



**HAVE YOUR SAY ON FOOD AND
DRINK MARKETING IN CANBERRA,
PARTICULARLY THOSE AIMED AT
CHILDREN**

Obesity Policy Coalition's Submission

23 November 2015

Executive Summary

The Obesity Policy Coalition ('OPC') is a partnership between Cancer Council Victoria, Diabetes Victoria and the WHO Collaborating Centre on Obesity Prevention at Deakin University, with funding from VicHealth. The OPC advocates for evidence-based policy and regulatory change to address overweight, obesity and unhealthy diets in Australia.

We welcome the ACT government's consultation on food and drink marketing in Canberra, particularly marketing aimed at children, and support restrictions on marketing in each of the proposed locations, including in:

- (a) businesses like supermarkets, shopping centres, cinemas, restaurants/cafes including quick service outlets, licensed clubs and hotels;
- (b) sporting clubs and organisations (including through sponsorship); and
- (c) ACT Government venues (such as GIO Stadium, Manuka Oval and Exhibition Park) and events.

Our submission focuses on how marketing may be restricted in these locations and highlights the importance of a comprehensive approach led by government that is capable of ensuring that children's exposure to unhealthy food marketing is reduced in a meaningful way. In particular, the OPC's submission:

- Identifies the general and specific restrictions that should apply to unhealthy food marketing in the proposed locations to meaningfully reduce children's exposure to this type of marketing. In particular, it highlights the need for consistent and broad definitions of 'unhealthy food', 'unhealthy food advertisement', 'directed to children' and 'children'. It also highlights the specific restrictions that should apply to limit unhealthy food marketing in supermarkets and other retail outlets, as well as sporting clubs and associations.
- Explores the benefits that would flow to the community from restricting unhealthy food marketing, including the health and economic benefits and protection of children's rights. It also outlines the benefits of sporting organisations shifting to healthier sponsorship arrangements.
- Highlights the likely resistance of industry and businesses to proposals to restrict unhealthy food marketing in the proposed locations (and in addressing sports sponsorship) and emphasises the limitations of the food and advertising industries' self-regulatory codes and initiatives that purport to restrict unhealthy food marketing to children.
- Encourages the ACT government to provide leadership through mandatory restrictions on unhealthy food marketing to children, or at the very least, guidelines for industry codes of practice to restrict this type of marketing. It also identifies the key elements of any approach capable of meaningfully reducing children's exposure to unhealthy food marketing, including permissively broad definitions of key terms, application to all advertisers and businesses, a comprehensive approach covering as many locations and types of media as possible and independent review, evaluation and complaints mechanisms, with meaningful sanctions for breaches.
- Urges the ACT government to provide monetary incentives and guidance to children's sporting organisations and clubs to support their transition to healthier sponsorship arrangements.
- Recommends that the ACT government consider a more comprehensive approach to unhealthy food marketing restrictions, including restricting unhealthy food marketing in a wider range of child-oriented settings and events, and possibly on free-to-air television.
- Encourages the ACT government to advocate to the Commonwealth Government (ideally in partnership with other states and territories) for commonwealth restrictions where a national approach is required or deemed appropriate, i.e. television, internet marketing, social media etc.

Introduction

The Obesity Policy Coalition ('OPC') is a coalition between Cancer Council Victoria, Diabetes Victoria and the WHO Collaborating Centre on Obesity Prevention at Deakin University, with funding from VicHealth. The OPC advocates for evidence-based policy and regulatory change to address overweight, obesity and unhealthy diets in Australia.

We are grateful for this opportunity to 'have our say' on food and drink marketing in Canberra, particularly that aimed at children. Our submission responds to your questions 2, 4, 6, 7 and 9 and aims to highlight the importance of a comprehensive approach to unhealthy food¹ marketing, led by government that is capable of achieving a meaningful reduction in children's exposure to this type of marketing.

Question 2

What actions could be taken to reduce marketing of unhealthy food and drinks at the following locations: (a) businesses like supermarkets, shopping centres, cinemas, restaurants/cafes including quick service outlets, licensed clubs and hotels?; (b) sporting clubs and organisations (including through sponsorship)?; and (c) ACT Government venues (such as GIO Stadium, Manuka Oval and Exhibition Park) and events?

We strongly support restrictions on unhealthy food marketing at each of the locations and venues identified above. The restrictions should be aimed at achieving the *policy objective* set out in the WHO's 'Set of recommendations on the marketing of food and non-alcoholic beverages to children', to reduce both the exposure of children to, and power of, unhealthy food marketing.²

To achieve this policy objective, **general restrictions** should apply to each proposed location and venue displaying or otherwise communicating an unhealthy food advertisement that is directed to children, or otherwise allowing this to occur. The terms 'unhealthy food', 'unhealthy food advertisement', 'directed to children' and 'children' should be broadly defined to ensure the restrictions are truly effective in reducing children's exposure to this type of advertising. They should be defined as follows:

- **'Unhealthy food'**, should refer to 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 nutrient profile criteria for eligibility of foods or beverages to carry health claims. Alternatively, the ACT government may develop criteria, in consultation with public health groups, to be used across all locations and venues that is based upon current government and scientific evidence, i.e. The Australian Dietary Guidelines and the WHO Sugar intake guidelines for adults and children. The aim of the criteria should be to ensure that energy-dense, nutrient-poor foods are not marketed to children.

¹ All references to 'food marketing' refer to food and drink marketing, unless the context suggests otherwise.

² Recommendation 2 of the World Health Organization. Set of recommendations on the marketing of foods and non-alcoholic beverages to children. Geneva: World Health Organization, 2010. Available at http://whqlibdoc.who.int/publications/2010/9789241500210_eng.pdf

- **'Unhealthy food advertisement'**, should refer to any writing, image or audio message (or any combination of these things) that publicises or promotes: (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.
- **'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 displayed or otherwise communicated; (2) the nature of the advertisement; or (3) the nature of the food product advertised.
- **'Children'**, should refer to persons younger than 18 years of age.

