Overbranded, Underprotected

How industry self-regulation is failing to protect children from unhealthy food marketing
Prepared by the Obesity Policy Coalition
The Obesity Policy Coalition is a partnership between Cancer Council Victoria, Diabetes Victoria and the Global Obesity Centre at Deakin University, a World Health Organization Collaborating Centre for Obesity Prevention.

The Obesity Policy Coalition advocates for evidence-based policy and regulatory change to address overweight, obesity and unhealthy diets in Australia, particularly among children.

Acknowledgements
The Obesity Policy Coalition is grateful for the assistance of its coalition partners in the preparation of this report.

Suggested citation

opc.org.au

July 2018

Contents
3 Executive summary
6 The problem
9 Why has the system failed?
9 Failure 1: The food industry codes don’t apply to all types of marketing
11 Failure 2: The meaning of ‘directed primarily to children’ is narrow: most marketing is permitted
13 Failure 3: Companies get to decide what’s healthier
14 Failure 4: The codes do not protect children from digital marketing
18 Failure 5: Children over 12 or 14 years are not protected
19 Failure 6: Food companies can choose not to sign up to the voluntary industry codes
19 Failure 7: Advertising codes are not specific and are open to flexible interpretation
20 Failure 8: No effective enforcement mechanisms
21 Protecting children from unhealthy food marketing
22 Recommendations
As Australian children go about their daily lives, they are exposed to a huge amount of unhealthy food marketing. Food companies and fast food chains bombard kids with unhealthy food on television, on the street, at the shops, while watching and playing sport, online, and sometimes even at school.

Urgent action is needed

More than a quarter of Australian children are overweight or obese: that’s more than a million children with an unhealthy weight. This serious public health issue comes with significant consequences for individual children, their families and our community.

Substantial evidence tells us marketing influences children’s food preferences and consumption, contributing to overweight and obesity.

The Australian Government allows the food and advertising industries to set their own rules for marketing unhealthy food to children. This is done through a complex system of self-regulatory codes. In practice, this self-regulation does not protect children from unhealthy food marketing. This is not surprising: the food industry’s ultimate goal of increasing profits by selling more food products is in clear conflict with the public health goal of improving diets and encouraging people to avoid unhealthy food.

But with an obesity crisis on our hands, which is slated to cost the Australian health system billions, the government cannot afford to continue to leave regulation of unhealthy food marketing in the hands of industry. The issue of our children’s future health is too important.
How is self-regulation failing to protect our children?

The food and advertising industries\(^1\) have continually failed to reduce children’s exposure to unhealthy food marketing, despite ample opportunity.

Why has the system failed? Overbranded, Underprotected investigates.

1. A lot of marketing isn’t covered at all by the food industry’s codes, including:
   - sports sponsorship
   - packaging featuring cartoons and familiar characters
   - in-store promotions, competitions and giveaways

2. Marketing is only covered if it’s ‘directed primarily to children’. Media popular with both children and adults is unlikely to be covered, e.g. popular TV shows, sport broadcasts and social media.

3. Food companies can decide which foods are ‘healthier’ and can be marketed to children. We see foods including high-sugar breakfast cereals, ice creams and biscuits categorised as ‘healthier’ under the food industry codes.

4. The codes don’t adequately protect children from digital marketing.

5. No code covers older children, with age limits of either 12 or 14 years old.

6. The food industry codes are voluntary and many companies have not signed up.

7. In practice, advertising industry codes rarely restrict marketing of unhealthy food to children: they contain rules that aren’t specific and are interpreted narrowly.

8. Compliance isn’t effectively enforced or independently monitored. Companies might be required to stop showing an advertisement found to breach a code, but there are no additional penalties.

\(^1\) Food industry codes are those developed by the Australian Food and Grocery Council: the Responsible Children’s Marketing Initiative and the Quick Service Restaurant Initiative for Responsible Advertising and Marketing to Children. See page 8 for more detail.

Advertising industry codes are those developed by the Australian Association of National Advertisers: the Code for Advertising and Marketing Communications to Children and the Food and Beverages Advertising and Marketing Communications Code. See page 8 for more detail.
Protecting children from unhealthy food marketing: what action is needed?

The Australian Government must regulate to reduce children’s exposure to unhealthy food marketing. An effective scheme must:

1. Apply to all food companies and fast food chains

2. Apply to all forms of advertising, marketing and promotion and all forms of media
   - Including television, cinema, outdoor advertising, radio, internet and print, as well as digital media such as social media, mobile applications and any new and emerging technology.
   - The scheme must also cover promotional strategies such as brand advertising, product packaging, in-store displays, sponsorship of children’s sport, product placement, competitions and offers of free toys and giveaways.

3. Restrict advertising that appeals to children in either its content or placement
   - This must include a restriction on advertisements on free-to-air television at the times when the greatest number of children are likely to be watching:
     - **Weekdays** 6am to 9am & 4pm to 9pm
     - **Weekends** 6am to 12pm & 4pm to 9pm.
   - The restriction must apply to all unhealthy food advertising during these times and outside of these times to any advertisement that uses techniques that appeal to children.

4. Effectively restrict marketing in other forms of media, in particular digital marketing

5. Clearly define ‘unhealthy food’ by reference to an appropriate nutrient profiling model.

6. Apply to children up to 16 years old, as a minimum.

7. Be administered and enforced by an independent agency

8. Impose meaningful disincentives and sanctions for breach to content creators, publishers and broadcasters. Compliance should be monitored so that it is not entirely dependent on complaints from the public to enforce the rules.
Overweight and obese children have a much greater chance of becoming obese adults and facing increased risks of developing chronic conditions such as type 2 diabetes, heart disease and cancer.

