁴

8.1 Television advertising

Advertising to children on free-to-air television is co-regulated by the Australian Communications and Media Authority (ACMA) under the Children's Television Standards 2009, and co-regulated by ACMA and the free-to-air commercial television broadcasting industry (represented by Free TV Australia) under the 2010 Commercial Television Industry Code of Practice. Advertising on subscription television is co-regulated by ACMA and the subscription television broadcasting industry (represented by the Australian Subscription Television and Radio Association) under the Subscription Broadcast Television Code of Practice 2007. A number of voluntary codes developed by the advertising and food industries also apply to advertising on free-to-air and subscription television. (These are discussed further below.)

These existing regulations are ineffective to deal with food advertising to children on free-to-air and subscription television. The main problems with the regulations are:

- there are only extremely limited provisions dealing specifically with food advertising to children;
- these provisions do not limit children's exposure to unhealthy food advertising or prevent inappropriate advertising techniques used to target children (other than misleading or inaccurate advertising);
- there are some further restrictions on advertising

generally, but these restrictions do not apply during popular children's programs or viewing periods;

- compliance by television broadcasters with the regulations is not monitored; identification of breaches depends on complaints from viewers;
- it typically takes a very long time for complaints to be resolved, by which time advertising campaigns have almost always concluded; and
- the regulatory system is very complex, which makes it extremely difficult for members of the public to lodge complaints.

Children's Television Standards 2009

The Children's Television Standards 2009 are the only government regulations dealing specifically with advertising to children, and they apply only to free-to-air television advertising during certain children's programs. The Children's Television Standards are administered and enforced by ACMA. Compliance with the Children's Television Standards is a licence condition for all free-to-air commercial television broadcasters. ACMA has recently released revised Children's Television Standards following a review. However, the revised Children's Television Standards do not include any additional restrictions on food advertising to children.

The Children's Television Standards include some general restrictions on the content of advertising to children,^{**} and some restrictions on the amount of advertising that may be shown during certain 'children's viewing periods', but only one provision dealing specifically with advertisements for food.^{***} This provision prohibits advertisements that contain any misleading or incorrect information about the nutritional value of foods or beverages. Clearly, this provision does not deal adequately with all the problems associated with television advertising of unhealthy food to children. The advertising restrictions in the Children's Television Standards do not adequately restrict the amount of advertising of unhealthy food to which children are exposed on television, or the range of techniques that advertisers use to influence children to consume unhealthy foods.

In addition, a major problem with the Children's Television Standards is that they do not apply during the time periods and programs when children are most likely to watch television. The restrictions on the content of advertising in the Children's Television Standards only apply to advertisements broadcast during, and immediately before and after, 'P programs' (programs classified by ACMA as

* See information about the review on the ACMA website at http://www.acma.gov.au/WEB/STANDARD/1001/pc=PC_310262.

** For example, the Children's Television Standards include prohibitions against advertisements that may mislead or deceive children, that are designed to put undue pressure on children to ask their parents to buy advertised products or services, or that state or imply that a product makes children who own or enjoy it superior to their peers.

*** Clause 19(6) of the Children's Television Standards.

suitable for pre-school children) and 'C programs' (programs classified by ACMA as suitable for children younger than 14 years of age). P and C programs attract very low ratings among child viewers compared with other programs that are popular with children.

Free-to-air and subscription television codes of practice

The 2010 Commercial Television Industry Code of Practice (CTICP) is an industry code of practice, developed and administered by the free-to-air commercial television industry. The CTICP and the Subscription Broadcast Television Code of Practice 2007 both contain only very limited restrictions on advertising content, and do not impose any restrictions on the volume of food advertising to children.

The CTICP contains one provision dealing with food advertising (clause 6.3), under which advertisements directed to children on TV must not encourage not engaging in physical activity as a way of life or excessive or compulsive consumption of food or beverages. This does little to protect children from inappropriate food advertising practices, and fails to recognise that it is the cumulative impact of children's exposure to a high volume of food advertising that is likely to encourage them to consume food excessively, rather than exposure to a single advertisement that promotes excessive consumption.

The CTICP also requires advertisements that are 'directed to children' to comply with the Children's Television Standards. However, the CTICP has little impact in practice because it relies on a complicated complaints system and is very difficult to enforce. Complaints under the CTICP must be made to the broadcaster of the advertisement before they can be referred to ACMA and if ACMA does eventually find a breach of the CTICP, its enforcement powers are more limited than if it finds that an advertisement breaches the Children's Television Standards.*

The Subscription Broadcast Television Code of Practice 2007 does not contain any specific restrictions on food advertising to children, other than a clause stating that advertisements must comply with the self-regulatory Australian Association of National Advertisers' Food and Beverages Advertising and Marketing Communications Code (AANA Food Code). (The many problems with self-regulatory

* Where there has been a breach of the Commercial Television Industry Code of Practice, ACMA may, under section 205W of the *Broadcasting Services Act 1992* (Cth), accept enforceable undertakings that a broadcaster will take specified action to comply with the Commercial Television Industry Code of Practice; if the broadcaster then breaches the undertaking, the ACMA may apply under section 205X of the *Broadcasting Services Act 1992* (Cth) for a Federal Court order directing compliance with the undertaking or payment of compensation for the breach. ACMA may also impose an additional licence condition under section 43 of the *Broadcasting Services Act 1992* (Cth) requiring a licensee to comply with the Code, but is highly unlikely ACMA would do this in response to a breach relating to advertising. ACMA does not have any other enforcement powers in relation to the Commercial Television Industry Code of Practice.

codes on advertising, including the AANA Food Code, are summarised below.)

8.2 Other media – self-regulatory codes

Aside from general prohibitions against misleading and deceptive conduct in the *Trade Practices Act 1974* (Cth) and state and territory fair trading and food acts, food advertising to children through media other than television is subject only to self-regulation by the advertising and food industries under a number of voluntary codes.

The Australian Association of National Advertisers (AANA) – the industry body representing advertisers in Australia – established a national scheme for self-regulating advertising in 1996. Under this scheme, AANA has developed a number of self-regulatory codes of practice relating to advertising to children, including the AANA Code for Advertising and Marketing to Children and the AANA Food Code. In collaboration with AANA, sections of the food industry have also introduced their own self-regulatory codes on advertising to children, such as the Australian Food and Grocery Council's Responsible Children's Marketing Initiative (RCMI) and the Australian Quick Service Restaurant Industry's Initiative for Responsible Advertising and Marketing to Children (QSR II). Complaints about breaches of all these codes (other than in relation to the truth, accuracy and legality of advertisements) are determined by the Advertising Standards Board, which is appointed and funded by the advertising industry.

The AANA Food Code, and the QSR II and RCMI codes deal specifically with food advertising to children. They apply to food advertising and marketing on television and through non-broadcast media.

However, there are a number of deficiencies in the codes and their administration, which makes them ineffective for protecting children from the negative influence of unhealthy food advertising and marketing.

These codes are effective in creating the appearance of responsible conduct and in achieving advertisers' aim of warding off government intervention. However, the codes fail to impose meaningful limits on the content of food advertising to children, or the level of children's exposure to this advertising. The provisions of the codes tend to be blunt, imprecise and narrow, and do not effectively address common promotional strategies that are used to target children.^{74,75}

It is clear that self-regulation cannot protect children from the negative influence of food advertising due to the irresolvable conflict between food advertisers' commercial interest (to advertise to children in a manner that is effective to sell unhealthy products) and the public interest (to protect children from such advertising). Food advertisers lack sufficient incentive to develop, comply with or enforce effective food advertising restrictions.⁷⁴

Problems with self-regulatory codes – summary

Specific problems with the codes and AANA's advertising self-regulation scheme are summarised below.

