

obesity  
policy  
coalition



# End the Charade!

The ongoing failure to protect children  
from unhealthy food marketing



### Prepared by the Obesity Policy Coalition

The Obesity Policy Coalition (OPC) is a partnership between Cancer Council Victoria, Diabetes Victoria and the World Health Organization Collaborating Centre for Obesity Prevention at Deakin University, with funding from VicHealth.

The OPC advocates for evidence-based policy and law reform to reduce the burden of overweight and obesity in Australia, particularly among children.

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# Executive summary

## Australians are becoming increasingly concerned about children's unhealthy diets, high rates of overweight and obesity and the marketing of unhealthy food to children.

The nation's system for protecting children from unhealthy food marketing is mostly a voluntary, self-regulatory system, operated by the food and advertising industries.

In 2012, the Obesity Policy Coalition released a report titled *Exposing the Charade*. This report explored the problems of unhealthy food marketing to children and highlighted the key failures of the self-regulatory system to protect children from this type of marketing. In particular, it highlighted major loopholes in the self-regulatory codes, explored the narrow application of these codes and concluded that government led regulation is urgently needed.

Since then, little action has been taken by Australian governments and the self-regulatory codes have been substantially weakened. The system is, in fact, getting worse.

The changes to the codes now include:

### ► A looser definition of 'healthier' food

Under this definition, many foods that would be considered unhealthy under government dietary guidelines, such as Coco Pops, are 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.

### ► An ongoing lack of transparency, accountability and accessibility

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.

The passive approval of this system by the Australian government is dramatically out of step with community expectations, healthy eating guidelines and the recommendations of peak international bodies (including the World Health Organization).

It will only be through significant improvements led by government that children's exposure to this type of marketing will be reduced and their diets and health improved. The action needed is outlined in **BOX 1**.

## BOX 1

### A comprehensive approach, led by Australian governments, is urgently needed.

**As a first step**, Australia's broadcasting regulator, the Australian Communications and Media Authority, should **monitor children's exposure** to unhealthy food marketing on television.

Amendments should also be made to the advertising codes or regulations to:

- **Clearly define key terms**, including 'unhealthy food', 'unhealthy food marketing', 'children' and 'directed to children'.
- **Consistently and transparently define 'unhealthy food'** in accordance with government and scientific guidelines.

- **Expand their scope to apply to all forms, media and locations of marketing** of unhealthy food (including brand marketing) that is directed to, or appeals to children.
- **Restrict all unhealthy food marketing on television during times when large numbers of children are likely to be watching** (i.e. weekdays 6–9am and 4–9pm, and weekends and school holidays 6am–12pm and 4–9pm).
- **Ensure compliance is regularly monitored.**



## Section 1

# Background

### What is the problem?

Australia is being engulfed by an obesity epidemic that is threatening its population's welfare and future economic prosperity. One quarter of Australian children and 63 per cent of adults are overweight or obese.<sup>1</sup> The current generation of children are expected to die at an earlier age than their parents as a result.

Poor diet and elevated Body Mass Index (BMI) have been identified as the leading causes of chronic disease in Australia.<sup>2</sup> This poses a huge challenge for our nation and its policy makers.

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*If high rates of overweight and obesity are not checked, it is estimated that 83% of men and 75% of women over 20 will be overweight or obese by 2025, creating major implications for health care spending and public health.<sup>3</sup>*

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Overweight and obesity are a major cause of the spiralling demands and rising costs, straining our hospitals and health services. These risk factors can lead to chronic disease and/or limit a person's ability to work or take part in family and community activities.

A PricewaterhouseCoopers Australia study estimated the total costs of obesity in Australia in 2011-12 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. Conversely, by investing in a set of evidence based interventions, estimated to cost \$1.3 billion, there would be a benefit of \$2.1 billion to society after 10 years.<sup>4</sup>

### Why do we need to reduce children's exposure to unhealthy food marketing?

Australian children are being bombarded by unhealthy food\* marketing† in all aspects of their lives – when they watch television, use social media, go to school, play sport or participate in community events.

The World Health Organization (WHO) and numerous public health experts have called for effective controls on unhealthy food marketing to reduce children's exposure and reduce their risk of poor diet, weight gain and chronic disease.