These general restrictions may need to be supplemented by more **specific restrictions** on particular types of marketing. For example, specific restrictions would be required in relation to the placement and display of products in supermarkets and other retail outlets. Specific restrictions would also be required to restrict unhealthy food and drink sponsorship of sporting clubs and organizations.

In supermarkets and other retail outlets, restrictions could apply to the display of an unhealthy food product 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). Restrictions may also apply to displaying unhealthy food products in a retail outlet in any other manner intended or likely to attract the attention of children.

In sporting clubs and organizations, restrictions could apply to displaying or communicating an unhealthy food advertisement at or in association with sporting events or activities in which primarily children are involved or participate. To be effective, this would need to include restrictions on promoting unhealthy food, or a trade mark, design, brand or name of a manufacturer, producer or distributor that is closely associated with unhealthy food, including in fundraising materials and branded materials (including on equipment, facilities, activities, events or programs; or entry to competitions, prizes, awards, vouchers or other benefits). Specific restrictions should also apply to manufacturers, producers or distributors closely associated with unhealthy food sponsoring sporting events or activities in which primarily children are involved.

For further guidance regarding the general and/or specific restrictions that may apply to these locations and venues, please refer to the Obesity Policy Coalition's report: **A comprehensive approach to protecting children from unhealthy food advertising and promotion**.³

³ Mackay S, Antonopoulos N, Martin J., Swinburn B. A comprehensive approach to protecting children from unhealthy food advertising and promotion. Obesity Policy Coalition, Melbourne, 2011, available at <http://www.opc.org.au/downloads/positionpapers/protecting-children-unhealthy-food-advertising-promotion.pdf>

Question 4

What would be the benefits to the community?

The World Health Organization, Australia's Preventative Health Taskforce and numerous public health groups and experts agree that reducing children's exposure to unhealthy food marketing must be a critical component of any multi-strategy approach to improving children's diets and reducing rates of overweight, obesity and chronic disease.⁴

Outlined below are the benefits that would flow to the community from restricting unhealthy food marketing, including the health and economic benefits and protection of children's rights. We also discuss the benefits of sporting organisations shifting to healthier sponsorship arrangements.

(a) Health benefits

Poor diet and elevated Body Mass Index are the two leading contributors to the burden of disease in Australia.⁵ Rates of overweight and obesity remain high across age groups and demographics, including among children. In 2011-12, around a quarter of all Australian children aged 5-17 years (24% of boys and 27% of girls) were either overweight or obese.⁶

The World Health Organization has conclusively recognised that a relationship exists between children's exposure to unhealthy food advertising and harmful food behaviours and health outcomes.⁷ Systematic reviews of the evidence in Australia and internationally clearly demonstrate that unhealthy food advertising influences children's food preferences, requests and consumption and is a probable causal factor in weight gain and obesity.⁸ In 2009, the National Preventative Health Taskforce considered that the evidence was sufficiently compelling to justify restricting the volume of unhealthy food advertising on television in Australia, as well as the marketing techniques most commonly used by food advertisers to target children.⁹

⁴ World Health Organization. Set of recommendations on the marketing of foods and non-alcoholic beverages to children. Geneva: World Health Organization, 2010. Available at http://whqlibdoc.who.int/publications/2010/9789241500210_eng.pdf ; Final report of the Preventative Health Taskforce (2009) Australia: the Healthiest Country by 2020, available at <http://www.preventativehealth.org.au/> ; MacKay S, Antonopoulos N, Martin J, Swinburn B. A comprehensive approach to protecting children from unhealthy food advertising. Obesity Policy Coalition, Melbourne, 2011, available at <http://www.opc.org.au/paper.aspx?ID=foodadvproposal&Type=policydocuments#.VQDp47ccSUK>

⁵ Institute for Health Metrics and Evaluation, Global Burden of Disease Country Profile data for Australia (2014), available at www.healthmetricsandevaluation.org

⁶ Australian Bureau of Statistics 4338.0 – Profiles of Health, Australia, 2011-2013, Overweight and obesity.

⁷ Ibid.

⁸ Cairns et al, Systematic reviews of the evidence on the nature, extent and effects of food marketing to children. A retrospective summary (2013) 62 *Appetite* 209; Boyland E J and Halford J C G, Television advertising and branding; Effects of eating behaviour and food preferences in children (2013) 62 *Appetite* 236; Jennifer Harris et al, Priming Effects of Television Food Advertising on Eating Behavior (2009) 28(4) *Health Psychology* 404; G Cairns, K Angus and G Hastings, The extent, nature and effects of food promotion to children: A review of the evidence to December 2008, Geneva: World Health Organisation, 2009; G Hastings et al. Review of the research on the effects of food promotion to children (Final report), Prepared for the Food Standards Agency, 22 September 2003; B Kelly et al, Monitoring food and non-alcoholic beverage promotions to children (2013) 14 *Obesity Reviews* (Suppl 1) 59; Shin-Yi Chou, Inas Rashad and Michael Grossman, Fast-Food Restaurant Advertising on Television and Its Influence on Childhood Obesity (2005) 51 *Journal of Law and Economics* 599

⁸ B Kelly et al, Monitoring food and non-alcoholic beverage promotions to children (2013) 14 *Obesity Reviews* (Suppl 1) 59.