Problems with codes

1. The codes only apply to advertising or marketing considered by the Advertising Standards Board to be directed primarily to children (i.e. advertising designed specifically for a child audience). The codes do not apply to advertising or marketing that targets a wider age range including children, for example, advertising that targets teenagers as well as children, or advertising that targets families. Nor do the codes restrict the volume or frequency of unhealthy food advertising at times, locations and in contexts when children are likely to be exposed to this advertising. In relation to television, the codes do not restrict the amount or frequency of unhealthy food advertising during programs and periods when the highest numbers of children are in the viewing audience. For example, the RCMI code applies only to advertisements published or broadcast in media that is primarily directed to children or for which the audience is predominantly children. Viewing data indicate that the free-to-air television audience is never predominantly children at any time of the day.²⁹ The RCMI code does not apply during the highest rating programs for children as these are considered to be directed to adolescents or adults as well as children (e.g. *Junior Masterchef*, *The Simpsons*, *Modern Family*, *Talkin' Bout Your Generation*, *X Factor*, *Australia's Funniest Home Video Show*, *Home and Away*). For example, recently, the ASB held that the RCMI does not apply to food ads shown during *Junior Masterchef*, *The Simpsons* and *Modern Family*, despite these being three of the highest rating programs for children under 12 in 2010.^{*} A recent University of Sydney study found that there has been no decline in unhealthy food advertising during children's peak television viewing times following the introduction of the Australian Food and Grocery Council's RCMI initiative.^{**}

* Advertising Standards Board, *Case Report: Mars Confectionery*, complaint reference number 0439/10, 24 November 2010; Advertising Standards Board, *Case Report: Nestle Drumstick*, complaint reference number 0482/10, 8 December 2010.

** King L, Hebden L, Grunseit A, Kelly B, Chapman K, Venugopal K. Industry self regulation of television food advertising: responsible or responsive? *International Journal of Pediatric Obesity*, 2010; Early online, 1–9.

- The codes contain inconsistent definitions of 'children', and none of the codes covers advertising to children older than 14 years of age. Research shows that the food choices of children of all ages are susceptible to the influence of food advertising and that there is a link between advertising and obesity in children and adolescents.⁵⁴
- The codes do not cover all forms of media and promotion directed to children. For example, none of the codes covers:
 - direct marketing of unhealthy food to children through emails and SMS messages sent by food companies;
 - in-store promotions of unhealthy food directed to children;
 - promotion or advertising to children of brands, logos and trade-marks associated with unhealthy food;
 - brand advertising in schools through sponsorship, supply of branded materials, fundraising or other means;
 - sponsorship, fundraising or other forms of marketing by food companies in association with children's sport;
 - promotions directed to children on unhealthy food packaging.

The QSR11 and RCMI codes do not apply to company-owned websites used to promote foods to children,^{***} and the Australian Standards Bureau has made inconsistent decisions about whether or not the AANA Food Code applies to these websites.^{****}

- The provisions of the codes are poorly drafted, and are subject to technical exceptions, restrictive definitions and loopholes. As a result, promotional strategies used to target children are not effectively regulated by the codes. For example, the codes do not cover promotion of toys included with fast food meals, and do not prevent use of popular children's characters and personalities in brand advertising.

Problems with self-regulatory scheme

There are also a number of problems with AANA's scheme for administering and enforcing the codes, which are summarised below.

*** Under clause 7, the QSR11 applies only to advertising for which the food company has paid or provided valuable consideration to a third party, which means company-owned websites are outside the scope of the QSR11. The RCMI applies only to 'media', defined as 'television, radio, print, cinema and third-party internet sites where the audience is predominantly children and/or the programs or media are directed primarily to children'. Company-owned websites do not fall within this definition. See email from the Advertising Standards Bureau to Professor David Hill, 11 January 2010, http://www.opc.org.au/downloads/complaints/response_kelloggs_zoo_pass.htm, accessed 24 February 2010.

**** Letter from Professor David Hill, Professor Boyd Swinburn, Greg Johnson and Todd Harper (on behalf of the Obesity Policy Coalition) to the Advertising Standards Bureau, 18 May 2007, <http://www.opc.org.au/browse.asp?ContainerID=complaints>, accessed 24 February 2010; Letter from Fiona Jolly, Chief Executive Officer, Advertising Standards Bureau to Professor David Hill (on behalf of Obesity Policy Coalition), 25 May 2007, <http://www.opc.org.au/browse.asp?ContainerID=complaints>, accessed 24 February 2010; Advertising Standards Bureau, *Case Report: McDonald's Australia Ltd (Shrek – internet)*, complaint reference number 256/07, 14 August 2007. <http://www.adstandards.com.au>, accessed 5 May 2008; Advertising Standards Bureau, *Case Report: MasterFoods Australia/NZ (M&M's – Shrek)*, complaint reference number 252/07, <http://www.adstandards.com.au>, accessed 5 May 2008.

1. Participation in the AANA self-regulatory scheme and compliance with the codes is voluntary; the codes do not apply to all industry members.
2. Compliance with the scheme is not monitored; the scheme relies entirely on complaints from members of the public to identify offending advertisements.
3. The number of different codes makes the scheme very complex and difficult for members of the public to understand.
4. If the Advertising Standards Bureau upholds a complaint, it can only request the offending advertiser to modify or withdraw the advertisement; there are no mechanisms to enforce compliance.
5. Many short advertising campaigns have already finished running by the time complaints are received and determined.
6. The Advertising Standards Bureau has no power to impose sanctions for breaching the codes, and as a result there are no effective deterrents.*

In a recent example, the Advertising Standards Bureau upheld a complaint about a Hungry Jack's advertisement for the Hungry Jack's Kids Club Meal. The Bureau decided that the advertisement breached the QSR11 on two grounds: (a) the Kids Club Meal (comprising three chicken nuggets and a bottle of water) did not comply with the nutritional criteria in the QSR11 (because it exceeded the maximum level of saturated fat); and (b) it featured licensed characters from children's cartoon, *SpongeBob Square Pants*.** However, by the time the complaint was received and the Bureau's determination was made, the advertisement had stopped running, and no penalties could be imposed on Hungry Jack's. Soon after the Bureau's determination, Hungry Jack's began showing another advertisement for exactly the same Kids Club Meal, this time featuring characters from children's television show, *The Simpsons*. Hungry Jack's acknowledged that it was aware that the advertisement breached the QSR11, but decided to broadcast it anyway.*** Another complaint about this advertisement was upheld by the Advertising Standards Bureau,**** but the new advertisement had already been shown more than 300 times on major commercial television stations during children's school holidays.

* For further information about the problems with the AANA scheme and self-regulation of food advertising to children see MacKay S, 'Food advertising and obesity in Australia; to what extent can self-regulation protect the interests of children' *Monash University Law Review*, 2009; 35(1).

** Advertising Standards Bureau, *Case Report: Hungry Jack's*, case number 573/09, 9 December 2009, available at http://www.adstandards.com.au/pages/casestudy_c.aspx, accessed 3 February 2010.

*** Sinclair, L. 'Burger chain breaks food ad rule for kids', *The Australian*, 15 February 2010, page 3.

**** Advertising Standards Bureau, *Case Report: Hungry Jack's*, case number 32/10, 10 February 2010, http://www.adstandards.com.au/pages/casestudy_search.asp?keyword=&PageIndex=3, accessed 15 June 2010

9 International advertising regulations

A number of sources of international law recognise the need for special protection for children from advertising, due to their vulnerability and credulity.

The United Nations Convention on the Rights of the Child requires signatories, including Australia, to take appropriate measures to protect the rights of children. Two articles of the convention support the need for countries to introduce effective regulation of food advertising to children: article 17, which directs countries to develop appropriate guidelines for the protection of children from information which may be 'injurious to [their] well-being'; and article 36, which directs countries to 'protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.'