Their proposals are supported by robust evidence that food marketing not only influences children's food attitudes and dietary preferences, it also influences what they eat and contributes to high rates of childhood overweight and obesity.<sup>5</sup> Food marketing also raises serious ethical issues, as children cannot properly understand or interpret marketing messages, or recognise that their intent is to persuade rather than entertain or inform.<sup>6</sup>

While the food and marketing industries claim to be committed to 'responsible' marketing to children pursuant to a range of industry-developed initiatives and codes, these restrictions as they currently stand provide very little protection to children. An overview explaining how this self-regulatory system works is contained in **BOX 2**.

Self-regulation has not been shown to be effective in achieving the policy aim of reducing children's exposure to unhealthy food marketing in any meaningful way in Australia, or anywhere in the world.<sup>7</sup>

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*As poor diet and weight-related chronic disease continue to engulf the nation, we cannot permit the charade of self-regulation continue.*

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\* Any reference to 'food' in this paper includes food and beverages unless otherwise stated or indicated by its context.

† References to 'marketing' in this paper include any method used to advertise, promote or publicise unhealthy food products or food brands.

It is now more than five years since the Australian Government's Preventative Health Taskforce identified the need to reduce children's exposure to unhealthy food marketing. The Taskforce also identified the need to monitor and evaluate the effectiveness of further changes to self-regulation to reduce children's exposure.<sup>8</sup>

It is also nearly two years since the Australian government co-sponsored a resolution by the World Health Assembly which in effect, urged Australia to accelerate the implementation of the WHO's *Set of Recommendations on the Marketing of Food and Non-Alcoholic Beverages to Children*. In its recommendations, the WHO urged Member States to strengthen marketing restrictions to reduce the exposure of children to, and the power of unhealthy food marketing. It also encouraged Member States to establish systems for ongoing monitoring and evaluation.

## Why has the Obesity Policy Coalition released this report?

In 2012 the Obesity Policy Coalition investigated and reported on the failure of self-regulation to reduce children's exposure to unhealthy food marketing.<sup>9</sup> These flaws remain and have not been addressed. The report, *Exposing the Charade: The failure to protect children from unhealthy food advertising*, demonstrated:

### ► Major loopholes

- 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 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 healthy dietary choices are vague and unclear

### ► Self-interest dictates

- 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 no independent oversight

- there is a blatant conflict of interest in self-regulation which clearly undermines its effectiveness
- there are no meaningful sanctions for breaches
- there is no evidence that self-regulation has reduced children's exposure to unhealthy food marketing

## Australians want governments to regulate unhealthy food marketing to children

Australian parents and other consumers want governments to intervene and take the steps urgently needed to protect children from unhealthy food marketing.

A national survey conducted by Cancer Council Victoria in 2012, of 1,521 adult grocery buyers, found:

- 87% wanted the government to regulate unhealthy food advertising on free-to-air-TV
- 77% supported a ban on unhealthy food advertising at times when children watch TV
- 87% wanted restrictions on unhealthy food advertising on children's websites
- 81% supported restrictions on the use of toys and give-aways to promote unhealthy food
- 69% supported restrictions on unhealthy food sponsorship of children's sporting events.<sup>10</sup>



## BOX 2

### Overview of the self-regulatory system in Australia

While some broadcasting codes cover children's programming on television in Australia,<sup>11</sup> the rules controlling unhealthy food advertising to children are largely left to a national system of food and advertising industry self-regulatory codes and initiatives. These purport to set standards for ethical advertising of food to children.<sup>12</sup>

The Advertising Standards Bureau ('Bureau') administers the codes, including those developed by the Australian Association of National Advertisers (AANA), which relate to community standards and contain certain requirements for marketing aimed at children (collectively: 'AANA codes').<sup>13</sup> The Bureau also administers codes specifically developed for food and beverage advertisers by the Australian Food and Grocery Council (AFGC). These codes comprise the Responsible Children's Marketing Initiative (RCMI), which applies to grocery

producers, and the Quick Service Restaurant Initiative for Responsible Advertising and Marketing to Children (QSRI), which applies to several large fast food chains.<sup>14</sup>

The RCMI and QSRI apply to marketing in certain types of media, including free-to-air Australian television. The stated objectives of these initiatives include to reduce marketing to children for food and beverage products that do not represent healthier choices.