⁹ Final report of the Preventative Health Taskforce (2009) Australia: the Healthiest Country by 2020, available at <http://www.preventativehealth.org.au/>

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. Restrictions on unhealthy food advertising directed to children (as defined above) across a broad range of locations and venues will be critical to ensuring that children's exposure is reduced. Furthermore, it is not enough to ensure that particular advertisements directed to children are truthful, honest, decent etc., as suggested by the food and advertising industries. It is the totality of large volumes of sophisticated marketing that influences children and it is children's exposure to these large volumes that must be addressed if consumption patterns and health outcomes are to be improved.

Industry often point to likely small effect sizes to support their position that government intervention is not required when advocating against restrictions on unhealthy food advertising. However, experts caution that research findings of small effect sizes in statistical terms should not be interpreted as evidence that food advertising only has a small effect on children, and do not justify inaction on food advertising. Findings of a small effect size are likely to stem from methodological difficulties in isolating and measuring the effect of food advertising on children and do not take into account food advertising's wider indirect effects on children's food preferences and consumption. Since a wide range of factors contribute to children's food choices and obesity, it makes sense that the direct independent contribution of food advertising to children is fairly modest.¹⁰

Experts also emphasize that a small statistical effect on the immediate behavior of individual children is likely to translate to a much larger effect at the population level and over the period of a child's development. For example, a literature review undertaken for the Office of Communications in London (2006) noted that a 2% variance 'may make an appreciable difference to the number of children who fall into the "obese category"', that 'this effect may be larger than the measurable effect of exercise and some other factors', and that longitudinal research is beginning to show that the cumulative effects of food advertising throughout a child's development are 'much more sizeable'.¹¹

(b) Economic benefits

The financial and non-financial costs of overweight and obesity in Australia significantly affect individuals, governments and the community. In 2011-12 the total costs of obesity were estimated to be \$8.6 billion. This total cost included direct financial costs of \$3.8 billion (e.g. general practitioner, allied health and specialist services, hospital care, pharmaceuticals and weight loss intervention costs). It also included \$4.8 billion in indirect costs (e.g. absenteeism, presentism and government subsidies). It estimated that these costs would escalate to \$87.7 billion in additional direct and indirect costs due to obesity to society over the next ten years if action is not taken to curb the obesity epidemic.¹²

¹⁰ Livingstone S. New research on advertising foods to children: an updated review of the literature. Published as Annex 9 to Television advertising of food and drink products to children, London: Ofcom, 2006

¹¹ Livingstone S. New research on advertising foods to children: an updated review of the literature. Published as Annex 9 to Television advertising of food and drink products to children, London: Ofcom, 2006

¹² Obesity Australia, Obesity: Its impact on Australia and a case for action. October 2015, available at <http://www.obesityaustralia.org/files/Weighing-the-cost-of-obesity-Final.pdf>

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.¹³ This was higher than the cost-effectiveness of any of the other 12 potential interventions modelled in the study. While focussed on TV advertising only, this study illustrates that advertising restrictions can be implemented at low cost and generate high cost savings.

There is also evidence that the financial impact of restrictions on advertisers may not be significant. An evaluation by Ofcom of the restrictions on unhealthy food advertising to children on television in the United Kingdom demonstrated while broadcasters' revenue from unhealthy food and beverage advertising had declined since the restrictions were introduced, the 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.¹⁴ This was also the case when tobacco advertising restrictions were introduced in Australia, with tobacco advertising revenue being replaced with revenue from advertising in other sectors.¹⁵

Indeed, Australians want restrictions on food marketing techniques that cause their children to pester them for unhealthy foods.¹⁶ A national survey conducted by Cancer Council Victoria in 2012 found that 75% of consumers supported restrictions on the use of displays of unhealthy food and drinks at supermarket checkouts, and 33% supported this practice being stopped completely. Parents will no doubt prefer to shop at retail outlets with restrictions in place to make their shopping experience a healthier and more positive family experience. Consumers are also overwhelmingly in favour of regulating the sponsorship of children's sporting activities, with 69% supporting restrictions and 21% believing this practice should be stopped completely.¹⁷

It may therefore be expected that any loss in revenue for advertising in the locations and venues proposed by the ACT will be mitigated by advertising from healthier food options or other products or services, as well as potentially increased consumer traffic. Yet even if businesses and government in the ACT 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 government and businesses to incur some loss in the interest of improving children's health and the reducing the long term impacts of unhealthy diets, overweight and obesity.

¹³ ACE-Obesity. Assessing cost-effectiveness of obesity interventions in children and adolescents. Summary of results. Melbourne: Victorian Government Department of Human Services, 2006.

¹⁴ Ofcom. HFSS advertising restrictions: final review. London: Ofcom, 2010.

¹⁵ Scollo MM, Winstanley MH. Tobacco in Australia: facts and issues. Melbourne: Cancer Council Victoria, 2008, Chapter 17.5.

¹⁶ Cancer Council Victoria, unpublished data, 2012.

¹⁷ Ibid.

(c) The protection of children's rights

There are strong rights-based and ethical reasons for protecting children from this type of marketing. Children cannot be expected to make informed choices based on advertising if they cannot properly understand the persuasive intent of advertising or interpret it (regarding it simply as information or entertainment).¹⁸ 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).

