

POLICY BRIEF

FOOD ADVERTISING REGULATION IN AUSTRALIA

SUMMARY

Food advertising in Australia is regulated under a complex mix of statutory regulations and self-regulatory codes. These regulations and codes are inadequate to protect children from the problems of unhealthy food advertising to children. The statutory regulations are very limited in their scope. Industry's voluntary advertising codes fail to protect children from exposure to unhealthy food advertising. The codes do not prevent unhealthy food advertising during the highest rating children's programs, do not cover all forms of promotion, do not apply to all food advertisers, and contain unclear and inadequate nutrition criteria. Comprehensive legislation restricting unhealthy food advertising to children is urgently required.

WHAT ARE THE REGULATIONS AND CODES?

1. Children's Television Standards

The Children's Television Standards 2009 (CTS), applying to free-to-air television, is the only government regulation dealing specifically with advertising to children. The Australian Communications and Media Authority (ACMA) developed the CTS under the *Broadcasting Services Act 1992* (Cth). Compliance with the CTS is a licence condition for all free-to-air television broadcasters and ACMA is responsible for its administration and enforcement.

The CTS only applies to advertising on free-to-air television and not to other types of media. It contains general restrictions on the amount and content of advertising during children's television programs and periods (those classified 'P' for pre-school and 'C' for children, which are broadcast mostly between 4 and 5pm).

The CTS includes some general restrictions on the content of advertising to children, such as restrictions on advertisements that promote premium offers, i.e. free toys (CTS 33) and advertisements that feature promotions and endorsements by popular personalities and characters (CTS 35). However these provisions are very limited in scope and do not adequately restrict the range of advertising techniques commonly used to target children (particularly given they only apply during C and P programming).

CTS 32(7) is the only provision that deals specifically with food advertising. It prohibits advertisements that contain any misleading or incorrect information about the nutritional value of foods or beverages – a prohibition which is very limited in scope.

Aside from the limited scope of its provisions, the main problem with the CTS is that it does not restrict the volume of unhealthy food advertising to children on TV and therefore does not reduce the amount of unhealthy food advertising that children are exposed to. The CTS does not apply to the most popular television programs among children (such as *Masterchef*, *the Voice*, *the Block* or *My Kitchen Rules*) or the times when the highest numbers of children watch television, i.e. between 6 and 9pm.¹

2. Commercial Television Industry and Pay TV Codes of Practice

The Commercial Television Industry Code of Practice 2015 (CTICP) and the Australian Subscription Television and Radio Association Codes of Practice 2013 – Subscription Broadcast Television (ASTRA Code SBT) are self-regulatory industry codes developed by the free-to-air commercial television industry and ASTRA respectively to apply to free-to-air or pay TV advertising, respectively. The codes are administered primarily by TV licensees (although complaints may be referred to ACMA in some circumstances). Both codes provide that licensees must comply with the AANA Codes (discussed below) but beyond that, they do not contain any provisions dealing with food and beverage advertising to children or restrictions on the volume of advertising to children.

3. Industry codes

A range of advertising and food industry self-regulatory codes apply to food advertising to children.

Advertising industry codes

Food advertising to children (through television and other media) is self-regulated to a limited extent by the Australian Association of National Advertisers (AANA) under its codes of practice, the Code for Advertising & Marketing Communications to Children (Children's Code) and the Food & Beverages Advertising & Marketing Communications Code (Food & Beverages Code).

These codes contain some (generally ineffective) provisions relating to the content of food and beverage advertising 'directed primarily to children' aged 14 and younger. For example, ads must not aim to undermine parents in their role of guiding diet and lifestyle choices, must not promote or encourage inactive lifestyles or unhealthy eating habits, must not feature premiums that are not integral elements of the products, must not mislead or deceive children in relation to any nutritional or health claim, and ads must not imply that a product will give them a particular advantage over other children. We discuss in the section below the difficulties associated with convincing the ASB that an ad is 'directed primarily to children'.

Food industry codes

The Australian Food and Grocery Council (AFGC) introduced two voluntary codes to restrict food advertising to children. The Responsible Children's Marketing Initiative (RCMI) applies to food and beverage advertising (not including fast food advertising) 'directed primarily to' children under 12 by food companies that are signatories. The Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (QSRI) applies to fast food advertising 'directed primarily to' children under 14 by fast food companies that are signatories. These voluntary codes purport to ensure that food advertising 'directed primarily to children' represents healthier choices but the weak provisions provide very little protection.

The codes are administered by the ASB.

Problems with the food industry codes

Only cover advertising and programs 'directed primarily to children'

The QSRI and RCMI only restrict unhealthy food advertising content 'directed primarily to children' (under 14 for the QSRI and under 12 for the RCMI) or placed during C programs or P programs or other shows created specifically for children, or where children represent 35% or more of the audience.

The ASB has taken a very narrow interpretation of when advertising content is 'directed primarily to children'. For example, it has held that a number of food ads or promotions featuring children or children's activities are not primarily directed to children – on the basis that some words in the ad are addressed to parents, or that an ad is intended to evoke nostalgia for childhood. For example, the ASB held that the following ads were not directed primarily to children:

- Kellogg's Coco Pops ad featuring an animated mechanical contraption passing Coco Pops down a production line and a bowl of Coco Pops rolling on a toy trolley.
- Wonka chocolate ad featuring an animated family on a hot air balloon, eating the chocolate product while whimsical and magical things occur.