Australia’s epidemic of poor diet and obesity

Australia is in the midst of a childhood obesity epidemic that threatens our population’s welfare. More than a million Australian children are now overweight or obese. 1 27% of all Australian kids. 2

Poor diet is also a significant problem for our children. We know that 40% of the energy in children’s diets comes from unhealthy food 3 and that only one in 20 children eats the recommended daily amount of fruit and vegetables. 4 Poor diet can lead to unhealthy weight, or to children being undernourished within a healthy weight range. Overweight and obese children have a much greater chance of becoming obese adults and facing increased risks of developing chronic conditions such as type 2 diabetes, heart disease and cancer. 5 As a result of this obesity epidemic, many of the current generation of children may die at an earlier age than their parents. 6

Obesity also costs us significantly: weight-related disease is projected to cost Australia $87.7 billion between 2015 and 2025. 7

Clearly, urgent action is required.
Children are vulnerable to unhealthy food marketing

As we face this obesity epidemic, unhealthy food marketing is becoming increasingly pervasive and sophisticated – especially to children.

Right now, children are exposed to huge amounts of marketing for fast food, confectionery, sugary drinks and other unhealthy products. They are bombarded with marketing throughout their day: when they watch television, use social media, go to school, visit the shops, take public transport, play and watch sport, and participate in community events.

Food companies are constantly using new techniques and technologies to encourage children to prefer, to consume and to purchase, unhealthy food.

Strong evidence shows children’s food preferences, purchases and consumption are influenced by marketing. Evidence also shows unhealthy food marketing contributes to overweight and obesity.

Children are particularly vulnerable as they cannot properly understand or interpret marketing messages. Nor can children understand that these messages are intended to persuade and manipulate rather than entertain.

The World Health Organization and numerous public health bodies have recognised the severity of the issue, and are calling for effective government-led controls to limit children’s exposure to unhealthy food marketing, improve their diet, and reduce their risk of weight gain and chronic disease.

Self-regulation is not the answer

The Australian Government has not taken action to protect children from unhealthy food marketing. Instead, the government allows the food and advertising industries to self-regulate using a complex system of codes and initiatives. In practice, these provide little protection. Australia’s self-regulatory system is described on page 8.

A self-regulated, self-congratulatory, industry

The food industry describes its codes as a success, reporting compliance levels of over 99%.

But the food industry is effectively setting its own homework then giving itself top marks.

In the industry’s own words:

“[we are] committed to responsible advertising and marketing of food and/or beverages to Children” – taken from the Responsible Children’s Marketing Initiative and the Quick Service Restaurant Initiative for Responsible Advertising and Marketing to Children.

The food industry claims to be compliant – and even successful – in adhering to these codes, but the bar is set so low that success means little in this context. A close analysis of the self-regulatory codes reveals narrow application and definitions, weak restrictions and narrow interpretation by the Advertising Standards Community Panel (the body charged with hearing complaints). In practice, this means most advertisements for unhealthy food promoted to children are not covered at all, with the remainder not restricted in any meaningful way.

It is clear that self-regulation does not effectively control how much unhealthy food marketing that children see. The self-regulatory system protects the interests of the food industry by creating a façade of responsible conduct and avoiding the introduction of meaningful and effective government regulation. This undermines the efforts of parents, schools and communities to protect children and make the healthy choice the easy choice.

---

ii Any reference to ‘food’ in this report includes food and beverages unless otherwise stated or indicated by context.

iii References to ‘marketing’ in this report include any method used to advertise, promote or publicise unhealthy food products or food brands.
Self-regulation does not work: the evidence

Evidence shows that self-regulation is ineffective in reducing children’s exposure to unhealthy food marketing, both in Australia and in other countries around the world.\textsuperscript{14} Australian research shows there was no reduction in the rate of unhealthy food marketing to children between 2011 (following introduction of the food industry codes) and 2015, including by the code signatories.\textsuperscript{15} On average an Australian child will still see around three advertisements per hour for food during prime-time television and 44% of food advertisements will be for unhealthy food.\textsuperscript{16} These figures are on television alone, and do not take into account children’s increasing focus on digital media, much of which is not adequately covered by the industry codes.

Evidence also shows that self-regulation does not reduce sales of unhealthy food. Recent research examining policies in 79 countries revealed that only countries that had enacted statutory policies showed a decrease in unhealthy food sales over a period of time, compared to those with self-regulation which showed an increase in unhealthy food sales.\textsuperscript{17}

The failure of the processed food industry to effectively protect children from unhealthy food marketing is entirely unsurprising. Ultimately, the purpose of regulating unhealthy food marketing is to protect children from seeing unhealthy food marketing, resulting in a reduction in the sales of unhealthy food and improved eating habits in children. Asking food manufacturers and fast food chains to voluntarily self-regulate to limit marketing and reduce sales of their unhealthy products is out of step with a corporation’s fundamental goal of increasing profits.

The self-regulatory system

The control of unhealthy food marketing to children is largely left to a series of self-regulatory codes developed and administered by the food and advertising industries.\textsuperscript{18} These claim to set appropriate standards for marketing of food to children, but in reality do little to protect children from exposure to unhealthy food marketing.