In May 2010, the World Health Assembly endorsed a set of recommendations on marketing of food and non-alcoholic beverages to children developed by the World Health Organization, in recognition of the evidence of the effects of this marketing on children.⁷⁹ The recommendations are designed to help member states formulate policy mechanisms to reduce both children's exposure to marketing of foods high in saturated fats, trans-fatty acids, free sugars or salt, and the power of this marketing (i.e. the content, design and execution of marketing messages). Among other measures, the World Health Organization recommends that member states should take steps to ensure that settings where children gather are free of this marketing.

9.1 General restrictions on advertising to children

In some international jurisdictions, broad prohibitions against all advertising to children exist, in recognition of the principle that advertising to children is unethical because they cannot understand its persuasive intent. The jurisdictions with the most extensive legislative prohibitions on advertising to children are Sweden and Norway, and the Canadian province of Quebec. In Sweden and Norway, commercial advertising directed to children on television is prohibited, while in Quebec, commercial advertising directed to children



Kids wearing McDonalds uniforms.

through any medium is prohibited.* The restrictions apply to commercial advertising of all products and services to children, not just food advertising.

A weakness of these bans is that they apply to advertisements that are *directed at children* in Quebec, or *designed to attract the attention of children* in Sweden. These tests tend to be narrowly interpreted, and exploited by advertisers. If a single element of an advertisement is considered to be 'adult' or to otherwise weigh against the advertisement being intended or designed for children, the advertisement will not be considered to be subject to the bans.⁷⁵ For example, an advertisement broadcast on Quebec television which showed a child asking to eat at a fast food restaurant was not caught by the advertising ban because a theme of the advertisement was the child's guardian's hope of meeting attractive women at the restaurant.⁷⁵

This demonstrates the need for regulatory assessments of whether advertisements are 'directed to children' to be designed carefully so that regulations apply if *any* aspect of the advertisement itself, or the circumstances in which it is communicated, indicate that the advertisement is intended for children (whether wholly, primarily or partly), or that children are likely to see or hear the advertisement.⁷⁵

9.2

Restrictions on food advertising to children

Internationally, countries and health agencies are beginning to recognise the need to act on food advertising to children

Hungry Jack's AFL finger puppet promotion including free sundae



* Sweden: commercial advertising in a television broadcast may not be designed to attract the attention of children under 12 years of age (s 4 of the *Radio and Television Act* (1996): 844); Norway: advertisements may not be broadcast on television in connection with children's programs, nor may advertisements be specifically directed to children (s 3-1 of the *Broadcasting Act* (1992)); Quebec: commercial advertising may not be directed at persons under 13 years of age (s 248 of the *Consumer Protection Act* 1980).

as part of comprehensive approaches to address the obesity epidemic.

At the beginning of 2010, the South Korean government introduced restrictions to prevent advertisements for foods high in fat, sugar or salt from being broadcast on television from 5pm to 7pm or during children's programs.⁸⁰ The Taiwanese government is currently drafting a bill to prohibit advertisements for unhealthy food during children's television programs.⁸¹

In 2007, the United Kingdom communications regulator, Ofcom, introduced restrictions on food advertising to children (in the UK BCAP Television Advertising Standards Code).

These restrictions apply to advertising of foods that are assessed as being high fat, sugar or salt (HFSS) according to 'nutrient profile criteria' developed by the UK Food Standards Agency (discussed further below).

The restrictions include:

- a scheduling restriction – preventing the advertising (including program sponsorship) of HFSS foods in or adjacent to 'children's programs' or programs principally directed, or of particular appeal, to children younger than 16 (the effect of this restriction is also to prevent any HFSS food advertising on dedicated children's channels); and
- content restrictions on HFSS food advertising, including prohibitions against use of licensed characters, celebrities, promotional offers and health claims directed to pre-school or primary school children.

These restrictions are certainly far more effective for protecting children than current Australian regulations. However, the scheduling restriction only applies to programs for which the likely proportion of people aged 4–15 years in the audience is more than 20% higher than the proportion of people aged 4–15 in the general UK population.

This is a poor method for identifying popular children's programs because it is based on the proportion of children in the audience rather than absolute numbers of children. As a result, the restrictions do not apply to programs which attract the highest ratings for children under 16 – soaps and game shows, such as the *Coronation Street* and *The X Factor* – because these programs are also popular with older age groups.⁸²

Although the UK scheduling restriction is a significant step forward in addressing unhealthy food advertising to children, it highlights the problems with adopting a time-based restriction on food advertising based solely on the *proportion* of children in the television viewing audience, and the need for legislation to introduce time-based restrictions on unhealthy food advertising based also on absolute *numbers* of children in the audience.

* Historical scheduling data are used to predict the audience composition for programs. For one-off programs or new program series, this is based on the predicted audience for the program or series according to similar material that has been broadcast in the past.

10 Legislation to regulate unhealthy food advertising to children

As part of a multi-strategy approach to addressing the childhood overweight and obesity problem in Australia, legislation is urgently required to regulate all types of unhealthy food advertising that is directed to children, or to which children are likely to be exposed to a significant degree.

As discussed, research demonstrates that this would be one of the most effective and cost-effective steps Australian governments could take to address overweight and obesity in Australian children. In addition to minimising Australian children's exposure to unhealthy food advertising and the negative influence of this exposure on their food choices and diet, it would help to prevent unhealthy food advertising from undermining other strategies to improve children's nutrition and eating patterns, such as media campaigns and school programs. It would also encourage food companies to reformulate products in order to be able to advertise them to children, and would cause a shift to promotion of healthier food products to children.

A proposal for how such legislation should be designed and implemented, and how it should operate in Australia, is outlined below.

It should be noted that this proposal is not intended to act as model legislation. Rather, it is intended to be an overview of how legislation should define key terms, identify advertisements that are directed to children, and apply to different forms of advertising and promotion of unhealthy food, in order to minimise children's exposure to unhealthy food advertising. It is hoped that this proposal will act as a starting point for discussion and further work in this area.

Drafting of the legislation would be a matter for Parliamentary Counsel. Further analysis would be required to ensure that legislation is drafted in a manner that is technically sound, and avoids any loopholes or unintended consequences. The exact manner in which legislation would need to be drafted would also depend on a number of factors, such as whether it is introduced at Commonwealth or state/territory level, the intended scope of the legislation, and constitutional issues.

10.1

The need for comprehensive restrictions

One of the most important aspects of this proposal is that legislation to prohibit unhealthy food advertising to children would need to apply comprehensively to all forms of advertising and promotion of unhealthy food products and brands to children in all types of media and locations. Legislation would need to cover advertising via free-to-air and subscription television, radio, magazines, mobile phones, billboards, websites, email and instant messaging, and any new media and forms of communication that are developed in the future. It would also need to apply to all forms of advertising and promotion in schools or in association with children's sport, including fundraising and sponsorship, as well as all advertising and promotion in public places, cinemas, and inside stores and supermarkets.

Free-to-air television remains the main vehicle food advertisers use to reach children. However, as discussed in section 3.2 the food and beverage industry is increasingly using sophisticated methods to promote foods to children through a range of different media, including children's websites featuring games, activities, competitions and downloads, social networking websites, such as Facebook and MySpace, SMS messages, e-cards (email greeting cards) that children can send to friends, and other viral emails. Children and young people tend to be early adopters of these new media and forms of communicating, which provide advertisers with direct and unsupervised access to children.

If partial restrictions on unhealthy food advertising were introduced, which applied only to one or more media or forms of advertising (e.g. free-to-air television advertising) this would, without question, cause the food industry to shift its advertising expenditure from the restricted to the unrestricted forms of advertising.