- McDonald's website featuring events, products and information as part of McDonald's Minions movie campaign, including a game of skill competition.
- Smarties website with a colouring-in competition open to children aged 3-10 (www.smarties-australia.com.au).

With respect to placement, as children only constitute a small proportion of the general population, there are few TV programs or digital media for which children constitute more than 35% of the audience, even though large numbers of children are viewing. This approach means that programs watched by the highest numbers of children (which are shown in evening viewing periods) are not covered by the voluntary codes.

For example, the ASB held that advertising during Junior Masterchef, The Simpsons and Modern Family was not covered by the codes, despite these being the three highest rating programs for children aged 5-12 years at the time. Ads for a range of junk food have been shown during these programs, including McDonald's, Hungry Jack's, KFC, Domino Pizza, Snickers, Mars and Twix Bars, Coca-Cola, Fanta, V Energy Drink, Red Bull, Smiths Crisps, and Streets Magnum and Nestle Drumstick ice creams.

Similarly, with digital media, the ASB has held that a number of Apps and websites that are popular with children, such as Snapchat and YouTube, are not directed primarily to children as children would not make up more than 35% of users. Junk food ads also regularly appear on these platforms.

Not surprisingly, a recent study showed that between 2011 and 2015 there was no reduction in the rate of unhealthy food advertising in Australia, including by the signatories to the RCMI and QSRI.² A previous study similarly showed minimal changes to unhealthy food advertising rates to children between 2006, before introduction of the initiatives, and 2011, after their introduction. Children see, on average, around 3 advertisements per hour for unhealthy food during prime-time television.³

Do not cover all forms of promotion

The RCMI does not cover:

- Outdoor media (e.g. billboards targeting children)

- Direct marketing to children (post, email, SMS)
- Point of sale advertising⁴
- Promotions on product packaging⁵
- Brand advertising⁶
- Sponsorship of children's sport⁷
- Fundraising activities in schools

The QSRI does not cover:

- Point of sale advertising
- Promotions on product packaging
- Free toys with fast food meals
- Brand advertising
- Sponsorship of children's sport⁸

Importantly, the Codes are inadequate for keeping up with the new forms of digital advertising to children, on platforms such as apps and social media. For more information, please see '[How unhealthy food is marketed to children through digital media](#)'.

Do not apply to all food advertisers

As the Codes are voluntary, companies that have not signed up include Donut King, Krispy Kreme, Wizz Fizz, Domino Pizza, Cottee's Cordial, Schweppes, and Snack Brands Australia.

Do not protect all age groups

The RCMI does not apply in relation to children older than 11, and the QSRI does not apply to children older than 13.

Inadequate nutrition criteria

The RCMI does not provide a single set of nutrition criteria for assessing products but refers generally to 'established scientific or Australian government standards, as detailed in Signatories Company Action Plan'. This means that each company sets its own criteria. For example, Nestle, Cereal Partners, Kellogg and Kraft use their own criteria, Arnotts and Simplot use NSW or national school canteen criteria, and some companies use a combination of criteria.

Relying on companies' own criteria, some foods which have been considered to be 'healthier dietary choices' by the ASB include Coco Pops and Paddle Pop icy poles.

The QSRI sets out nutrition criteria, but they are weak and apply only to meals, not to single food items. A fast food meal consisting of chicken nuggets, apple slices and water meets the criteria.

Problems with ASB decision-making

The ASB consistently takes the narrowest possible interpretation of provisions, often resulting in absurd determinations. For example, the ASB held that a Fanta website featuring animated teenage characters known as the Fanta crew, which offered desktop and mobile screensavers for download and streamed a Fanta video featuring the Fanta crew, was not directed primarily to children.

The ASB also held that a Cadbury Oreo animated ad, which featured a square of chocolate and an Oreo Cookie, surrounded by emojis as they enjoy spending time together, was not primarily directed to children as neither Facebook nor YouTube attract an audience of more than 35% children. The ASB also decided the animation was targeted primarily to adults as the scenes were adult-focused activities (hanging out at the beach, camping, at a sports event) and likely to create a whimsical feel of nostalgia.

ASB decisions are often out of step with the views of the community and government regulators. The ASB has consistently held that toys offered with fast food meals are not premiums (i.e. gifts intended to induce purchase of a product) because toys are an 'integral part' of the meals, and thus that free toy offers are not covered by the voluntary codes. This is inconsistent with the approach of the Australian Communications and Media Authority, which has held that toys offered with McDonald's Happy Meals for children do constitute premium offers (because it is clear that the toys are intended to induce purchase of Happy Meals). A 2010 public opinion survey conducted by Cancer Council Victoria found that 86% of consumers surveyed believed that use of toy offers to market unhealthy food to children should be restricted or banned.⁹

Lack of monitoring

Compliance with the voluntary codes is not monitored; the system relies entirely on complaints from the public to identify breaches. The regulatory system is very complex, and it is difficult for members of the public to identify which regulatory body to complain to, and which code and provision to complain under. There are a number of overlapping codes containing complex clauses and definitions, including the AANA Food and Beverages Advertising and Marketing Communications Code, the AANA Code for Responsible Advertising and Marketing to Children, the RCMI and the QSRI. Each of these codes applies in different ways to food advertising to children – to different advertisers and products, different types of advertising and media and different age groups of children, making it very difficult for members of the public to understand which code to complain under.