Advertising industry codes

The Australian Association of National Advertisers (AANA) has developed a series of codes, including the Code for Advertising and Marketing Communications to Children (AANA Children’s Code) and the Food and Beverages Advertising and Marketing Communications Code (AANA Food and Beverages Code).

These codes apply to all food and beverage advertisers and to a wide range of media. The codes contain extremely weak restrictions on the marketing of food to children, largely centred on upholding community standards and the appropriate depiction of healthy lifestyles, dietary habits and excess consumption.

Food industry codes

These codes were developed specifically for the food and beverage and fast food restaurant industries by the Australian Food and Grocery Council. The Responsible Children’s Marketing Initiative (RCMI) applies to signatories in the food and grocery industry and the Quick Service Restaurant Initiative for Responsible Advertising and Marketing to Children (QSRI) applies to signatory fast food chains. Both codes are voluntary and apply only to a limited range of media.

The public can make complaints about breaches of all codes to Ad Standards, with the complaint assessed by the Advertising Standards Community Panel\textsuperscript{19} (the Advertising Standards Panel).
Why has the system failed?

**Failure 1**  The food industry codes don’t apply to all types of marketing

The RCMI and QSRI apply only to a narrow range of media. The RCMI applies to television, radio, print, cinema and internet sites. The QSRI applies to television, radio, newspaper, magazines, outdoor billboards and posters, emails, interactive games, cinemas and internet sites. In practice, this narrow scope means that a significant amount of marketing to children is not covered at all.

What’s not covered?

**Sport sponsorship**

Unhealthy food companies commonly target children through sport – an activity which should be inherently healthy. Kids are exposed to a variety of unhealthy food marketing while participating in sport, including:

- The food brand forming part of the competition’s name.
- The brand and logo displayed on sporting equipment, uniforms and participant packs, including free drink bottles, hats and other items.
- Prominent signage at children’s weekly sporting events.

Australian research in 2011 revealed that the majority (63%) of food sponsors of children’s sport did not meet the criteria as being healthy.20

Sport sponsorship is not covered by the RCMI and QSRI, as many of the specific types of promotion involved are not included in the codes. Sport sponsorship – for example brand and logo use – does not typically feature any food or beverage products. Where products are featured, the brand will often display healthier product line options.

The QSRI does contain a rule stopping signatories from giving away food or beverage products or vouchers at children’s sporting events unless the products meet the nutrition criteria.21 This rule, however, does not restrict the sponsorship of kids’ sport by unhealthy food companies.
Buying loyalty

Research demonstrates how exposure to unhealthy food marketing while playing sport influences children’s perception of the advertised brands.

Children aged 10–14 are likely to consider brands associated with their sports team “cool”, according to Australian research. The survey also found children are likely to think about sponsors associated with their sports club when buying something to eat or drink.

The research found that 85% of children surveyed thought that food and beverage companies sponsored sport to help out sports clubs and 59% liked to return the favour to these sponsors by buying their products.

Brand and product line advertising

Companies often use brands, logos or characters associated predominantly with unhealthy products to market to children without actually featuring any food or beverage products, or by featuring only healthy choice options.

This can take various forms, for example a game or children’s activity website featuring brand characters and imagery, or a TV advertisement featuring the logo and colours of an unhealthy food brand without featuring unhealthy products. Sports sponsorship is a particular form of brand advertising (see page 9).

Product packaging

Product packaging and labelling is not covered by either the advertising or food industry codes. To make them more attractive to children, children’s food products often feature cartoon graphics or familiar characters – usually from popular children’s film and television programs, or created by brands themselves.

Most foods with these types of cartoon character packaging have been found to be unhealthy (most commonly confectionery, sweet biscuits, chips and other savoury snacks, dairy snacks and ice cream).

In-store promotions, competitions and giveaways

Unhealthy products are often marketed to children using in-store displays, competitions, giveaways and other promotions. Promotions may be limited-time offers or may be linked to a particular movie release, sporting event or other special event. These promotions are not typically covered by the RCMI and QSRI codes as they are not in the limited list of included media.

Examples:

- An ice cream display with a digital monitor, featuring an eye-catching video.
- Fast food children’s meals being sold with a free toy.
- A competition that can be entered when purchasing a product.
Failure 2 ▶ The meaning of ‘directed primarily to children’ is narrow: most marketing is permitted

A huge amount of influential marketing that is appealing and attractive to children is not covered by the codes.

The codes apply only to marketing that is ‘directed primarily to children’, and those words are defined and interpreted extremely narrowly.

The QSRI and RCMI define an advertisement to be ‘directed primarily to children’ by reference to either the placement or content of the advertisement.

**To meet the test the advertisement must be:**

- Placed in a medium that is directed primarily to children (for example a television program rated C or P).
- Placed in a medium where children are 35% or more of the audience.
- Directed primarily to children, when considering the advertisement’s themes, visuals and language.

In practice, this test is rarely met.

A huge amount of influential marketing that is appealing and attractive to children is not covered by the codes.

---

Placement of marketing

Children are a relatively small proportion of the general population, so there are few TV programs or digital media for which they are more than 35% of the entire audience, even though very large numbers of children are watching.

**What are children watching?**

The most popular television programs watched by children include:

- sporting events
- family movies, and
- reality TV programs including The Block, I’m a Celebrity Get Me Out of Here and Australian Ninja Warrior.

