



Submission to the Children's Commissioner
Australia's progress in implementing the Convention on
the Rights of the Child

Obesity Policy Coalition

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Background

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

Australia is in the midst of a childhood obesity epidemic that threatens our children's health and wellbeing. Childhood overweight and obesity has escalated to the point that over one quarter of Australian children are now overweight or obese.¹ These children have a much greater chance of becoming obese adults, and consequently face increased risks of developing a chronic condition such as type 2 diabetes, heart disease or cancer.² As a result of this obesity epidemic, many of the current generation of children are expected to die at an earlier age than their parents.³

Clearly, urgent action is required.

Unhealthy food marketing to children: self-regulatory system is not working

At the same time, marketing of unhealthy food to children is becoming increasingly pervasive and sophisticated. Unhealthy food⁴ marketing is the wallpaper of Australian children's lives. They are being saturated with marketing throughout their day – when they watch television, use social media, go to school, visit the shops, take public transport, play sport or participate in community events. Unhealthy food companies are increasingly using new techniques and technologies to target children, exposing them to huge amounts of advertising for fast food, confectionery, soft drinks and other unhealthy products.

The evidence convincingly shows that marketing influences children's food preferences, purchases and consumption,⁵ and contributes to overweight and obesity.⁶ Children are

¹ Australian Bureau of Statistics, National Health Survey: First results, 8 December 2015, <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4364.0.55.001>. 27.4% of children aged 5-17 years are overweight or obese.

² World Health Organization. Obesity: preventing and managing the global epidemic WHO Technical Report Series 894, Geneva: World Health Organization, 2000; Lobstein T, Baur L and Uauy R, Obesity in children and young people: a crisis in public health. *Obesity Reviews*, 2004. 5(Suppl 1), p 4-85.

³ Holman C and Smith F. Implications of the obesity epidemic for the life expectancy of Australians. Report to the Western Australian Public Health Advocacy Institute, 2008. School of Population Health, University of Western Australia, Crawley.

⁴ All references to food in this paper include food and beverages, unless otherwise stated or indicated by context.

⁵ For example, Boyland EJ, Whalen R. Food advertising to children and its effects on diet: review of recent prevalence and impact data. *Pediatr Diabetes*. 2015 Aug;16(5):331-7; Kelly B, King L, Chapman K, Boyland E, Bauman AE, Baur LA. A hierarchy of unhealthy food promotion effects: identifying methodological approaches and knowledge gaps. *Am J Public Health*. 2015 Apr;105(4):e86-95; Kelly B, Freeman B, King L, Chapman K, Baur LA, Gill T. Television advertising, not viewing, is associated with negative dietary patterns in children. *Pediatric Obesity*. 2015; Bruce AS, Pruitt SW, Ha OR, Cherry JB, Smith TR, Bruce JM, Lim SL. The Influence of Televised Food Commercials on Children's Food Choices: Evidence from Ventromedial Prefrontal Cortex Activations. *J Pediatr*. 2016 Oct;177:27-32; Norman J, Kelly B, Boyland E, & McMahon A.-T. (2016) The Impact of Marketing and Advertising on Food Behaviours: Evaluating the Evidence for a Causal Relationship. *Current Nutrition Reports*, 5 (3), 139-149; Dixon H, Niven P, Scully M, Wakefield M. Food marketing with movie character toys: Effects on young children's preferences for unhealthy and healthier fast food meals. *Appetite*. 2017 Oct 1;117:342-350.