Lack of sanctions

The ASB has no power to impose sanctions on advertisers that breach the codes; it can only request advertisers to modify or withdraw offending ads. For example, Hungry Jack's continued to advertise its Kids Club Meal to children after the ASB twice held that the meal breached the QSRI nutrition criteria. The ASB was not able to enforce its determinations, or impose any sanctions on Hungry Jack's for its repeated breaches of the code.

The ASB may refuse to consider complaints about an ad that has finished running or that has been withdrawn after the filing of a complaint. Ads have often finished running by the time the ASB makes determinations. As a result, there are no effective deterrents against breaching the voluntary codes.

Conflict of interest

There is an irresolvable conflict between food advertisers' commercial interests (to advertise in a manner that is effective to sell products) and the public interest (to protect children from advertising of unhealthy products). Self-regulation is inherently incapable of protecting children because food advertisers lack sufficient incentive to develop, comply with or enforce effective food advertising restrictions.¹⁰ Indeed, the few changes to the Industry Codes that have been made since their inception have generally weakened, rather than strengthened, their provisions.

4. Consumer protection laws

In addition, the Australian Consumer Law (Cth), and State and Territory fair trading acts, contain provisions on misleading and deceptive conduct and false representations, which apply to food advertising.

WHAT ACTION IS NEEDED?

Experts, health agencies, researchers and expert commentators agree that the evidence of the effects of food advertising to children warrants government intervention to restrict unhealthy food advertising to children.¹¹ Two national studies conducted in 2012 each found that approximately three quarters of participants surveyed were in favour of the Government introducing stronger restrictions to reduce the amount of unhealthy food advertising seen by children.¹²

As part of a multi-strategy approach to curbing the problems of childhood overweight and obesity in Australia, comprehensive legislation to restrict unhealthy food advertising to children is urgently needed.

MORE INFORMATION

Please refer to the Obesity Policy Coalition's report '[A comprehensive approach to protecting children from unhealthy food advertising and promotion](#)' for recommendations on legislation to restrict unhealthy food advertising to children.

About the Obesity Policy Coalition

The Obesity Policy Coalition (OPC) is a partnership between the Cancer Council Victoria, Diabetes Victoria and the Global Obesity Centre at Deakin University, a World Health Organization Collaborating Centre for Obesity Prevention. The OPC advocates for evidence-based policy and regulatory change to address overweight, obesity and unhealthy diets in Australia, particularly among children.

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² Watson, W L et al, 'Advertising to children initiatives have not reduced unhealthy food advertising on Australian television', *Journal of Public Health* (2017), 1-6: <https://academic.oup.com/jpubhealth/article-abstract/doi/10.1093/pubmed/fdx004/2966185/Advertising-to-children-initiatives-have-not?redirectedFrom=fulltext>

³ King L, Hebden L, Grunseit A et al. Building the case for independent monitoring of food advertising on Australian television. *Public Health Nutr* 2013;16(12):2249-54.

⁴ Eg Paddle Pop's Lick-a-Prize competition, aimed at children 6-12 years old; Cadbury's holographic box displays in stores

⁵ Coco Pops boxes with Coco Pops monkey; Rice Bubbles packs with snap, crackle and pop cartoon characters; Billabong packs with cartoon characters

⁶ Cadbury 'wouldn't it be nice' TV ads (featuring animated chocolate characters); Cadbury 'Joy Deliveries' Christmas delivery truck

⁷ For example, Milo sponsorship of kids' cricket – Miloin2cricket; Milo T20 Blast Program <http://www.milo.com.au/milo-cricket>

⁸ Eg McDonald's sponsorship of Basketball Victoria, through schools and community clubs: <http://basketballvictoria.com.au/our-partners> ;

McDonald's sponsorship of Little Athletics in a number of states: <http://www.lansw.com.au/>

⁹ Livingstone S. New research on advertising foods to children: An updated review of the literature: Published as Annex 9 to Ofcom. Television of food and drink products to children. United Kingdom, 28 March 2006.

¹⁰ 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): 118-146.

¹¹ Above, n5; McGinnis JM, Gootman JA, Kraak VI. Food marketing to children and youth: Threat or opportunity? Institute of Medicine of the National Academies: Washington DC, USA: 2005; Lobstein T, Dobb S. Evidence of a possible link between obesogenic food advertising and child overweight. Obesity Reviews 2005; 6 (3): 203-208.

¹² Obesity Policy Coalition and Cancer Council Victoria survey (2012) (unpublished); Lockie S and Pietsch J (2012) Public Opinion on Food Security, Australian National University