Because shows most watched by children tend to be popular with adults too, children rarely make up 35% of the audience, yet large numbers of children are watching. For example, a 2013 report into children’s television viewing found that across five Australian cities:

- 368,000 children watched the final of The Block
- 335,000 children watched the final of X-Factor
- More than 250,000 children watched family movies
  - Toy Story 3
  - Hop
  - Despicable Me
**When are children watching?**
The highest numbers of children are watching television in the evening. This is also a popular time for adults, and so advertisements shown during these times are unlikely to be covered by the codes.

On weekdays, children never exceed 35% of the audience, according to an analysis of Australian free-to-air TV, and there was just a short period at weekends when the proportion of the audience aged under 14 years exceeded 35%.29

**Where are children watching?**
The 35% audience test is also inadequate when applied to digital marketing. The Advertising Standards Panel has considered a number of apps and websites popular with children, including YouTube, Facebook, Instagram and Snapchat, and on each occasion has said that the app or website is not a medium with an audience of more than 35% children.30 We analyse this issue, and other issues related to digital marketing on page 14.

**Themes, visuals and language**
When marketing does not meet the placement test, the Advertising Standards Panel decides whether the content of the advertisement – its themes, visuals and language – is directed primarily to children. This test applies under the RCMI, the QSRI and the AANA Children’s Code. Very few advertisements are found to meet this test.

“Directed primarily to parents, not children”
An unhealthy food might be intended for children and promoted in a way that appeals to children. The Advertising Standards Panel often finds this marketing to be directed primarily at parents, to convince them to buy the unhealthy food product for their children. For example, a voice or image calling for ‘mums’ to take action may be described as being directed primarily to the main grocery buyer, rather than to children.

“Aimed at parents and children”
The codes also do not apply where the Advertising Standards Panel says marketing is directed primarily at both parents and children. The Advertising Standards Panel often decides that an advertisement, while appealing to children, is not directed primarily to them because it also appeals to adults or older children who are not covered by the codes. For example, childlike animations and images may be described as invoking nostalgia in adults, rather than being of primary appeal to children.

Not directed primarily to children

**Cadbury Oreo chocolate advertisement**31
This Facebook and YouTube advertisement featured an animated story of a square of chocolate meeting an Oreo cookie, surrounded by emojis that become happy when the pair unite. They are shown doing a number of activities together, including hanging out at the beach, at a sports event and camping. Despite the childish theme of the advertisement, and the appeal of emojis to children, the advertiser was able to successfully argue that it was not directed primarily to children because the activities were adult focused, the themes would provoke ‘a whimsical feel of nostalgia’ for adults and the product is not a children’s product but is designed for family sharing.

**Fanta’s website featuring animated characters known as ‘the Fanta crew’, a group of teenage friends**32
This website profiled the characters including a video, and provided screensavers and the current Fanta range. The Advertising Standards Panel considered that while the website might have appeal to children under 12, it was not primarily directed to them because the overall audience would likely be over 12. This was on the basis that the characters were teenagers, although the Advertising Standards Panel noted that younger children would aspire to be these teenagers, and the website contained bright colours appealing to younger children.
Failure 3 ▶ Companies get to decide what’s ‘healthier’

Rather than applying a universal, scientific standard to define which foods are healthy and may be marketed to children, the RCMI allows food companies to decide what they consider to be healthier choices.

‘Healthier’ doesn’t necessarily mean ‘healthy’

According to the Australian Food and Grocery Council, the codes provide a ‘framework to ensure that only food and beverages that represent healthier choices are promoted directly to children’.33

However, this statement needs to be placed in context – what is meant by ‘healthier’? In reality, it could be a range of things.

The definition of ‘healthier dietary choices’ (not ‘healthy’) is set by each signatory in a company action plan. The RCMI requires the ‘healthier dietary choices’ to be based on ‘established scientific or Australian government standards’, however the lack of a uniform, objective standard allows companies to set varying definitions of what is ‘healthier’. In practice, this means each company gets to decide for itself what it considers ‘healthier’ and may market to children.

Australia is lagging

Australia is lagging behind a growing number of countries providing objective standards to determine which foods are healthy.

United Kingdom35 and Ireland36: both apply the UK Food Standards Agency’s nutrient profiling model to determine which foods are considered high in sugar, salt or fat. Products that exceed these criteria cannot be advertised to children.

The New Zealand Food and Beverage Classification System for Schools determines which foods are considered high in sugar, salt or fat and may not be advertised to children.37

Canada is in the process of developing a new scheme and will set nutrient threshold limits determined by government.38

A recent survey of policies in 79 countries found:

- Countries with standardised nutrition criteria underpinning their regulations showed a decrease in unhealthy food sales.
- Countries that use only guidance criteria or no criteria showed an increase in unhealthy food sales.39

Healthier than what?

The Australian Food and Grocery Council says healthier choices are promoted directly to children. But this includes the following foods, all defined as ‘healthier’ by the companies themselves:

- Froot Loops 38% sugar and 2 health stars
- Coco Pops 36.5% sugar and 2 health stars
- Paddle Pops around 20% sugar
- Tiny Teddy biscuits including chocolate coated around 25% sugar.

All of these foods are high in sugar and categorised as unhealthy based on the Australian Dietary Guidelines.34
Failure 4  The codes do not protect children from digital marketing

The way the food industry codes apply to digital marketing is complex and often unclear. Overall, the codes have failed to keep pace with the changing media landscape and the rise of digital marketing, and do not adequately protect children.

