Food advertising in Australia is regulated under a complex mix of statutory regulations and co- and self-regulatory codes. These regulations and codes are inadequate to protect children from the problems of unhealthy food advertising to children: they do not restrict the volume of unhealthy food advertising that children are exposed to, nor do they adequately restrict the marketing techniques most commonly used to target children. There are also significant deficiencies in the administration and enforcement of the self-regulatory codes. Comprehensive legislation restricting unhealthy food advertising to children is urgently required.

**WHAT ARE THE REGULATIONS?**

On free-to-air television, food advertising to children is regulated to a limited extent under the Children’s Television Standards 2009 and the Commercial Television Industry Code of Practice 2010. Advertising on subscription television is self-regulated by the subscription television broadcasting industry under the Australian Subscription Television and Radio Association (ASTRA) Codes of Practice.

Food advertising to children (through television and other media) is self-regulated by the Australian Association of National Advertisers (AANA) under its codes of practice. Sections of the food industry, and a number of individual food companies, have also introduced their own self-regulatory codes on advertising to children.

In addition, the Competition and Consumer Act 2010 (Cth), and State and Territory fair trading acts, contain provisions on misleading and deceptive conduct and false representations, which apply to food advertising.

**1. Children’s Television Standards**

The Children’s Television Standards 2009 (CTS) are the only government regulations dealing specifically with advertising to children.

The CTS are administered and enforced by the Australian Communications and Media Authority (ACMA) and compliance with the CTS is a license condition for all free-to-air commercial television broadcasters.

The CTS apply only to advertising on free-to-air television during C (children’s) and P (pre-school children’s) rated programs, i.e. children’s programming which is broadcast mostly between 4 and 5pm.

The CTS include 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 limited in scope and do not adequately restrict the range of 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.
The main problems with the CTS are that they do not restrict the volume of unhealthy food advertising to children, nor do they purport to reduce the amount of unhealthy food advertising that children are exposed to. They do not apply to the most popular television programs among children (such as Junior Masterchef, Modern Family or The Simpsons) or the times when the highest numbers of children watch television, i.e. between 5 and 9pm.

2. Commercial Television Industry Code of Practice

The Commercial Television Industry Code of Practice 2010 (CTICP) is an industry code of practice, developed and administered by the free-to-air commercial television industry (represented by Free TV Australia). Complaints can also be referred to ACMA and the Advertising Standards Board.

The CTICP requires advertisements ‘directed to children’ to comply with the advertising provisions of the Children’s Television Standards and contains only one provision dealing with food and beverage advertising to children (clause 6.23). This provision only prohibits advertising that encourages or promotes an inactive lifestyle or excessive consumption of food or beverages. Few if any advertisements on their own are likely to encourage or promote either of these things. It is the cumulative effect of children’s exposure to the huge amount of unhealthy food advertising on television that encourages children to consume unhealthy foods excessively.

In addition, this provision only applies to advertisements that are ‘directed to children’. It is likely that this would be interpreted narrowly to mean that it applies only to advertisements designed specifically for children, and not to advertisements intended for both children and adults, or to advertisements not specifically created for children, but likely to be watched by a significant number of children.

The CTICP is very difficult to enforce and relies on an incredibly complex and slow complaints system. It is difficult for consumers to understand and by the time a complaint is considered, the advertising campaign will often be complete.

3. Pay TV Code of Practice

The ASTRA Codes of Practice 2007 are industry codes developed by ASTRA that apply to pay TV advertising. The codes are administered primarily by pay TV licensees (although complaints may be referred to ACMA and the ASB in some circumstances).

The ASTRA codes do not contain any specific restrictions on food advertising to children. However the ASTRA Code – Subscription Broadband Television (SBT) does require that licensees comply with the AANA Codes (discussed below). While the ASTRA Code – SBT also contains two clauses that specifically relate to advertising to children (clauses 6.3 and 6.5), these clauses are highly unlikely to be applied in any way that would protect children from the marketing techniques most commonly used to target them (i.e. premium offers, use of popular or appealing characters). The codes contain no restrictions on the volume of advertising to children.

4. Voluntary codes

A range of advertising and food industry self-regulatory codes apply to food advertising to children. Participation in these codes is voluntary, meaning not all industry members are signatories.

Advertising industry codes

The advertising industry codes are developed by AANA and administered by the Advertising Standards Bureau. They include the AANA Code of Ethics, the AANA Code for Advertising and Marketing to Children (AANA Children’s Code) and the AANA Food and Beverages Advertising and Marketing Communications Code (AANA Food Code).
While the AANA Code of Ethics and the AANA Children’s Code contain some (highly ineffective) provisions relating to food and beverage advertising, these provisions have been superseded by the AANA Food Code, which contains general provisions on food and beverage advertising, and specific provisions on food and beverage advertising to children. For example, the Food Code contains restrictions on advertisements featuring premium offers (clause 3.6), advertisements that create pester power (i.e. advertisements that appeal to children to urge their parents to buy particular products for them) (clause 3.5) and advertisements that imply that having a product will give children a physical, social or psychological advantage over other children (clause 3.3).

Food industry codes

The food industry codes on advertising to children are the Australian Food and Grocery Council’s Responsible Marketing Initiative to Children (RCMI) and the Australian Quick Service Restaurant Industry’s Initiative for Responsible Advertising and Marketing to Children (QSRI). These codes are also administered by the Advertising Standards Board. The codes require advertising ‘directed primarily to children’ to represent healthy food and lifestyle choices. They also contain provisions restricting some of the techniques used to market unhealthy food to children, such as premium offers, product placement and the use of popular personalities and characters.

Problems with the industry codes

While the advertising and food industry codes create the appearance of responsible conduct, in practice they fail to impose any meaningful limits on the content of food advertising to children. They are ineffective for ensuring that children’s exposure to unhealthy food advertising is minimised, and they are inadequate to restrict the most common marketing techniques.

The main problems with the codes are that they -

- Do not apply to all food advertisers, only signatories.
- Do not protect all age groups, none of the codes apply to 14-18 year olds.
- Contain inadequate nutrition criteria to assess products that may be advertised to children.
- Rely entirely on complaints from the public, compliance is not monitored.
- Lack sanctions, the ASB has no power to enforce its determinations or impose sanctions for breach of the codes.

For more information about these problems with the self-regulatory codes, please see the Obesity Policy Coalition’s briefing paper ‘Food Advertising Voluntary Codes’.

WHAT ACTION IS NEEDED?

Self-regulation is inherently incapable of protecting children from unhealthy food advertising due to the irresolvable conflict between food advertisers’ commercial interest in being able to advertise to children in a manner that is effective to sell unhealthy products, and the public interest in protecting children from advertising that has this influence. Food advertisers lack sufficient incentive to develop, comply with, and enforce effective food advertising restrictions.\(^5\)

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.\(^2,3,6\)

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

For more information on how unhealthy food advertising and marketing to children should be regulated in Australia, refer to the Obesity Policy Coalition’s paper ‘A comprehensive approach to protecting children from unhealthy food advertising’.
REFERENCES


About the Obesity Policy Coalition

The Obesity Policy Coalition (OPC) is a coalition between the Cancer Council Victoria, Diabetes Australia – Victoria, VicHealth and the WHO Collaborating Centre on Obesity Prevention at Deakin University. The OPC is concerned about rates of overweight and obesity in Australia, particularly in children.

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