(d) Sports sponsorship

As discussed above, systematic reviews of the evidence on food marketing to children, including through sport, have consistently concluded that it influences the types of food children prefer, demand and consume, and is likely to contribute to poor diets, negative health outcomes, weight gain and obesity in children.¹⁹ This body of research has underpinned WHO recommendations that member states take active steps to reduce children's exposure to marketing for unhealthy foods, including through sport.²⁰

While the specific impacts of sport sponsorship by unhealthy food brands remain under-explored,²¹ Australian research has found that for children aged 10-14, sponsorship of their sports club is associated with recall of sponsors and they are likely to think about sponsors when buying something to eat or drink. Children surveyed were likely to consider sponsors "cool".²² Australian research showed 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.²³ It demonstrated the majority (63%) of food sponsors of children's sport surveyed did not meet the criteria as healthy sponsors in 2011. It was also found that where food companies sponsor sports that are popular with children, the food products are generally unhealthy.²⁴

Children's perceptions and reactions to food sponsorship highlight the unethical and confusing nature of these promotional messages. The presence of unhealthy food branding and marketing in children's sport sends contradictory messages to children. By 'partnering' with junior sporting clubs food companies exploit children's vulnerability and engender positive relationships. The lack of appreciation of the commercial intent of the sponsorship, which is likely to be more pronounced in younger children,²⁵ is particularly concerning. Involvement in junior sports not only allows opportunities to introduce children to products, and also builds the goodwill of

¹⁸ Kunkel D, Wilcox B, Cantor J, Palmer E, Linn S, Dowrick P. Report of the APA Taskforce on Advertising and Children. Washington DC: American Psychological Association, 2004

¹⁹ United Nations Political Declaration of the High-Level Meeting of the General Assembly on the Prevention and Control of Non-communicable Diseases, General Assembly resolution 66/2, 16 September 2011; World Health Organization. *Set of recommendations on the marketing of foods and non-alcoholic beverages to children*. Geneva: World Health Organization, 2010.

²⁰ World Health Organization, 2010, 'Set of recommendations on the marketing of food and non-alcoholic beverages to children', available at http://whqlibdoc.who.int/publications/2010/9789241500210_eng.pdf.

²¹ B Kelley et al. (2011) "Role Modelling unhealthy behaviours: food and drink sponsorship of peak sporting organisations" 22(1) Health Promotion Journal of Australia 72

²² Ibid.

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

participants, parents and clubs,²⁶ forming positive associations with brands without even perceiving the presence of a promotional message.

While it has been argued that the practice of clubs providing unhealthy food vouchers as a 'reward' for participation in sport is appropriate and promotes healthy participation in physical activity, health groups counter that sending children the message that consumption of unhealthy foods is appropriate so long as you exercise is misleading and damaging. It follows that from a public health and rights perspective, children will benefit from being protected from this type of marketing.

(e) The benefits of promoting healthy foods -v- restricting unhealthy food marketing

It must also be emphasised that while healthy food marketing should be encouraged, children will benefit mostly from restrictions on unhealthy food (compared to the promotion of healthy foods). The evidence is clear that it is unhealthy food promotion that must be reduced and any increase in healthy food marketing will have little impact if children continue to be bombarded by the former. Unhealthy food companies often also use the guise of promoting a healthier product to promote their brand name and provide a healthy halo for their products and brand. For example, McDonald's regularly features so called healthier options in its promotions to children, yet there is evidence that children do not tend to consume these healthier option when they visit McDonalds.²⁷ It is the saturation of unhealthy food advertising that is the problem and it is this that must be acted upon. Children's exposure to brand marketing for companies closely associated with unhealthy food products must also be reduced.

Question 6

What challenges might there be in making these changes for; (a) businesses like supermarkets, shopping centres, cinemas, restaurants/cafes including quick service outlets, licensed clubs and hotels?; (b) sporting clubs and organisations (including through sponsorship)?; (c) ACT Government venues (such as GIO Stadium, Manuka Oval and Exhibition Park) and events?

The key challenge to reducing children's exposure to unhealthy food marketing across each of the proposed locations and venues will be opposition from food advertisers, processed food manufacturers and sporting groups. There is also a risk that inconsistent approaches will be taken across locations and venues, making it difficult for advertisers to comply and consumers to understand the various restrictions that are in place. In relation to sports sponsorship, there may also be concern within sports clubs and organizations about loss of financial support.

(a) Food and advertising industries – likely challenges

The processed food and advertising industries will lobby hard against government, businesses and/or sporting clubs in the ACT restricting unhealthy food marketing in any way that may meaningfully reduce children's exposure. They will point to their existing self-regulatory codes to restrict unhealthy food advertising to children

²⁶ Cancer Council NSW *Building Solutions to Protect Children from unhealthy food and drink sport sponsorship* 2011.

²⁷ Wellard, L., C. Glasson, et al. (2012). "Fries or a fruit bag? Investigating the nutritional composition of fast food children's meals." *Appetite* 58(1): 105-110.

to show that they are already committed to protecting children.²⁸ They will also use potentially misleading technical arguments and scare tactics (i.e. likely job losses, loss of revenue etc.) to dissuade or delay further action.

In reality, the **self-regulatory codes** of the food and advertising industries are of limited affect. This is essentially because these industries have little incentive to take meaningful steps to reduce children's exposure to unhealthy food marketing. They have no desire to reduce sales and indeed have obligations to their shareholders to maximise profits. The only real incentive for the food and advertising industries is to appear to take action to ward off government intervention. Retailers and other businesses that profit from unhealthy food marketing are similarly likely to have limited motivation to reduce children's exposure to this type of marketing.