This was the response of the tobacco industry when partial tobacco advertising restrictions were introduced that only applied to radio and television advertising.⁸³ A study of the effect of tobacco advertising restrictions in 22 high-income countries found that before 1973, when restrictions only applied to advertising through broadcast media, the restrictions had no effect on tobacco consumption, but after 1973, by which time comprehensive bans had come into effect in most of the countries studied, the restrictions had a significant negative effect on consumption.⁸³ The authors of the study suggested that this was because until 1973, broadcasters were able to respond to broadcast advertising restrictions by increasing their marketing through alternative media; after 1973, manufacturers were less able to do this. An international review of the effect of tobacco bans on tobacco consumption concluded that 'a comprehensive set

of advertising bans can reduce tobacco consumption but a limited set of advertising bans will have little or no effect.⁸³

Although an incremental approach may initially be required to implement legislation to restrict unhealthy food advertising to children, it will be vital that all forms, media and locations of unhealthy food advertising directed to children become subject to government regulation within a reasonable timeframe (i.e. less than 4 years). The forms, media and locations of unhealthy food advertising that would need to be regulated are set out in section 10.4.

10.2

Recommended approaches for legislation

There are two possible legislative approaches that may be taken to comprehensively regulate all forms of unhealthy food advertising directed to children.

One approach would be for legislation to impose a general prohibition against 'publishing', 'broadcasting', displaying or otherwise communicating an 'unhealthy food advertisement' that is 'directed to children', or causing, permitting or authorising this to occur, using definitions of 'publishing', 'broadcasting', 'unhealthy food', 'unhealthy food advertisement' and 'children' described in section 10.3. This would be similar to the approach under the *Tobacco Advertising Prohibition Act 1992* (Cth), which imposes a general national prohibition against all forms of publication or broadcast of tobacco advertising, including in films, videos, DVDs, television, radio, the internet, email, computer disk or any electronic medium, print media (e.g. newspapers, magazines, leaflets or tickets) and outdoor media (e.g. billboards, posters and public transport), and any tobacco advertising that can be seen or heard from a public place, public transport or workplace.

To supplement a general prohibition against unhealthy food advertising, or as an alternative approach, legislation should specifically prohibit unhealthy food advertising directed to children in particular forms or locations. This would be similar to the approach taken by state tobacco legislation, which operates concurrently with the general national prohibition against tobacco advertising in the Tobacco Advertising Prohibition Act. Legislation in all states and territories specifically prohibits certain forms of tobacco advertising, such as tobacco advertising in public places, at point of sale, in cinemas and theatres, and in unsolicited flyers and leaflets, and through competitions, free samples and sponsorship.

The advantage of having a general national prohibition against unhealthy food advertising directed to children

* *Tobacco Advertising Prohibition Act 1992* (Cth), sections 8 and 10.

would be that, if well drafted, it could comprehensively regulate most forms of unhealthy food advertising directed to children, and could to some extent avoid the need for future amendments to legislation to cover any new types of promotion as they are developed. This is highly likely, given new and emerging forms of technology, and the uptake of these by young people.

A general prohibition against unhealthy food advertising directed to children may not, however, regulate some forms of advertising with a sufficient degree of control and certainty or adequately capture forms of advertising to which children are likely to be exposed but which do not specifically target them. For example, it may be difficult to draft a general prohibition that would cover, and effectively regulate, indirect methods of promoting foods to children, such as use of competitions, premiums and free samples, fundraising or sponsorship in association with schools or children's sports, placement and display of products in supermarkets and other retail outlets, or product packaging designed to appeal to children. In addition, the location in or media through which some advertisements are published, broadcast or communicated, mean that large numbers of children are exposed to the advertisements and/or make it clear that such advertisements are intended to reach children, for example, advertising in schools, in children's magazines or on free-to-air television during children's peak viewing periods. These forms of advertising may be best dealt with through specific legislation to ensure that if advertisements promote unhealthy food, they are automatically prohibited. This would avoid the need for case-by-case assessments of whether individual advertisements are directed to children, and provide greater clarity and certainty as to the application of legislation.

Accordingly, a combination of both general and specific legislation would appear to be the best way forward. It is recommended that a general prohibition on publishing, broadcasting, displaying or communicating an unhealthy food advertisement directed to children should be imposed through Commonwealth legislation. This could be supplemented by further Commonwealth legislation and/or state and territory legislation (see discussion in section 10.5) imposing prohibitions against particular forms of unhealthy food advertising directed to children.

10.3

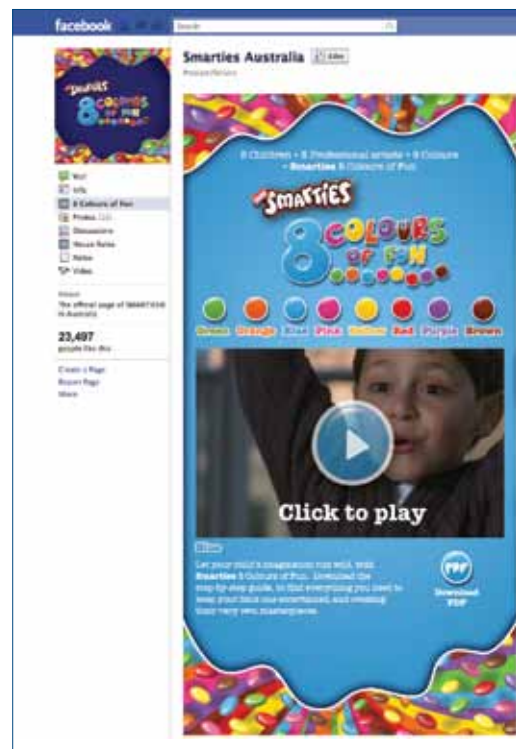
Defining key terms

In any legislation to restrict unhealthy food advertising to children, it will be necessary to carefully define key terms, such as 'children', 'unhealthy food', 'healthy food', 'food brand', 'unhealthy food advertisement', 'broadcasting', 'publishing' and 'directed to children'.

Recommended definitions for these terms are summarised in Box 1 and explained in more detail on page 32.

Instead of using traditional media, Nestlé promoted Smarties in a digital campaign. The campaign featured:

- campaign website
- Facebook profile with videos links and activity sheets
- YouTube channel with a range of videos.



'Unhealthy food'

A key aspect of the proposed legislative restrictions is that they should apply only to advertising of *unhealthy* food. This would provide an incentive for manufacturers to advertise healthier products to children, and to reformulate existing products to make them healthier so that they could continue advertising the products to children.

Existing nutrient profiling scoring systems in the UK and Australia offer robust and easy-to-use models for defining 'unhealthy food' for the purpose of restrictions on food advertising directed to children in Australia. These models (which may be applied across food groups) take into account the positive nutritional characteristics of a food (such as fibre, protein and fruit/vegetable content) as well as the less desirable attributes (such as energy, saturated fat, sodium and total sugars) and reach an overall assessment of the food's healthiness.

In the UK, the Food Standards Agency developed its nutrient profiling model for Ofcom as the basis for identifying high fat, sugar and salt foods that are subject to restrictions on food advertising to children. This model has been found to be a scientifically robust and effective tool for differentiating food and drinks on the basis of their nutrient composition, for the purpose of Ofcom's restrictions.⁸⁴ Food Standards Australia New Zealand (FSANZ) has adapted this model for use in Australia for identifying foods eligible to make health claims, under the proposed new health claims standard to be included in the Australia New Zealand Food Standards Code. The FSANZ model uses the same incremental scoring system as the UK model, and applies it to three food categories: foods (including milk), beverages, and other foods (including oils, edible spreads and cheeses).⁸⁵ The nutrients assessed are those that have an established association with a range of chronic diseases. The baseline nutrients are those likely to increase the risk associated with these diseases, while the modifying factors confer health benefits.⁸⁵ The FSANZ model has now been tested on over 10,000 Australian foods.⁸⁵

The FSANZ model offers a robust method to identify unhealthy foods for the purposes of restrictions on food advertising directed to children in Australia. It is closely based on the UK model and has been rigorously tested on Australian foods, is relevant to children's nutrient requirements, and is relatively simple to use.