⁶ Zimmerman, F and Bell, J. Associations of Television Content Type and Obesity in Children. *Am J Public Health*. 2010 February; 100(2): 334–340; Kelly B, King L, Chapman K, Boyland E, Bauman AE, Baur LA. A hierarchy of unhealthy food promotion effects: identifying methodological approaches and knowledge gaps. *Am J Public Health*. 2015 Apr;105(4):e86-95.

particularly vulnerable as they cannot properly understand or interpret marketing messages or understand that they are intended to persuade rather than entertain.⁷ In light of the evidence, the World Health Organisation and numerous public health bodies have called for effective controls to limit children's exposure to unhealthy food marketing and reduce their risk of a poor diet, weight gain and chronic disease.⁸

We believe that the Australian Government has not taken sufficient action to protect children from unhealthy food marketing. Instead, it allows the food and advertising industries to self-regulate using a complex system of codes and initiatives that provide little protection in practice. A close analysis of the self-regulatory codes reveals narrow definitions, weak restrictions and, frequently, extremely constrained interpretations by the body charged with hearing complaints, the Advertising Standards Community Panel. In practice, this means that a significant amount of marketing of unhealthy food to children is not covered at all, with the remainder not restricted in any meaningful way.

Australian research shows there was no reduction in the rate of unhealthy food marketing to children between 2011 (following introduction of the food industry self-regulatory codes) and 2015, including by companies that have signed up to the self-regulatory codes.⁹ On average, an Australian child will still see around three advertisements per hour for unhealthy food during prime-time television and 44% of advertisements will be for unhealthy food.¹⁰ 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.

Rather than protecting our children from marketing of unhealthy food, we believe that the self-regulatory system serves to protect the interests of the food industry by creating a façade of responsible conduct and avoiding the introduction of meaningful and effective government regulation. Australia needs mandatory legislative, regulatory or strong co-regulatory measures to reduce the volume and influence of food marketing reaching children.

Unhealthy food marketing to children: children's rights

In our view, the failure to adequately protect Australian children from exposure to unhealthy food marketing represents a lack of progress in implementing some of the civil rights and freedoms, the right to health and the right to protection from economic exploitation under the Convention on the Rights of the Child (the Convention). We argue that to fulfil our Convention obligations and protect the health and wellbeing of Australian children, effective government controls on marketing of unhealthy food to children need to be introduced.

A children's rights perspective on marketing of unhealthy food requires consideration and balance of a range of Convention rights.¹¹ Children's rights to participation in social life, such

⁷ Kunkel D, Wilcox BL, Cantor J, Palmer E, Linn S & Dowrick P. *Report of the APA Task Force on Advertising and Children*. Washington DC: American Psychological Association, 2004.

⁸ World Health Organization. Set of recommendations on the marketing of foods and non-alcoholic beverages to children. Geneva: World Health Organization, 2010, endorsed by the World Health Assembly, of which Australia is a member, in 2010: http://apps.who.int/iris/bitstream/10665/44416/1/9789241500210_eng.pdf.

⁹ Watson, W L et al, 'Advertising to children initiatives have not reduced unhealthy food advertising on Australian television', *Journal of Public Health* (2017), 1-6: <https://academic.oup.com/jpubhealth/article-abstract/doi/10.1093/pubmed/fdx004/2966185/Advertising-to-children-initiatives-have-not?redirectedFrom=fulltext>

¹⁰ *Ibid.*

¹¹ World Health Organisation Regional Office for Europe, *Tackling food marketing to children in a digital world: trans-disciplinary perspectives* (2016), Denmark, page 5.

as freedom of expression (Article 13), freedom of association (Article 15) and to access information from diverse sources (Article 17) must be balanced with their rights to protection, including the right to health (Article 24), to protection from economic exploitation (Article 32), to protection from injurious material when accessing information (Article 17), and to protection from arbitrary or unlawful interference with privacy (Article 16).¹²

We argue that the current lack of meaningful regulation to control children's exposure to unhealthy food marketing does not strike the appropriate balance and prioritises the ability of private corporations to advertise to increase sales and profits over the best interests of our children.

Marketing of unhealthy food to children must be effectively controlled to implement the following rights and protections under the Convention:

- *Article 24: right to health, including that States Parties will take appropriate measures to 'combat disease and malnutrition' and 'to develop preventive health care'.*

The protection of a child's right to health is the primary reason for regulating marketing of unhealthy food to children. As we discussed earlier, evidence shows that marketing influences children's food consumption and contributes to overweight and obesity. In turn, children who are obese have a higher chance of becoming obese adults and facing increased risk of chronic conditions such as type 2 diabetes, heart disease or cancer.