Globally, industry-led, self-regulatory approaches have consistently failed to meaningfully reduce children's exposure to, or the power of, unhealthy food advertising to children.²⁹ The food and advertising industry codes in Australia are no exception. In 2012, the Obesity Policy Coalition released a report: '**Exposing the Charade**', highlighting the numerous limitations and failures of the self-regulatory codes that purport to restrict unhealthy food marketing to children in Australia.³⁰ In particular, it demonstrated that:

- the codes do not apply to all food advertisers, only those who sign up to the codes
- the codes only cover advertising *content* that is "directed *primarily* to children" – they do not prevent advertising for unhealthy foods that appeal to, or is regularly seen by, both children and adults
- the codes do not prevent unhealthy food advertising on TV when the highest numbers of children are in the viewing audience, i.e. between 6 and 9pm when the highest rating children's shows are broadcast. They apply only when children represent 35% or more of the audience, which is rare (and not representative of when the largest numbers of children are watching)
- many forms of promotion and media are not covered
- the codes only apply to younger children
- the criteria for nutrition and (then) healthy dietary choices are vague and unclear
- the scheme relies entirely on complaints from the public
- there are inconsistencies in decision making by the Advertising Standards Board ("Board") and key claims have not been properly addressed
- the Obesity Policy Coalition believes that the Board's decisions are completely out of step with prevailing community standards
- there is a blatant conflict of interest in self-regulation which clearly undermines its effectiveness
- there are no meaningful sanctions for breaches

²⁸ The food industry codes that apply to unhealthy food advertising are the Australian Food and Grocery Council's Responsible Children's Marketing Initiative, which applies to grocery producers, and the Quick Service Restaurant Initiative for Responsible Advertising and Marketing to Children, which applies to fast food outlets. The advertising codes include The Australian Association of National Advertisers (AANA) Advertiser Code of Ethics 2012, the AANA Code for Advertising & Marketing Communications to Children 2014 and the Food & Beverages Advertising & Marketing Communications Code 2009.

²⁹ See for example, Galbraith-Emami S and Lobstein T. The impact of initiatives to limit the advertising of food and beverage products to children: a systematic review (2013) 14(12) *Obesity Reviews* 960–974; K Ronit and J D Jensen. Obesity and industry self-regulation of food and beverage marketing: a literature review (2014) 68 *European Journal of Clinical Nutrition* 753-759.

³⁰ Lumley J, Martin J, Antonopoulos N. Exposing the Charade – the failure to protect children from unhealthy food advertising. Obesity Policy Coalition, Melbourne, 2012.

- there is no evidence that self-regulation has reduced children's exposure to unhealthy food marketing.

In the next few weeks, the Obesity Policy Coalition will be releasing a follow up to this report titled '**End the Charade**'.³¹ This report demonstrates that over the past three years little action has been taken by Australian governments to improve protections for children from this type of marketing and that instead, the food and advertising industries' self-regulatory codes have been weakened. It shows that **the system is, in fact, getting worse**. The codes now include:

- A looser definition of 'healthier' food: This definition allows many foods that would be considered unhealthy under government dietary guidelines, such as *Coco Pops*, to be considered a 'healthier dietary choice' for the purpose of the codes – meaning they are also considered appropriate for marketing to children.
- A weakened meaning of 'directed primarily to children': This weakened clause results in children being targeted through a greater range of techniques such as animations, cartoons and imagery from fairy tales, which previously may not have been permitted in unhealthy food marketing.
- A lack of transparency, accountability and accessibility continues: The codes are amended without consultation and the system is fraught with delay. There is a lack of objectivity and transparency in decision making and no meaningful sanctions exist for breaches of the codes by advertisers.

It follows that the protection of children from the unhealthy food marketing cannot be left to the food or advertising industries, or indeed any business that profit from the sale of unhealthy food.

Of further concern, if individual businesses or industries do introduce a level of restriction on unhealthy food advertising there are likely to be **inconsistencies** in their approaches. This will make it difficult for consumers to understand the various restrictions that apply and whether they are being complied with. It will also make it difficult for the food industry to comply. A consistent approach will be needed to ensure a level playing field and promote consumer and industry understanding of the restrictions that apply.

(b) Challenges in addressing sports sponsorship

Community sporting clubs may rely on such sponsorship arrangements or receive essential contributions that enable them to provide valuable opportunities to children. Transitioning from such relationships to healthier sponsorship arrangements poses a significant challenge, particularly to poorly resourced clubs. As discussed below, government led support is likely to be required.

³¹ Mills C, Martin J, Antonopoulos N. End the Charade! The ongoing failure to protect children from unhealthy food marketing. Obesity Policy Coalition, Melbourne, 2015. Available soon from the OPC website, at www.opc.org.au

Question 7

What are your suggestions to overcome these challenges for; (a) businesses like supermarkets, shopping centres, cinemas, restaurants/cafes including quick service outlets, licensed clubs and hotels?; (b) sporting clubs and organisations (including through sponsorship)?; and (c) ACT Government venues (such as GIO Stadium, Manuka Oval and Exhibition Park) and events?

A government led approach to reducing children's exposure to unhealthy food marketing in these settings will be needed as opposed to inconsistent and unenforceable voluntary measures that will be ineffective to achieve this policy objective. Ideally, any restrictions should be legislated and compliance should be mandatory. Alternatively, a government led co- or quasi- regulatory approach should be taken. In relation to sports sponsorship, government support may be required to enable clubs to transition to new sponsors.

(a) Regulatory options

The continuing spectrum of regulation includes self-regulation, quasi-regulation, co-regulation and explicit government regulation, i.e. statutory regulation.³² Each form of regulation involves varying levels of industry and government participation and leadership.

As discussed in response to question 6, **self-regulation** is inherently incapable of protecting children from unhealthy food marketing 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 marketing that has this influence. Food advertisers lack sufficient incentive to develop, comply with, and enforce effective food advertising restrictions. Industry has been given ample opportunity to introduce meaningful restrictions on unhealthy food marketing to children in Australia and has failed dismally.³³

Many experts, health agencies, researchers and expert commentators agree that the evidence of the effects of food marketing to children warrants government intervention to restrict unhealthy food marketing to children.³⁴ The WHO recommends that governments take the lead while working with stakeholders to develop and implement unhealthy food marketing restrictions (whether through self-, co- or statutory regulation). It states that while there may be a key role for industry their role should be clearly defined and conflicts of interest must be avoided.³⁵

³² Australian Government. The Australian Government Guide to Regulation, 2014.