'Children'

At a minimum, the definition of 'children' should include children younger than 16 years. Consideration should be given to extending this age range to children younger than 18 years. Up to the age of 15–17 years, children generally remain vulnerable to the possibly harmful effects of food advertising, and require protection from its influence.^{58, 87} There is also a link between exposure to food advertising and weight gain and obesity in children and adolescents of all ages.^{54, 55}

In other contexts, children up to the age of 16–17 years in Australia are considered to require protection by the state as they are not sufficiently mature or competent to bear responsibility for their actions.* In the UK, it was determined that the restrictions on advertising unhealthy foods to children should apply to children younger than 16 years (following careful consideration by Ofcom of the age to which children and adolescents require protection).⁸⁷

'Unhealthy food advertisement'

The definition of the term 'unhealthy food advertisement' should cover all forms of advertising and promotion of unhealthy food products in all types of media. The definition should be designed to ensure that it covers all direct advertising for unhealthy food products, as well as indirect forms of promotion, such as sponsorship, fundraising and product placement.

It will also be important for the definition to cover all forms of advertising and promotion of unhealthy food brands. Food manufacturers and fast food companies sometimes advertise brands, logos or characters associated with unhealthy products to children without actually featuring any food or beverage products in the advertising. For example, recent Cadbury's advertisements featured the colour purple and animated scenes, without showing any Cadbury's products. Similarly, some McDonald's advertisements promote the McDonald's brand and McDonald's restaurants, without specifically advertising McDonald's products, such as a McDonald's advertisement featuring adults playing in a McDonald's playground. Research has found that children begin to recognise brands from as early as two to six years of age.^{88–90} In one study children were found to prefer the taste of food in McDonald's packaging compared with identical food in unbranded packaging.⁹⁰ Since children are often familiar with the products or fast food chains associated with advertised brands or characters, this type of advertising is likely to trigger children's desire and requests for unhealthy products or visits to fast food restaurants, in addition to increasing children's awareness of and allegiance to unhealthy food brands.

If legislative restrictions on advertising of unhealthy food to children were introduced without effective restriction of brand advertising, it is likely that advertisers would use this advertising as a way of circumventing restrictions and continuing to promote unhealthy food to children. Therefore, it will be important for legislation to effectively capture food brand advertising.

* For example, in most Australian jurisdictions the age of consent to sex is 16 (ACT, NT, Victoria, NSW, WA and Queensland, except in Queensland the age of consent to anal intercourse is 18), and the maximum age for treatment as a child in terms of criminal responsibility is 17 years (except Queensland where it is 16 years). On the other hand, children younger than 18 cannot, for example, vote, marry (without a court order and/or the consent of parents), be bound by a contract (other than a contract for 'necessaries'), or purchase alcohol or tobacco products.

To achieve these things, the definition of ‘unhealthy food advertisement’ should be modelled on the definition of ‘tobacco advertisement’ in the *Tobacco Advertising Prohibition Act 1992*.^{*} ‘Unhealthy food advertisement’ should be defined similarly broadly to include any writing, still or moving picture, sign, symbol, or other visual image, or any audible message, or combination of these things, that publicises or promotes, or is intended to publicise or promote:

- (1) one or more unhealthy food products; or
- (2) a food brand, unless one of more healthy food products is the dominant feature of the advertisement.

The aim of the second limb of this definition, applying to promotion of food brands, would be to prevent all non-product food brand advertising and promotion, and to ensure that advertisers could not circumvent restrictions by including a brief or incidental reference to a healthy product. Proposed definitions of ‘food brand’ and ‘healthy food’ are set out below.

The second limb of the definition would apply to all food brands, rather than just brands associated with unhealthy foods. This is to avoid the need for complex assessments of the healthiness of all of a manufacturer’s products, or all products in a range. This approach would still allow manufacturers of healthy products to advertise their brands, as long as one or more of their healthy products is the dominant feature of the advertising.

Guidelines should be developed for assessing whether a healthy product is the dominant feature of a food brand advertisement. These could be based on factors such as the prominence given to promotion of the healthy product (e.g. in terms of colour, size, words, theme of the advertisement, depiction of actors consuming the product), and the time and/or space devoted to the healthy product, in relation to other features of the advertisement.

‘Food brand’

For the purposes of the definition of ‘unhealthy food advertisement’, ‘food brand’ should be defined as:

- a trade mark or design registered in respect of a food product or food range;
- the name of a manufacturer of a food product or food range; or
- the name of a food range, or any other words, designs or images, or combination of words, designs or images, that are closely associated with a food range.

‘Healthy food’

For the purposes of the definition of ‘unhealthy food advertisement’, ‘healthy food’ should be defined according to nutrient profile scoring criteria (discussed above in relation to the definition of ‘unhealthy food’).

‘Broadcasting’ and ‘publishing’

Definitions of the terms ‘broadcasting’ and ‘publishing’ should also be modelled on the definitions of these terms in the *Tobacco Advertising Prohibition Act 1992* (Cth).^{*} They should be defined similarly broadly to include publication or broadcast of advertisements in all media through which unhealthy foods are advertised and promoted to children, including television, radio, the internet, direct marketing practices and in-store displays. A failure to cover current media, and media that may be created and utilised in the future, will inevitably cause food advertisers to shift their advertising expenditure into any unregulated media.

‘Directed to children’

Assessment of whether an advertisement is ‘directed to children’ should be based on the following three considerations:

1. **The circumstances in which the advertisement is published, broadcast or communicated** – the media in which the advertisement was communicated, and/or the mode, location, timing or placement of the advertisement. For example, an advertisement should be considered to be directed to children if it is shown during a television program or film that is directed to children, or displayed in the immediate vicinity of a school.
2. **The nature of the advertisement** – the content (themes, plots or concepts), presentation and design of the advertisement, the age of people in the advertisement, and whether the advertisement features characters, personalities, premiums, competitions or activities likely to appeal to children.
3. **The nature of the food product advertised** – whether any food product advertised is designed for children, likely to appeal to children, usually promoted to children, or typically consumed by children.

An advertisement should be considered to be directed to children if assessment of *any one* of these three factors indicates that this is the case.

An advertisement should also be considered to be ‘directed to children’ if assessment of these three factors indicates that the intended or probable audience of the advertisement consists of a significant number of children, even if children only make up part of the audience. This is to ensure that the restrictions capture unhealthy food advertisements that are directed to both children and older age groups, for example advertisements that are directed to adolescents and children, or advertisements that are directed to families. Many advertisements that are directed partly, or even primarily, to adolescents or adults would still have significant interest and appeal to many children.

^{*} *Tobacco Advertising Prohibition Act 1992* (Cth), sections 8 and 10.

Definitions

At a minimum, the definition of **children** should cover children younger than 16 years of age. Consideration should be given to extending the definition of 'children' to children younger than 18 years of age.

Unhealthy food should be defined as any food or beverage product that fails to meet 'nutrient profile criteria' for eligibility of foods or beverages to be advertised directly to children.

These criteria should be based upon Food Standards Australia New Zealand's proposed nutrient profile criteria for eligibility of foods or beverages to carry health claims, and the nutrient profile model used in the UK to identify high fat, sugar and salt foods for the purpose of UK advertising restrictions. The aim of the criteria should be to ensure that energy-dense, nutrient-poor foods are not marketed to children.

Healthy food should be defined as any food or beverage product that meets 'nutrient profile criteria' for eligibility of foods or beverages to be advertised to children.

Food brand should be defined as:

- a trade mark or design registered in respect of a food product or food range;
- the name of a manufacturer of a food product or food range; or
- the name of a food range, or any other words, designs or images, or combination of words, designs or images, that are closely associated with a food range.