The dental health of Australian children should also be considered when assessing Australia's progress in implementing the right to health conferred by the Convention. Children's dental health is declining; there was a 61% increase in tooth decay in 12 year old children from 1998 to 2010, and a 78% increase for 6 year old children from 1996 to 2010.¹³ Recent research has shown that both the frequency and the amount of sugar is important in developing tooth decay.¹⁴

Controlling children's exposure to unhealthy food marketing is an important part of an effective preventive health strategy. We argue that Australia's implementation of Article 24 can be supported by introducing strong government controls on marketing of unhealthy food to children. This is supported by the Committee on the Rights of the Child, which has recognised that states should address childhood obesity and take action to regulate marketing of unhealthy food to children.¹⁵

- *Article 17: the right to access information from diverse sources, including protection from 'material injurious to his or her well-being'*

Access to media is important to ensure a child's ability to fully participate in civil life and to access information about issues that relate to them. Article 17 contemplates that this right must be balanced with a child's right to be protected from material that harms their

¹² *Ibid*, page 6.

¹³ Sugar Free Smiles, Tooth decay in Australia, available at <http://sugarfreesmiles.com/tooth-decay-in-australia>

¹⁴ Berabbe et al, The Shape of the Dose-Response Relationship between Sugars and Caries in Adults, *Journal of Dental Research*, Vol 95, Issue 2, pp. 167-172.

¹⁵ *General Comment No 15*, UN Doc CRC/C/GC/15, 12 as cited and discussed in Elizabeth Handley and Belinda Reeve, 'Holding Food Companies Responsible for Unhealthy Food Marketing to Children: Can International Human Rights Instruments Provide a New Approach?' (2018) 41(2) *University of New South Wales Law Journal* (Advance).

well-being. We argue that marketing of unhealthy food to children is injurious to their well-being, in that it promotes consumption of unhealthy food that can lead to overweight, obesity and a higher risk of a number of chronic conditions or illnesses as an adult.

- *Article 32: right to protection from economic exploitation*

We argue that children are being exploited by unhealthy food companies seeking to increase profits, with corporations' ability to promote their unhealthy products taking priority over children's health and wellbeing. We know that children are especially vulnerable to marketing as they are unable to differentiate between content that is intended to persuade, and content intended to entertain.¹⁶ Exposing children to large amounts of marketing for unhealthy food exploits this vulnerability.

- *Article 16: protection from arbitrary or unlawful interference with privacy*

Children's privacy is particularly at risk from digital marketing, including marketing on social media platforms such as Facebook, Instagram and Snapchat, and on popular websites such as Google, YouTube and elsewhere online. The nature of digital media means that large amounts of personal information is collected, including specific information about an individual's online behaviour, purchase preferences, social networks and physical location.¹⁷ This information can then be used by marketers, including unhealthy food companies, to target their marketing directly to particular groups of consumers, including children, based on their individual profiles.¹⁸ This large scale collection and disclosure of personal and other information is a significant risk to the protection of children's privacy, particularly as it is difficult to monitor and to prevent.

Conclusion

Implementing strong government controls on marketing of unhealthy food to children is an important step in fulfilling our obligations under the Convention, in particular ensuring that we implement the protections in Articles 17 and 24 and that our children's best interests are Australia's primary consideration.

¹⁶ Kunkel D, Wilcox BL, Cantor J, Palmer E, Linn S & Dowrick P. *Report of the APA Task Force on Advertising and Children*. Washington DC: American Psychological Association, 2004.

¹⁷ World Health Organisation Regional Office for Europe, *Tackling food marketing to children in a digital world: trans-disciplinary perspectives* (2016), Denmark, page 8.

¹⁸ *Ibid*, pages 8-9.