³³ Lumley J, Martin J, Antonopoulos N. Exposing the Charade – the failure to protect children from unhealthy food advertising. Obesity Policy Coalition, Melbourne, 2012; Mills C, Martin J, Antonopoulos N. End the Charade! The ongoing failure to protect children from unhealthy food marketing. Obesity Policy Coalition, Melbourne, 2015.

³⁴ 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; 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.

³⁵ World Health Assembly. Sixty-third World Health Assembly, eighth plenary meeting, agenda item 11.9. 21 May 2010. Retrieved from http://apps.who.int/gb/ebwha/pdf_files/WHA63/A63_R14-en.pdf on 19 January 2012; World Health Organization. Set of recommendations on the marketing of foods and non-alcoholic beverages to children. Geneva: World Health Organization, 2010.

Comprehensive legislation, regulating unhealthy food marketing in each of the locations and venues proposed would be the most effective regulatory option to ensure that restrictions are comprehensive, clear and enforceable, with meaningful sanctions. For more information about how unhealthy food marketing to children may be regulated in these locations and venues, please refer to the Obesity Policy Coalition's report: [A comprehensive approach to protecting children from unhealthy food advertising and promotion](#).³⁶

While explicit government regulation would be the most effective mechanism to reduce children's exposure to unhealthy food advertising and limit the marketing techniques most commonly used to target children, a co- or quasi- regulatory approach may have some effect if it is comprehensive, led by government, adopted by all food manufacturers and advertisers and there are adequate incentives for compliance (i.e. independent complaints mechanism and meaningful sanctions).

A **co-regulatory approach** would involve industry developing and administering its own legally binding standards or code of practice within the parameters of enabling legislation, i.e. with government involvement or oversight. A **quasi-regulatory approach** would involve the government leading the industry's development of a non-legally binding code of practice (for example, through setting policy objectives, the issuing of specific guidelines, endorsing a code, monitoring, ensuring that there is a credible threat of binding regulation in the event of non-compliance with a voluntary arrangement).³⁷

A co-regulatory approach would be preferable to require that all relevant food advertisers be subject to the codes and to provide independent oversight and mechanisms for enforcement, with meaningful sanctions. However a quasi-regulatory approach could at least provide some government led guidance on the necessary elements of any industry code capable of achieving the policy objective of reducing children's exposure, and promoting consistency. An industry code developed under a quasi-regulatory approach would not be binding upon signatories and would not be enforceable or overseen by a court of law, however it could provide the threat of co- or full government regulation if appropriate action is not taken.

The necessary elements of any legislation (under a full or co- regulatory approach) or government guidelines (under a quasi-regulatory approach) must include the following if the policy objective of reducing children's exposure is to be achieved:

1. The **policy objective** to reduce children's exposure to, and the power of, unhealthy food marketing, consistent with the WHO's Set of recommendations on the marketing of foods and non-alcoholic beverages to children.
2. **Definitions of key terms**, such as 'children', 'unhealthy food', 'unhealthy food advertisement' and 'directed to children'. For example:
 - Unhealthy food: 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 nutrient profile criteria for eligibility of foods or beverages to carry health claims. Alternatively, the ACT government may develop criteria, in consultation with public health

³⁶ Mackay S, Antonopoulos N, Martin J., Swinburn B. A comprehensive approach to protecting children from unhealthy food advertising and promotion. Obesity Policy Coalition, Melbourne, 2011.

³⁷ Ibid

groups, to be used across all locations and venues that is based upon current government and scientific evidence, i.e. The Australian Dietary Guidelines and the WHO Sugar intake guidelines for adults and children. The aim of the criteria should be to ensure that energy-dense, nutrient-poor foods are not marketed to children.

- Unhealthy food advertisement: any writing, image or audio message (or any combination of these things) that publicises or promotes: (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.
 - 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 displayed or otherwise communicated; (2) The nature of the advertisement; and (3) The nature of the food product advertised.
 - Children: persons younger than 18 years of age.
3. A requirement that any **code be adopted by all** relevant food manufacturers, advertisers and businesses.
 4. A **comprehensive approach**, applying to unhealthy food advertising directed to children in as many forms and types of media and locations as is possible.
 5. Independent **review and evaluation** of the code every two years to ensure that it is effective in achieving the policy objective of reducing children's exposure to unhealthy food marketing.
 6. A mechanism for **complaints to be made to an independent body**, with a range of powers, to encourage compliance. **Meaningful sanctions** should apply to breaches of the code, including financial penalties.

(b) Sports sponsorship

The ACT government should take active steps to remove unhealthy food marketing, promotion and sponsorship of all children's and community sport. To support sporting clubs and organizations to overcome the challenges of shifting away from unhealthy food marketing, the government should:

- establish a scheme to provide **monetary incentives to children's sporting organisations** and community clubs to reject unhealthy food sponsorship arrangements and forge relationships to transition sponsorship arrangements to other partners.
- develop, promote and disseminate **healthy sponsor criteria** to clubs to support them in meeting the challenge of forging alternative sponsorship arrangements and phasing out unhealthy food and beverage sponsors.

As discussed above, sporting clubs want to promote healthy environments and consumers overwhelming support restrictions on unhealthy sports sponsorships. With adequate support from the ACT government, and drawing on experiences of tobacco sponsorship buy out, local clubs and organizations could make this shift and remain financially viable.

Question 9

Is there anything else you would like to add about the marketing of unhealthy food and drinks, in particular to children and/or promoting healthy food and drinks?

The ACT government should consider a more comprehensive approach to restricting unhealthy food marketing, including across a wider range of children's settings and events and possibly on television. It should also demonstrate leadership and advocate to the Commonwealth Government for a national approach where necessary or deemed appropriate in the ACT context, i.e. television and internet restrictions.