Unhealthy food advertisement should be defined to include any writing, still or moving picture, sign, symbol or other visual image, or any audio message (or any combination of these things) that publicises or promotes, or that is intended to publicise or promote:

- (1) **one or more unhealthy food products**; or
- (2) **a food brand** unless a healthy food product or range is the dominant feature of the advertisement.

Broadcasting should be defined to include transmitting by means of television, radio, internet, email, telecommunications or an electronic medium.

Publishing should be defined to include:

- placing an advertisement in a document or publication that is available, distributed, supplied, sold or hired, or offered for supply, sale or hire, to the public or a section of the public;
- placing an advertisement in a film, video, television program or radio program that is, or is intended to be, seen or heard by the public or a section of the public;
- supplying, distributing, selling or hiring, or offering for supply, sale or hire, something constituting, including or containing an advertisement (such as an audio and/or visual recording, computer

disk, object or item) to the public;

- displaying, screening, playing or otherwise communicating an advertisement so that it can be seen or heard in or from:
 - a public place;
 - public transport;
 - a school;
 - a hospital;
 - retail premises; or
 - a cinema or theatre.

'Premium' should be defined as a good, service, prize, voucher, competition entry, product give-away or product sample, offered or supplied with or without charge.

Directed to children

An 'unhealthy food advertisement' should be considered to be 'directed to children' if assessment of any one of the following factors indicates that children are an intended or probable recipient of the advertisement:

1. The circumstances in which the advertisement was published, broadcast, displayed or otherwise communicated, including:

- a) the location, timing, mode and/or placement of the publication, broadcast, display or communication; and
- b) the nature of any media product (e.g. television program, film, website, publication) in, on, during, or in association with which the advertisement was published, broadcast, displayed or communicated.

2. The nature of the advertisement.

3. The nature of the food product advertised.

You just have to look at the power of viral marketing in adults to imagine that amongst kids - it's going to be huge. In an environment when children all have access to email, a viral marketer who is nicely targeting to kids will run rampant.

Leanne Smith

McNair Ingenuity Research

In: Cincotta K. Brands are playing by kids' rules. B&T, 7 April 2006, <http://www.bandt.com.au/articles/A6/0C03E8A6.asp>

The manner in which each of these factors should be assessed is discussed below.

1. Circumstances in which the advertisement is published or broadcast

- a) In assessing the location, timing, mode and/or placement of the advertisement, regard should be had to whether the advertisement is communicated:
- in a location where children are likely to be present;
 - at a time when children are likely to be listening or watching;
 - in a mode likely to appeal to children or attract their attention; or
 - in association with a medium, event or activity with which children are likely to be engaged or involved.
- b) In assessing the media product (e.g. television program, film, website, publication) in, on, during or in association with which the advertisement is published or broadcast, regard should be had to factors such as the following:
- The content of the media product, for example:
 - themes, plots or concepts likely to appeal to or interest children, such as fantasy, magic, adventure, fun, play, suspense, heroism, school, peer relationships, sport or youth culture;
 - participation or depiction of children or adolescents;
 - participation or depiction of personalities or characters of appeal to children, such as sporting personalities, personalities or characters featured in other children's media products, or cartoon, animal or fantasy characters; or

- activities likely to appeal to or interest children, e.g. sports, games, competitions, quizzes, quests or challenges.
- The presentation or design of the medium, for example:
 - imagery or graphics likely to appeal to or interest children, including cartoons, bold graphics, or images or pictures of children, animals, toys, balloons, cars, boats or aeroplanes;
 - bright colours likely to appeal to children;
 - music or songs likely to appeal to children;
 - production techniques or technical effects likely to appeal to or interest children such as animation, repetition or fast cutting; or
 - language intended for children, or spoken by or directly to children;
- The typical audience of the medium, and the manner in which the medium is marketed or promoted.

2. Nature of the advertisement

- a) In assessing the 'nature of the advertisement', regard should be had to factors such as the following:
- The age of people (actors or presenters) in the advertisement (particularly whether the advertisement features children).
 - Personalities or characters featured in the advertisement, for example:
 - personalities or characters popular with children or likely to appeal to children;
 - personalities or characters from children's media (television programs, books, films, comics, magazines, computer games etc); or
 - cartoon or fantasy characters.

- Any offers of premiums, competitions, prizes or other benefits promoted in the advertisement that would be likely to interest children.
- Any activities featured in the advertisement that would be likely to interest children, for example, sports, games, competitions, quizzes, quests or challenges.
- The presentation or design of the advertisement, for example, use of:
 - imagery or graphics likely to appeal to or interest children, for example, cartoons, bold graphics, or images or pictures of children, animals, toys, balloons, cars, boats or aeroplanes;
 - colours likely to appeal to children;
 - music or songs likely to appeal to children;
 - production techniques or technical effects likely to appeal to or interest children, such as animation, repetition, fast cutting; and/or
 - language intended or suitable for children, or spoken by or directly to children.
- The content of the advertisement, i.e. themes, plots or concepts likely to interest or appeal to children, such as fantasy, magic, adventure, fun, play, suspense, heroism, school, peer relationships, peer admiration, sporting success or youth culture.

3. Nature of the product

In assessing the 'nature of the product', regard should be had to whether the food product advertised is intended or designed for children, likely to appeal to children, otherwise promoted to children, or typically consumed by children.



Screen capture of the Cadbury site promoting Freddo Frog through an online game involving membership at the website <http://www.freddo.com.au>



Screen capture of a page within the 'adventure' on the Cadbury site promoting Freddo Frog at the website <http://www.freddo.com.au>



Hungry Jack's Simpsons toy promotion

10.4 Forms of unhealthy food advertising that should be regulated

The forms of unhealthy food product and brand advertising directed to children that should be regulated (whether through general or specific advertising restrictions) include:

- Free-to-air television
- Radio
- Internet
- Subscription television
- Print publications
- Direct electronic marketing (email, SMS)
- Direct mail
- Unsolicited documents
- Product placement
- Public places and transport
- Point-of-sale advertising
- Cinemas and theatres
- Children's institutions, services, events or activities (e.g. sponsorship of schools, children's sport or other children's activities)
- Competitions and premiums (free toys)
- Characters and personalities

On free-to-air and subscription television, all advertisements that are directed to children should be prohibited. In addition, to minimise children's exposure to unhealthy food advertising on television, time-based prohibitions against any unhealthy food advertising (irrespective of whether the advertising is directed to children) should apply during the following periods:

- Weekdays: 6–9am and 4–9pm.
- Weekends and school holidays: 6am–12pm and 4–9pm.

These time periods would cover times when the highest number and the highest proportion of children are in the viewing audience. For free-to-air television, these time periods would also cover the current G classification period (weekdays 6–8.30am and 4–7pm, and weekends 6–10am), when only material that is suitable for viewing by children is supposed to be shown.

Time-based prohibitions should apply to all free-to-air television channels, but only to those subscription television channels that are regularly watched by significant numbers of children (so that any subscription television channels that are watched almost exclusively by adults would be excluded from the prohibition). On designated children's channels on subscription television (i.e. channels directed primarily to children), an outright prohibition against all unhealthy food advertising should apply at all times of day.

These television advertising restrictions, together with restrictions that should apply to all other forms, modes and locations of unhealthy food advertising directed to children, are outlined in Box 2.

It should be noted that if a general prohibition against publishing or broadcasting an unhealthy food advertisement were enacted (as discussed in section 10.2) some of these specific restrictions would be covered by the general prohibition and would not be required. However, some forms of advertising would be more effectively and clearly regulated through specific restrictions, for example, specific restrictions on television advertising would be needed to prevent advertising of unhealthy food during specified time periods.