Why are we concerned about digital marketing?

Digital marketing is an increasing presence in children’s lives. Its unprecedented ability to track and target individuals is particularly concerning.

Digital marketing allows brands to market in ways that are emotionally persuasive, immersive, and entertaining.40

Digital marketing also gives brands access to sophisticated analytical tools, looking at an individual’s emotions, responses, preferences, behaviour and location. This allows them to reach a large number of highly targeted consumers.41 Children can be tracked and targeted with limited protection.

What is digital marketing?

Digital marketing can include any promotional activity delivered through digital media,42 for example:

Social media

Unhealthy food marketing on social media can include paid advertisements, interactive posts on a brand’s own social media page, paid partnerships with influencers or popular social media users and viral campaigns.

Video platforms, such as YouTube

Unhealthy food marketing on YouTube can include videos posted by food companies, brand channels, viral campaigns or paid partnerships with influencers or vloggers popular with children.

Online or mobile application (app) interactive games or websites

These can include marketing of unhealthy products in the characters and graphics used in the game or website, in the prizes available or in activities that can be played.

Other forms of digital marketing include apps that are not game-based, and advertisements appearing on unrelated websites, for example on news websites or blogs.
How are brands finding kids online?

On a typical weekday, Australian children spend around two hours online when they’re not at school.\textsuperscript{43} A quarter of these children are online for more than four hours.\textsuperscript{44}

We know children are accessing platforms that offer a wide range of content for all ages, not just child-specific content.\textsuperscript{45}

For example, a 2013 report on children’s media use in Australia showed:

- 60\% of 10–11-year-olds used YouTube in the previous four weeks, and
- 31\% of 10–11-year-olds used Facebook.\textsuperscript{46}

Global trends in internet and social media practices indicate children’s use is likely to have increased since the study.

Honing in on their target

Digital media gives brands data that can be used to target individuals in sophisticated and unprecedented ways. Marketers are able to create detailed individual profiles\textsuperscript{47} based on data they can collect from an individual’s online habits.

A brand may be able to collect enough information about someone to determine what unhealthy foods they prefer, how they like to be entertained online, and what would make them likely to buy a product (or pester their parents to buy it). Brands can then target and personalise their marketing, for example targeting an advertisement for a certain ice cream flavour based on the person’s purchase history.\textsuperscript{48}

A brand may be able to collect enough information about someone to determine what unhealthy foods they prefer, how they like to be entertained online, and what would make them likely to buy a product or pester their parents to buy it.

This personalised nature of digital marketing makes it simultaneously compelling for young people and difficult for parents to monitor.

Children’s information may be protected in some limited ways when online, however these protections are not adequate. United States legislation\textsuperscript{49} (often applied internationally by global companies) prohibits the collection of personally identifiable information for children under 13 years of age without verifiable parental consent, including restricting tracking across platforms.\textsuperscript{50} The extent of this protection, however, is limited as some parents may provide consent for data collection, some children may pretend to be older in order to access age restricted platforms, such as many social media sites, and many companies may not adhere to the requirements.\textsuperscript{51} The protections do not apply to children over 13 years old or to younger children using non child-directed websites.\textsuperscript{52} Importantly, the legislation is not Australian and cannot guarantee protection for Australian children.

Children’s information may be protected in some limited ways when online, however these protections are not adequate.
"Just like a video game!"

Unhealthy food brands also use digital media to engage and immerse children in a variety of interactive experiences – while also marketing unhealthy food to them.

This can include:

- themed game sites and apps
- paid partnerships with vloggers and other influencers popular with children
- encouraging the children to create and share their own brand-based social media content
- peer-to-peer communication such as ‘liking’ and ‘sharing’ social media content

Companies can then capitalise on the users’ social networks and magnify the reach and personal relevance of their marketing messages. These peer-to-peer strategies exploit pre-teens and teenagers in particular, who have a need to define their identity.

Digital marketing falls through the cracks

Digital marketing is often not covered by the codes for two reasons:

1. The specific type of digital marketing is not included in the limited list of media covered by the relevant code.

2. The marketing is not found to be ‘directed primarily to children’.

In theory, the advertising industry codes apply to digital media, as the codes contain a broad and non-exhaustive definition of media when it comes to marketing unhealthy food to children. In reality, however, it is almost impossible to establish a breach of any of the weak rules. See more on these issues on page 8.

The food industry codes apply to digital media only if the media can be considered:

- an internet site (RCMI and QSRI), or
- an interactive game (QSRI, and RCMI to a limited extent).

Unsuccessful complaints

KFC Buckethead Snapchat lens

This allowed users to snap themselves wearing a virtual KFC bucket on their heads and zinc stripes on their cheeks.

The lens also provided images of the bucket spinning, flying chicken pieces and fireworks on opening the mouth. Users could snap the picture of themselves and share it with their friends. It coincided with the final cricket match of the KFC Big Bash League and was promoted on a stadium billboard at the match.

The Advertising Standards Panel decided:

- Snapchat is not a medium directed primarily to children, nor would it have more than 35% children in its audience, as it requires an account holder to be over 13 years old.
- While the ‘bucket hat’ may appeal to children, there are many other filters that would be more childlike, and the bucket hat would equally appeal to adults.