(a) Children's settings

Given the ACT government's aim is to restrict unhealthy food marketing, particularly marketing aimed at children, it vital that steps are also taken to ensure that unhealthy food marketing is restricted in all **child-oriented institutions and services (particularly schools, kindergartens and early learning centres) and at children's events.**

The WHO's Set of Recommendations on the Marketing of Foods and Non-Alcoholic to Children Beverages (WHO's Recommendations) emphasises the importance of restrictions in these settings. It recognises that these settings act *in loco parentis*, and that noting that occurs in them should prejudice a child's well-being. It states that the nutritional well-being of children within schools should be paramount and the foundation stone for children's well-being at this formative age. Recommendation 5 of the WHO's Recommendations states:

'Settings where children gather should be free from all forms of marketing of foods high in saturated fats, trans-fatty acids, free sugars or salt. Such settings include, but are not limited to nurseries, schools, school grounds and pre-school centres, playgrounds, family and child clinics and paediatric services and during any sporting and cultural activities that are held on these premises'.

The promotion of unhealthy foods to children continues to occur in **Australian schools, particularly through fundraising and the curriculum.**³⁸ The areas around schools are also of particular concern, given the likelihood of exposure of large numbers of children. One Australian study found that primary schools had an average of 57 food billboards nearby, with 80% of food advertisements for unhealthy foods, like soft drink, alcohol and ice cream.³⁹ The promotion of unhealthy food brands is also common at children's sporting and cultural events. For example, the **Royal Canberra Show** scheduled for 2016 is sponsored by Coke, McDonald's and Peters, meaning that marketing by these companies across the show is inevitable.⁴⁰

While the food industry codes purport to restrict unhealthy food advertising in schools and pre-schools, the restrictions do not apply if the school permits the unhealthy food advertisement for educational or informational purposes, or is related to healthy lifestyle activities. It does not include brand advertising (i.e. through sponsorship), marketing through curriculum or the majority of fundraising techniques.

³⁸ See, for example, the Cadbury Fundraising website, at <https://www.fundraising.com.au/>

³⁹ Kelly B, Cretikos M, Rogers K, King L. The commercial food landscape: outdoor food advertising around primary schools in Australia. *Aust N Z J Public Health* 2008 Dec;32(6):522-8

⁴⁰ See Sponsors list on Royal Canberra Show website at <http://www.canberrashow.org.au/sponsors>

We therefore recommend that the ACT encourage **a consistent approach across schools and early childhood settings** by restricting unhealthy food marketing 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 care, education or recreational services primarily to children (e.g. hospital, club, activity centre, etc).

This would need to include restricting the promotion of unhealthy food, as well as brands closely associated with unhealthy food, through **sponsorship, fundraising materials, branded materials** (including equipment, facilities, activities, events or programs) and entry to competitions, prizes or other benefits.

We also recommend restricting unhealthy food marketing (including brand marketing) at or in association with **events or activities in which primarily children are involved** or participate.⁴¹ As well as exploring whether restrictions on unhealthy food marketing in close proximities to schools may be feasible in the ACT context.

(b) Television

If children's exposure to unhealthy food marketing in the ACT is to be reduced in a meaningful way, restrictions on unhealthy food advertising on free to air television will be essential.

i. The extent of unhealthy food marketing on television.

Television remains the primary vehicle for advertising to children, and the **most effective medium for reaching large numbers of children**.⁴² While there may have been some decline in the numbers of children watching television over the past decade, in 2013 children aged 0-14 continued to watch approximately one hour and 26 minutes of free to air television per day.⁴³ An average of 528,000 children (aged 0 – 14) continued to watch television between the peak viewing times of 7pm and 8pm.⁴⁴ While a high proportion of young children aged 0-4 watch ABC 4 Kids compared to other channels, children aged 5-12 years are watching mostly movies and general entertainment programs with family appeal (such as feature films and reality programs) across multiple free to air channels.⁴⁵ While the top 5 television programs among children in 2013 attracted average audiences of 314,000 children (The Block, The X Factor, The Voice, My Kitchen Rules and Toy Story 3), the five most

⁴¹ For more information about the restrictions that may apply, refer to Mackay S, Antonopoulos N, Martin J., Swinburn B. A comprehensive approach to protecting children from unhealthy food advertising and promotion. Obesity Policy Coalition, Melbourne, 2011.

⁴² ACMA. Use of electronic media and communications: Early childhood to teenage years. Australian Government. 2009. Available at http://www.acma.gov.au/WEB/STANDARD/pc=PC_311824; Olds et al, 2006, cited in Handsley, E., Nehmy, C., Mehta, C. & Coveney J. 'Media, public health and law: a lawyers primer on the food advertising debate', Media and Arts Law Review (2007) 12, 87-106.

⁴³ ACMA Children's television viewing - Research Overview (with Attachment A - Children's television viewing: community research 2014, and Attachment B - Children's television viewing: analysis of audience data 2001 - 13), March 2015. Commonwealth of Australia. Available at http://www.acma.gov.au/theACMA/Library/researchacma/Research-reports/childrens-television-viewing-research?utm_medium=email&utm_campaign=Content+the+key+to+kids+TV&utm_content=Content+the+key+to+kids+TV+CID_8a2dcad1d88a26bc3ccf0bfc120ffd85&utm_source=SendEmailCampaigns&utm_term=Childrens%20Television%20Viewing

⁴⁴ Ibid.

⁴⁵ Ibid.

popular dedicated children's programs attracted only 178,000 viewers (Room on the Broom, Shaun the Sheep, Ben and Holly, Peppa Pig and How Many More minutes Until Christmas [all on ABC 4 Kids]).