The forms of advertising that would be adequately restricted through a general prohibition, or that would need specific restrictions, are noted in Box 2.

10.5 Commonwealth or state and territory legislation?

The Commonwealth Government should take the lead and introduce comprehensive legislation to prohibit unhealthy food advertising directed to children. This should be supplemented by legislation in all state and territories to impose specific restrictions on forms of advertising which may be more appropriately regulated at the state/territory level and to cover any gaps in the Commonwealth's legislative power. A Commonwealth-led approach would have the best chance of ensuring consistent development, implementation and enforcement of legislation covering unhealthy food advertising in all forms, media and locations.

The Commonwealth would have the power to legislate to restrict all forms of unhealthy food advertising to children, with perhaps some very limited constitutional restrictions. The Commonwealth can only make laws with respect to the topics on which it is given specific power in sections 51 and 52 of the Australian Constitution. The Commonwealth's powers to make laws with respect to advertising arise mainly from the following subsections of section 51:

- Section 51(v): power to make laws with respect to postal, telegraphic, telephonic and other like services (i.e. advertising via broadcasting services, including television, radio and the internet); and
- Section 51(xx): power to make laws with respect to financial corporations, and trading and financial corporations (i.e. advertising by corporations).

The Commonwealth may also have power to make laws restricting advertising that crosses state borders under section 51(1) of the Constitution, which gives the Commonwealth power to make laws with respect to trade and commerce among the states.

These topics give the Commonwealth very wide scope to legislate with respect to unhealthy food advertising, but there may be some very limited types of advertising that would fall outside the scope of these topics. For example, the Commonwealth may not have the power to restrict unhealthy food advertising via non-broadcast media by individuals or entities other than corporations where the advertising occurs solely within a particular state or territory (such as an unincorporated small business operating only within one state). Where the Commonwealth is not satisfied it has power to legislate, it should encourage the states and territories to enact complementary legislation.

If the Commonwealth Government does not introduce legislation, the states and territories would have the power to prohibit most types of unhealthy food advertising directed to children, including on free-to-air television and radio.

Unlike the Commonwealth, states and territories are not restricted in the topics on which they may pass legislation (except that they may not legislate on certain topics in relation to which the Constitution gives the Commonwealth exclusive legislative power or withdraws legislative power from the states). The states and territories have general power to enact legislation on any topic that is sufficiently connected with the territory of that state/territory.

This includes the power to make legislation on the topics set out in section 51 of the Constitution in relation to which the Commonwealth is given specific legislative power. These powers are 'concurrent', which means they are shared by the Commonwealth and the states and territories. However, state and territory legislation that is inconsistent with Commonwealth legislation is invalid to the extent of the inconsistency, and the Commonwealth has the power to override any legislation of the territories.

A state or territory acting independently could legislate to restrict most forms of unhealthy food advertising directed to children in that state or territory. However, the states and territories would need to cooperate to develop and enforce consistent legislation in order to effectively regulate some forms of advertising that crosses state borders, such as advertising on subscription television and the internet.

In Victoria, South Australia and the Northern Territory, there are existing powers in food legislation to make regulations with respect to food advertising, which could be relied upon to some extent to introduce some of the restrictions proposed in this report. In South Australia and the Northern Territory, regulations may be made with respect to the form and content of food advertising, and the packaging and labelling of food,^{*} and in Victoria, regulations may be made to prohibit and restrict food advertisements, and to prohibit or restrict words, statements or pictures that may appear on food labels.^{**}

* *Food Act 2001* (SA), sections 113(d) and (g); *Food Act 2004* (NT), sections 134(i) and (l).

** *Food Act 1984* (Vic), sections 63(j) and (k).

Forms of unhealthy food advertising that should be restricted

Legislation should impose restrictions on the forms of unhealthy food (product and brand) advertising set out below. Some of these forms of advertising (e.g. advertising on the radio, in public places or on public transport) may be adequately covered by a general prohibition against broadcasting, publishing, displaying or otherwise communicating an unhealthy food advertisement. However, other forms of advertising (e.g. advertising on free-to-air television) would be more effectively dealt with through specific prohibitions.

General prohibition

The following forms of unhealthy food (product and brand) advertising would probably be adequately dealt with by a well-drafted general prohibition against broadcasting, publishing, displaying or otherwise communicating an unhealthy food advertisement directed to children, or causing, permitting or authorising this to occur.

Radio

Broadcasting, or causing, permitting or authorising the broadcast of, an unhealthy food advertisement that is directed to children on the radio.

Unsolicited documents

Distributing to the public, or causing, permitting or authorising, the distribution to the public of, unsolicited documents (such as flyers, leaflets or pamphlets) that constitute or contain an unhealthy food advertisement directed to children.

Recordings, toys and other items and objects

Supplying, distributing, hiring or selling, or offering, causing, permitting

or authorising the distribution, supply, hire or sale of, anything that constitutes or contains an unhealthy food advertisement directed to children (including visual or audio recordings, computer disks, clothes, toys, materials, equipment or other items or objects).

Public places and transport

Displaying or communicating, or causing, permitting or authorising the display or communication of, an unhealthy food advertisement directed to children that is visible or audible in or from a public place or public transport.

Specific prohibitions

The following forms of advertising may be more effectively dealt with through specific prohibitions.

Free-to-air television

Broadcasting or causing, permitting or authorising the broadcast of, an unhealthy food advertisement on free-to-air television, if the advertisement is:

- directed to children; or
- broadcast during the following times:
 - Weekdays: 6–9am and 4–9pm
 - Weekends and school holidays: 6am–12pm and 4–9pm

Subscription television

Broadcasting, or causing, permitting or authorising the broadcast of, an unhealthy food advertisement on subscription television, if the advertisement is:

- directed to children;
- broadcast on a channel that is primarily directed to children (i.e. a dedicated children's channel);
- broadcast on a channel regularly watched by significant numbers of children during the following times:

- Weekdays: 6–9am and 4–9pm; or
- Weekends and school holidays: 6am–12pm and 4–9pm.

Internet

Uploading, or causing, permitting or authorising the uploading of, material that constitutes or contains an unhealthy food advertisement on the internet, if the advertisement is:

- directed to children; or
- uploaded on, or linked directly to, a website or webpage that is directed to children.

Print publications

Publishing or including, or causing, permitting or authorising the publication or inclusion, of an unhealthy food advertisement in or with a print publication (such as a magazine or comic) that is directed to children.

Direct electronic marketing (email, and SMS)

Sending a direct electronic message to a child that constitutes or contains an unhealthy food advertisement, or causing, permitting or authorising this to occur.

Direct mail

Sending to a child by addressed mail anything that constitutes, includes or contains an unhealthy food advertisement, or causing, permitting or authorising this to occur.

Cinemas and theatres

Screening, or causing, permitting or authorising the screening of, an unhealthy food advertisement in a cinema before, during or after a G film, or before, during or after a PG film that is directed to children.

Displaying or communicating, or causing, permitting or authorising the display or communication of, an unhealthy food advertisement directed to children inside or outside the premises of a cinema or theatre.

Children's institutions or services (schools, childcare centres, hospitals)

Displaying or communicating, or causing, permitting or authorising the display or communication of, an unhealthy food advertisement in, at, or in association with any events or activities of:

- a kindergarten, childcare centre or school (primary and secondary); or
- any other institution or service that provides services (including medical, care, educational or recreational) primarily to children (e.g. a hospital, club, activity centre, etc).

This would include offering, providing or facilitating the following to, at, or in association with or support of, these institutions or services for the purpose of promoting unhealthy food, or a trade mark, design, brand, or name of a manufacturer, producer or distributor that is closely associated with an unhealthy food:

- sponsorship;
- fundraising materials;
- branded materials, equipment, facilities, activities, events or programs; or
- entry to competitions, prizes or other benefits.