McDonald’s Drop into Maccas App

This game allowed players to dive through the sky collecting coins while avoiding obstacles inspired by modern popular culture. This was held not to be primarily directed to children, despite the coin-collecting theme being relatively simple and appealing to all ages.

The Advertising Standards Panel decided:

- The ‘coin-collecting’ reward theme would appeal more to older teenagers and adults, as they are the ones paying for food.
- While cartoon-style games are appealing to children, the cartoon-style games would also appeal to adults, and so were not directed primarily to children.
What about apps?

Apps are incredibly popular with children, but whether the codes apply to apps marketing unhealthy food is unclear. An app will be covered if it is an internet site or an interactive game, however the codes contain no definition of what this means and the Advertising Standards Panel’s view is unclear.

If apps are not covered, they definitely need to be. Apps are incredibly popular with children – increasingly more so.

A 2013 study found:

- app usage by children aged 4–14 had doubled to 69% in the preceding 18 months, and
- children were using around seven apps in the month leading up to the study.

It is likely that children’s usage of apps has increased since that time.

How old are they really?

Even where the codes do apply to digital marketing, complaints often fail because the Advertising Standards Panel finds the advertisement is not ‘directed primarily to children’.

Most online platforms require a user to be aged 13 or older – Facebook, Instagram, YouTube and Snapchat all have this age limit for account holders. However, it is not hard for a child to enter a fake birthday when signing up to these platforms – evidence indicates children younger than 13 are using these platforms, despite the stated age limit. Children are even able to use YouTube without signing up for an account.

When faced with a complaint about one of these services promoting unhealthy foods to children, the Advertising Standards Panel often refers to the age limits nominated by the social media platforms and apps. The conclusion: children do not constitute 35% or more of the platform’s audience.

Hungry Jacks Frozen Coke

Hungry Jacks created an Instagram post advertising Frozen Coke: an animation of a Frozen Coke transforming into a rocket and launching into the air, spraying bubbles of Frozen Coke and shooting across the screen to sound effects.

The Advertising Standards Panel said that the animation would be appealing to children, but was equally appealing to adults. It described the advertisement’s theme, visuals and language as ‘advertising a beverage’ and said the message was directed equally to adults and not directed primarily to children under 14.
Failure 5  ▶  Children over 12 or 14 years are not protected

**Children over 14 are not protected at all by any codes. Protection cuts out at:**
- 12 years under the RCMI
- 14 years under the QSRI, and
- 14 years under the AANA Children’s Code.

Children above these ages are left completely unprotected, when in reality children are vulnerable to marketing well beyond these ages.

Australian children under 16 years should be protected from unhealthy food marketing. This recommendation is consistent with international practice and advice. The World Health Organization's Regional Office for Europe has recommended the age for digital marketing of unhealthy food be set at a minimum of 16 years. The UK has restricted unhealthy food from being marketed to children younger than 16 years for any non-broadcast medium.

---

**Teens are children too**

Evidence shows teenagers are influenced by unhealthy food marketing, despite most codes not protecting anyone over the age of 12 or 14.

Like all children, teenagers’ decision-making capacities are limited by their developing brain, making them particularly vulnerable to unhealthy food marketing. Their pre-frontal cortex, which affects decision-making and impulse control, is not fully developed until late adolescence.

Teenagers also experience neurological and hormonal changes, causing them to be more vulnerable to peer influence, including risky decision making.

**The allure of TV**

According to recent UK research, teenagers (ages 11–19) who watch a lot of television with advertisements were:
- more than twice as likely to eat a lot of foods high in sugar, salt and fat
- more than twice as likely to be obese if they saw unhealthy food advertisements regularly.

**Easily influenced online**

The increasing prominence of digital marketing makes a strong case for protecting older children. As we have already seen, digital media allows teens to be specifically tracked and targeted. Teens are particularly susceptible to the peer-to-peer and viral marketing techniques used to promote unhealthy foods. See more on the influence of digital marketing on page 14.

**Mobile marketing**

We also know the vast majority of teenagers have their own mobile phones, allowing largely unsupervised access to digital media and marketing. We note that the profiling tools companies use to target digital marketing to particular demographic groups should also enable them to restrict marketing in the same way; for example ensuring that advertisements on social media platforms are seen only by users older than 16.
Failure 6  ▶ Food companies can choose not to sign up to the voluntary industry codes

Many food companies have refused to sign up to their own industry’s voluntary codes: only 18 companies have signed up to the RCMI and seven to the QSRI. This means the codes do not apply to a significant number of food, beverage and fast food companies marketing to Australian children.

Falling through the cracks

The following advertisements were found to be directed primarily to children. But, because the company behind each one had not signed up to the Responsible Children’s Marketing Initiative, the rules in that code did not apply.

Failure 7  ▶ Advertising codes are not specific and are open to flexible interpretation

The advertising codes might have broad application, but they rarely restrict marketing of unhealthy food to children in any meaningful way. This is because both the wording and the interpretation of the rules are narrow and of little practical effect. The advertising codes’ key restrictions purport to ban advertisements that promote or encourage unhealthy eating habits, undermine healthy or active lifestyles or encourage excess consumption.69 These restrictions are almost meaningless in practice, as it is nearly impossible to establish that an advertisement promotes or encourages unhealthy eating habits.