Television is considered by marketers to be the '**cornerstone of an integrated campaign**', a medium that is 'able to target all demographics' and the 'best way to reach grocery buyers with children.'⁴⁶ Television also tends to be the focus of marketing campaigns that integrate a number of different media platforms. For example, McDonald's advertisement for Happy Meals often feature movie-tie ins and have directed children to the Happy Meal website where they can play games, download colouring pages and engage in other arts, crafts and fun activities.⁴⁷

Children are exposed to an **enormous amount of food advertising on Australian free-to-air television**.⁴⁸ Unhealthy Food and beverage advertising is twice as common during children's viewing hours compared to adult viewing times.⁴⁹ Children watching television during the weekday afternoon timeslot are subjected to approximately 14 food ads per hour.⁵⁰ For children (aged 5-12 years) watching the average of 2-3 hours of television daily, this means they are subjected to between 28-42 food advertisements every day. Australian studies of the extent and nature of food advertising on television during children's viewing hours have reported that a range of between 55% and 81% of food advertisements are for unhealthy foods (mainly confectionery or fast foods).⁵¹

While the food and advertising industries purport to restrict unhealthy food marketing on television under their self-regulatory codes, these restrictions provide very little protection to children.⁵² The codes only cover advertising *content* that is "directed *primarily* to children", they do not prevent the large amount of advertising for unhealthy foods that appeal to both children and adults. Nor do they prevent unhealthy food advertising during TV programs watched by the greatest number of children, i.e. between 6 and 9pm.⁵³

⁴⁶ Free TV Australia 2006 *Media Buyers Survey*, available from <http://www.thinktv.com.au>, accessed 26 August 2007.

⁴⁷ See McDonald's Happy Meal website at <http://www.happymeal.com.au/> (accessed 17 March 2015).

⁴⁸ Zuppa, J., Morton, H., Mehta, K. Television food advertising: counterproductive to children's health? A content analysis using the Australian Guide to Healthy Eating (2003) 60 *Nutrition and Dietetics* 78-84; Chapman, K., Nicholas, P., & Supramaniam, R. 'How much food advertising is there on Australian television?' (2006) 21 *Health Promotion International* 172-180; Hill, J., & Radimer, K. A content analysis of food advertisements in television for Australian children (1997) 54 *Australian Journal of Nutrition & Dietetics*, 174-181; Kelly, B., Smith, B., & King, L. Television food advertising to children: the extent and nature of exposure (2007) 11 *Public Health Nutrition* 1234-40; Neville, L., Thomas, M., & Bauman, A. 'Food advertising on Australian television: the extent of children's exposure.' *Health Promotion International*, 2005, 20, 105-112; Choice. *Food Advertising to Children: Who's the Biggest Loser?* NSW. Australia. March 2009.

⁴⁹ Zuppa, J., Morton, H., Mehta, K. 'Television food advertising: counterproductive to children's health? A content analysis using the Australian Guide to Healthy Eating.' (2003) 60 *Nutrition and Dietetics* 78-84; Choice. *Food Advertising to Children: Who's the Biggest Loser?* NSW. Australia. March 2009.

⁵⁰ Neville, L., Thomas, M. and Bauman, A. Food advertising on Australian television: the extent of children's exposure (2005) 20 *Health Promotion International*, 105-112.

⁵¹ Chapman, K., Nicholas, P., & Supramaniam, R. How much food advertising is there on Australian television? (2006) 21 *Health Promotion International*, 172-180; Neville, L., Thomas, M., & Bauman, A. Food advertising on Australian television: the extent of children's exposure (2005) 20 *Health Promotion International*, 105-112; Zuppa, J., Morton, H., Mehta, K. 'Television food advertising: counterproductive to children's health? A content analysis using the Australian Guide to Healthy Eating (2003) 60 *Nutrition and Dietetics*, 78-84.

⁵² Lumley J, Martin J, Antonopoulos N. *Exposing the Charade – The failure to protect children from unhealthy food advertising*. Obesity Policy Coalition, Melbourne, 2012, available at <http://www.opc.org.au/downloads/positionpapers/exposing-the-charade.pdf>

⁵³ Ibid.

(ii) Government led restrictions on unhealthy food marketing on television

The ACT government should consider whether it may have power to restrict unhealthy food advertising on television and whether such restrictions would be feasible in the ACT setting. If it is not satisfied that it has power to legislate, or is concerned about feasibility, we would encourage it to work with the other states and territories to advocate to the commonwealth government for a national approach. As a first step, the ACT government should also urge the Australian Communications and Media Authority to monitor unhealthy food advertising on television.

(c) *Other media*

Constitutional limitations may restrict action that could be taken by the ACT government to restrict unhealthy food marketing on subscription television, the internet, apps and social media. Again, to ensure that a comprehensive approach is taken and that children's exposure to unhealthy food marketing is reduced to the greatest extent possible, the ACT government should work with the other state and territories to **advocate to the commonwealth government for a national approach**.⁵⁴

Conclusion

We thank you again for this opportunity to have our say on unhealthy food marketing, particularly to children. We appreciate unhealthy food marketing to children is not the sole cause of the overweight and obesity in the ACT and that effective regulation of food marketing alone will not provide the solution. However, we do believe that adopting the recommendations outlined above will be vital to reducing children's exposure to unhealthy food marketing and would be consistent with our international obligations. Most importantly, it would also be an effective strategy for improving children's diets, as part of a comprehensive approach to dealing with the health impacts of overweight and obesity in the ACT.

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⁵⁴ For more information about these issues and the restrictions that may apply, please refer to Mackay S, Antonopoulos N, Martin J., Swinburn B. A comprehensive approach to protecting children from unhealthy food advertising and promotion. Obesity Policy Coalition, Melbourne, 2011.