Children's events or activities

Displaying or communicating, or causing, permitting or authorising the display or communication of, an unhealthy food advertisement at or in association with events or activities in which primarily children are involved or participate (e.g. children's sport or school fairs).

This would include provision or facilitation of the following at, in association with, or in promotion or support of, these events or activities, for the purpose of promoting unhealthy food, or a trade mark, design, brand, or name of a manufacturer, producer or distributor

that is closely associated with an unhealthy food:

- sponsorship;
- fundraising materials;
- branded materials, equipment, facilities, activities, events or programs; or
- entry to competitions, prizes, awards, vouchers or other benefits.

Premiums (including competitions and give-aways)

Supplying or offering to supply a premium for the purpose or with the effect of promoting unhealthy food to children.

'Premium' means a good, service, prize, voucher, competition entry, product give-away or product sample, offered or supplied with or without charge.

Characters and personalities

Causing, permitting or authorising the direct or indirect promotion or endorsement of an unhealthy food by, or in association with, a personality or character that is popular with or likely to appeal to children.

Product placement

Publishing, broadcasting, uploading, displaying or otherwise communicating visual or audio material or text that promotes or publicises an unhealthy food, during, within or as part of the content of a media product (such as a film, television program, radio program, print publication, computer game or website) that is directed to children, or causing, permitting or authorising this to occur.

Point-of-sale advertising

Displaying or communicating, or causing, permitting or authorising the display or communication of, an unhealthy food advertisement directed to children inside or outside retail premises where unhealthy food products are sold.

(This would not apply to advertisements that were in, on or part of 'product packaging', which would need to be dealt with separately: see description below.)

Other specific restrictions

Consideration should also be given to imposing specific restrictions on unhealthy food product displays in stores that are designed to attract children's attention, and on the placement of unhealthy food products (such as chocolate and confectionery) in lower shelves or in the vicinity of the checkout in a manner designed to encourage children to pick up and request the products.

In addition, consideration should be given to imposing specific restrictions on the packaging of unhealthy food in a manner designed to appeal to children, for example, use of characters, cartoons, pictures and shapes that are likely to appeal to children.

These restrictions could operate in the following manner.

Point-of-sale display and placement of products

Placing or displaying, or causing, permitting or authorising the placement or display of, an unhealthy food product in a retail outlet:

- below a height of 1 metre from the floor; or
- within a distance of 2 metres from the point of sale (cash register or checkout counter).

Placing, displaying or arranging, or causing, permitting or authorising the placement, display or arrangement of, unhealthy food products in a retail outlet in any other manner intended or likely to attract the attention of children.

Product packaging

Packaging, or causing, permitting or authorising the packaging of, an unhealthy food in a manner directed to children.

Packaging of a product should be considered directed to children if, for example, it features colours, graphics, pictures, cartoons, characters, personalities, competitions, activities or references to films, television programs, games or sports, that are intended for or likely to appeal to children.

10.6

Monitoring, enforcement and review of legislation

To ensure that legislation to restrict unhealthy food advertising to children is effective in practice, compliance with the legislation would need to be regularly monitored by a government department or regulatory agency that is independent of industry. For example, compliance with Commonwealth legislation could be monitored by a unit of the Department of Health and Ageing or the Australian Competition and Consumer Commission. Complaints from members of the public should not be the only means through which potential breaches of the legislation are identified and investigated.

The legislation should provide for a range of enforcement powers, including the power to seek penalties for breaches that are significant enough to act as effective deterrents. The enforcing agency/agencies should be active in investigating and prosecuting breaches, and seeking appropriate penalties.

The legislation should be regularly reviewed and evaluated to ensure that it is effective in minimising children's exposure to unhealthy food advertising. In particular, the legislation should be reviewed to identify and address any problems with drafting or loopholes, and to ensure new forms of advertising, media and technologies are effectively regulated. The extent to which breaches are identified and prosecuted should also be evaluated.

Conclusion

The problem of overweight and obesity in Australian children is serious and urgent, and the time to act is now. If Australian governments wait any longer before implementing comprehensive regulatory and policy measures to address the problem, the public health and economic consequences will be dire.

Experts agree that the evidence is clear and robust: unhealthy food advertising to children influences the foods children desire, request, choose and eat, and has a negative influence on children's diets. The huge amount of unhealthy food advertising to which children are exposed contributes significantly to increasing rates of childhood overweight and obesity.

Unhealthy food advertising pervades children's lives with unprecedented intensity and frequency. Children are bombarded and surrounded with unhealthy food advertising in all aspects of their lives – on television, films and the internet, in magazines, supermarkets and shops, on billboards, at school and when playing sport. They are enticed to prefer, request and choose advertised products with promotional strategies such as free toy offers, give-aways, competitions, games, popular characters and celebrities and sports sponsorship.

Children do not have the cognitive capacity to understand and resist the influence of advertising, and they have the right to be protected when this influence is potentially harmful to their health.

Existing regulation of food advertising in Australia is extremely limited, and does very little to shield children from the influence of unhealthy food advertising. Self-regulation has already been shown to be grossly ineffective for dealing with this. It is inherently incapable of becoming effective in the future, since unhealthy food advertisers will not voluntarily submit to regulation that imposes any meaningful restrictions on their ability to promote consumption of their products.

There is a need for a fundamental shift in the way unhealthy food advertising to children is regulated in Australia.

In these circumstances, Australian governments have a clear responsibility to act to protect children from the negative influence of unhealthy food advertising on their diets and health.

We believe the proposal for legislation to restrict unhealthy food advertising to children described in this report offers an effective, fair and proportionate strategy for minimising children's exposure to unhealthy food advertising, and restricting strategies used by unhealthy food advertisers to target children.

The proposal sets out a number of key features that would be needed for legislation to be effective.

Legislation would need to:

- apply comprehensively to unhealthy food product and brand advertising directed to children in all forms, media and locations;
- apply to advertising of *unhealthy* food products, which should be identified using nutrient profile criteria;
- apply to advertising of food brands (unless one or more healthy food products is the dominant feature of the advertising);
- minimise children's *exposure* to unhealthy food (product and brand) advertising to the greatest extent possible (and not just restrict unhealthy food advertising that specifically targets children);
- prohibit unhealthy food (product and brand) advertising on television on weekdays from 6–9am and 4–9pm, and weekends and school holidays from 6am–12pm and 4–9pm (times when significant numbers and/or a significant proportion of children are likely to be watching, and during G classification periods);
- be regularly monitored for compliance so that identification of breaches of the legislation is not entirely dependent on complaints from the public;
- be administered and strictly and actively enforced by an agency that is independent of industry and that is given a range of enforcement powers, including the power to seek significant penalties for breaches; and
- be regularly reviewed and evaluated to ensure that it is effective for reducing children's exposure to unhealthy food advertising, and that it covers emerging media, technologies and advertising techniques.

We realise that this proposal is controversial, and that legislation will be resisted heavily by the food, advertising and media industries, but Australian governments cannot afford to ignore the problem of unhealthy food advertising to children any longer.

Legislation to comprehensively restrict unhealthy food advertising is urgently needed as part of a multi-strategic approach to addressing overweight and obesity in Australian children.

This would be one of the most effective and cost-effective interventions to address the childhood overweight and obesity problem. Legislation would have the direct benefit of minimising children's exposure to unhealthy food advertising and reducing the influence of this advertising on children's diets and health, as well as the indirect benefits of ensuring other strategies to improve children's diets, nutrition and health are not undermined, and encouraging food companies to produce and advertise healthier children's products.

Australian governments must act now to ensure the rights and health of Australian children are protected and they are given the best chance of having a healthy start to life, and to avoid further increases in rates of diabetes, cancer and heart disease, reduced life expectancy, reduced productivity, and crippling costs to the Australian economy.

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