The Advertising Standards Panel, often without referring to evidence, says:

• An advertisement for a particular unhealthy product, regardless of its nutritional profile, does not, of itself, undermine the importance of healthy or active lifestyles.70
• There is no community standard that means products with a particular nutritional profile cannot be advertised.71

Advertisers are also able to successfully argue that they are promoting the unhealthy food as a snack or as a treat as part of a balanced diet, so that the advertisement does not promote unhealthy eating habits.

It appears that a breach of the codes will require something extraordinary or unusual, and it is not clear what that might be.

Family McValue Box72

A television advertisement for a McDonalds ‘Family McValue Box’ promoted it as a suitable mid-week evening meal. It showed a family of three people consuming the fast food meal with four servings. The Advertising Standards Panel said the advertisement did not encourage excess consumption or unhealthy lifestyle choices as the advertisement did not suggest that all four serves need to be consumed, or that the meal box should be eaten regularly or by only one person.
Failure 8  No effective enforcement mechanisms

The codes are not independently monitored and there is no requirement for marketing to be screened before it is published or broadcast. Instead, the codes rely on consumers to make complaints. Once a complaint is made, the Advertising Standards Panel can take months to consider it.

Over before it began

Often, by the time a complaint is even considered, an unhealthy food campaign will have ended (not before being seen by many children).

For example, the OPC lodged a complaint in October 2017 about a Halloween campaign. It did not receive a decision until January 2018. By the time the decision was made, the campaign had finished and children were subjected to the marketing which had continued unchecked throughout that time period.

Expensive process

If a complaint is unsuccessful before the Advertising Standards Panel, the complainant may appeal. However lodging this appeal will cost an organisation $500 or an individual $100. The fee is refunded only if the original decision is overturned. This presents a significant barrier to an appeal.

No penalties or incentives

Even where a complaint is successful, there are no meaningful sanctions against the advertiser for promoting unhealthy food to children. The only sanction may be a requirement to stop showing the advertisement. This is particularly ineffective in the case of short campaigns that will be finished before the Advertising Standards Panel has the chance to consider the complaint; the advertiser can simply ignore the codes altogether. This also means there is no disincentive for advertisers to stretch the limits of the codes.

Even where a complaint is successful, there are no meaningful sanctions against the advertiser for promoting unhealthy food to children.
The system of self-regulation by the food and advertising industries has failed to protect children from exposure to unhealthy food marketing.

This report clearly shows that the industry codes are window-dressing, discouraging meaningful government intervention while unhealthy food marketing to children continues unchecked.

The pretence of voluntary codes of self-regulation that cannot and do not work is preventing the action that is urgently needed – a fundamental shift in the way that unhealthy food marketing is regulated in Australia towards legislated, mandatory and effective rules.
Recommendations for a comprehensive scheme

As part of a comprehensive approach to overweight and obesity, the Australian Government must regulate to reduce the volume and influence of unhealthy food marketing reaching children.

An effective scheme must have all the features set out below.

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>International example</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  Apply to all food companies and fast food chains</td>
<td>The UK, South Korea, Taiwan, Chile, Mexico, Quebec and Sweden all have mandatory regimes in place.</td>
</tr>
<tr>
<td>2  Apply to all forms of advertising, marketing and promotion and all forms of media</td>
<td>Chile’s restrictions include marketing that is addressed directly or indirectly to children and apply to all forms of marketing, communication, recommendation, propaganda, information or action intended to promote consumption of a product. The UK restricts brand marketing, where a brand is synonymous with a range of products the majority of which are unhealthy.</td>
</tr>
</tbody>
</table>
| 3  Restrict advertising that appeals to children in either its content or placement | Chile’s regulations provide that restricted foods – those high in salt, sugar or fat – may not be advertised on television and film between 6am and 10pm. Quebec’s regulations provide guidance as to when an advertisement will be considered directed to children:  
  - Is the promoted product intended for children under 13 or does it appeal to them specifically?  
  - Is the advertisement appealing to children?  
  - Does the timing and placement of the advertisement mean that children will be exposed to it? |

The scheme must include television, cinema, outdoor advertising, radio, internet and print, as well as digital media such as social media, mobile applications and any new and emerging technology.

The scheme must also cover promotional strategies such as brand advertising, product packaging, in-store displays, sponsorship of children’s sport, product placement, competitions and offers of free toys and giveaways.

Chile’s regulations provide that restricted foods – those high in salt, sugar or fat – may not be advertised on television and film between 6am and 10pm.

Quebec’s regulations provide guidance as to when an advertisement will be considered directed to children:

- Is the promoted product intended for children under 13 or does it appeal to them specifically?
- Is the advertisement appealing to children?
- Does the timing and placement of the advertisement mean that children will be exposed to it?

The restriction must apply to all unhealthy food advertising during these times and outside of these times to any advertisement that uses techniques that appeal to children.
<table>
<thead>
<tr>
<th><strong>4 Effectively restrict marketing in other forms of media, in particular digital marketing.</strong></th>
<th>A new scheme in Canada would apply to all unhealthy food and beverage marketing on websites, platforms and apps that are popular with children, even where they are intended for adults as well.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>5 Clearly define ‘unhealthy food’ by reference to an appropriate nutrient profiling model.</strong></td>
<td>The UK and Ireland use the UK Department of Health nutrient profile model to determine which foods are HFSS (High in fat, salt or sugar). Chile and Mexico set nutrient limits for energy, sodium, sugar and saturated fats. New Zealand restricts advertising of foods classified as high in fat, salt or sugar under the New Zealand Food and Beverage Classification System for Schools.</td>
</tr>
<tr>
<td><strong>6 Apply to children up to 16 years old, as a minimum.</strong></td>
<td>Restrictions in the UK and Peru apply to children under 16. Ireland’s restrictions apply to children under 18.</td>
</tr>
<tr>
<td><strong>7 Be administered and enforced by an independent agency.</strong></td>
<td>All jurisdictions with a mandatory regime have independent enforcement agencies.</td>
</tr>
<tr>
<td><strong>8 Impose meaningful disincentives and sanctions for breach to content creators, publishers and broadcasters. Compliance should be monitored so that it is not entirely dependent on complaints from the public to enforce the rules.</strong></td>
<td>In Quebec, the Consumer Protection Office has a number of actions it can take against anyone it considers in violation of the legislation: • negotiating an undertaking from the offender • taking legal action against an offender that doesn’t meet its commitments, and • a fine of up to CAD$100,000 against a company (and double for a repeat offence). Taiwan’s legislation provides for a fine of up to around A$140,000 for breaches.</td>
</tr>
</tbody>
</table>
References


6 Holman C and Smith F (2008). Implications of the obesity epidemic for the life expectancy of Australians. Report to the Western Australian Public Health Advocacy Institute. School of Population Health, University of Western Australia, Crawley.


13 See background of both the Responsible Children’s Marketing Initiative and the Quick Service Restaurant Initiative for Responsible Advertising and Marketing to Children.


16 Ibid.


18 The Children’s Television Standards (CTS) is the only government regulation dealing specifically with advertising to children. The CTS contains only one, very limited, restriction relating to food advertising – prohibiting misleading or incorrect information about the nutritional value of foods. The Commercial Television Industry Code of Practice 2015 and the Australian Subscription Television and Radio Association Codes of Practice 2013 – Subscription Broadcast Television 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. Both codes provide that licensees must comply with the AANA Codes but beyond that, do not contain any provisions dealing with food and beverage advertising to children or restrictions on the volume of advertising to children.

19 The Advertising Standards Board was renamed the Advertising Standards Community Panel in 2018. In this report references to the Advertising Standards Community Panel may include decisions made by the Advertising Standards Board.


21 See Quick Service Restaurant Initiative for Responsible Advertising and Marketing to Children.


23 Ibid.


26 Australian Communications and Media Authority, *Children’s Television Viewing: Research Overview*, March 2015, see also Mediaco, 1/1/17–31/12/17, Children 0–15, Melbourne.


30 See for example, Advertising Standards Community Panel (formerly Advertising Standards Board) decisions 0107/18 and 0550/17 (Instagram), decision 0102/17 (Snapchat), decision 0300/16 (YouTube) and decision 0299/16 (Facebook).


33 See the background to the Responsible Children’s Marketing Initiative and the Quick Service Restaurant Initiative for Responsible Advertising and Marketing to Children.


59 See Advertising Standards Board decisions 0299/16 and 0102/17.

60 Advertising Standards Board decision 0107/18.

61 World Health Organization Regional Office for Europe, above n40, p.11.

62 UK Code of Non-broadcast advertising and Direct & Promotional Marketing.


67 See Advertising Standards Board decisions 0463/14 and 0465/14.

68 See Advertising Standards Board decision 0101/14.

69 See clauses 2.1, 2.2 of the Australian Association of National Advertisers Food and Beverages Advertising and Marketing Communications Code and clauses 2.1 and 2.14 of the Australian Association of National Advertisers Code for Advertising and Marketing Communications to Children.

70 See for example Advertising Standards Board decisions 0101/14 (Wizz Fizz), 0089/14 (Paddle Pop website, 0205/14 (Wonka Cookie Creamery), 0097/14 (Milo Play O Pedia), 0102/17 (KFC Buckethead Snapchat lens), 0300/16 and 0299/16 (Cadbury Oreo).

71 See for example Advertising Standards Board decisions 0101/14 (Wizz Fizz), 0089/14 (Paddle Pop website), 0464/14, 0463/14 and 0465/14 (Peters Fandangles) and 0097/14 (Milo Play O Pedia).

72 Advertising Standards Board decision 0229/17.

Image references:

Page 9

- McDonald’s sponsorship of Little Athletics www.laq.org.au/News/mcdonalds-winter-championships-and-u7-u8-carnival
- Nestle Milo in2Cricket website screen grab www.playcricket.com.au

Page 10

- Paddle-Pop ice-cream display captured by the OPC June 2018
- McDonalds Australia Minion Happy Meal https://www.facebook.com/McDonaldsAU/photos/a.187321121310829.38241.179866158722992/1474262955949966/?type=3&theater
- Kellogs Froot Loops ‘Buy 1 get 1 free movie ticket’ captured by the OPC on July 11 2018.

Page 11

- Cadbury Oreo advertisement available at www.youtube.com/watch?v=oOUSDPgfY2M
- ‘The Fanta crew’ advertisement found on www.fanta.com in 2014

Page 13


Page 16

- McDonalds Drop into Maccas App https://www.youtube.com/embed/Vq4qtLfTGO4

Page 17


Page 19

- Peters Fandangles advertisement available at https://www.youtube.com/watch?v=nuqHElzzkE
- Wizz Fizz website (2014) www.wizzfizz.com
- McDonalds ‘Family McValue Box’ advertisement https://www.youtube.com/watch?v=6oCTLMGvj9o