The public can make complaints to the Bureau about alleged breaches of the AANA codes, RCMI and QSRI. The Bureau can refer them for consideration to the Advertising Standards Board, which is the associated decision-making body responsible for adjudicating complaints and disputes. The Board has no statutory authority, cannot impose sanctions and has no enforcement powers, however industry subscribers to the codes do abide by the Board's decisions in practice.



## Section 2

# Findings – Industry has weakened its voluntary regulations for protecting children

### Weakness 1: The food industry has loosened its definition of healthy food

Prior to 2014, the Australian Food and Grocery Council's (AFGC) code known as the Responsible Children's Marketing Initiative (RCMI) required that food marketing to children should promote "healthy" dietary choices.

The AFGC changed the requirement in January 2014 so that products advertised to children would only have to meet the definition of 'healthier' dietary choices. Unlike the term "healthy", the term 'healthier' is a relative expression that is not tied to any objective standard of health.

#### Each manufacturer sets its own criteria for what constitutes a 'healthier dietary choice'

Under the RCMI companies are allowed to set their own nutritional criteria to define a 'healthier' dietary choice according to each company's individual 'company action plan'.

The RCMI requires that the criteria must be based on 'scientific or government standards', however there is no requirement that they be based on current research or on Australian standards. This has led to companies using widely varying definitions of what they consider to be 'healthier' food.

*Foods considered unhealthy by the WHO, as well as government and scientific food standards, can fall into the 'healthier' category for the purposes of food marketing.*

A recent Cancer Council NSW study revealed food companies that have signed up to the RCMI are stretching the meaning of 'healthier' beyond a reasonable interpretation of the word.

The study compared the food companies' own definitions for 'healthier' food against the robust and independently developed nutrient standards defining healthy food used in Australian food labelling by the regulator - Food Standards Australia New Zealand.

The study found that, considering all advertisements, the advertisements by RCMI signatories were more likely to promote products that failed health standards (68%) than passed (32%), while the number of advertisements by non-signatories that failed health standards (49%) was similar to the number that passed (51%).<sup>15</sup>

The Obesity Policy Coalition has lodged several complaints about advertisements that fail to comply with the codes, including relating to the nutritional value of the product.

#### Coco Pops and Paddle Pops are considered 'healthier dietary choices'

In response to several complaints about advertising for Coco Pops and Paddle Pops since 2012, the Board has accepted advertisers' claims that these foods are 'healthier dietary choices' in accordance with their company action plans.<sup>16</sup>

In each case, the Obesity Policy Coalition argued in its complaint that the amount of sugar these products contributed to children's diets per serve (2 teaspoons or 36.5% by weight for Coco Pops and up to 3 teaspoons or 20% by weight for certain Paddle Pops) was not consistent with WHO recommendations.



*A healthier dietary choice, despite being 36.5% sugar.<sup>18</sup>*

The WHO recommends that free sugar\* intake should be less than 10% of total energy intake, and that levels of 5% or less (around 6 teaspoons per day for an adult, less for a young child) are recommended for extra health benefits.<sup>17</sup> It was also argued that the products would not be considered 'healthier dietary choices' by reference to the *Australian Dietary Guidelines 2013*, which recommend that intake of food and drinks containing added sugar should be limited.

\* The WHO defines "free sugars" to include monosaccharides and disaccharides added to foods and beverages by the manufacturer, cook or consumer, and sugars naturally present in honey, syrups, fruit juices and fruit juice concentrates

Nevertheless, despite the authoritative force of the international and domestic governmental standards for dietary sugar consumption relied on by the Obesity Policy Coalition in each instance, both advertisers consistently put forward their own company definitions of 'healthier dietary choices', as permitted under the RCMI to legitimise the marketing of high sugar products to young children.

*Coco Pops are a "healthier choice" according to Kellogg's criteria, yet they receive only 2 out of 5 stars under the government's Health Star Rating food labelling system.*

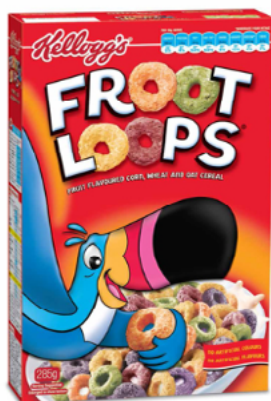
These examples highlight how far the companies' nutrition standards deviate from Australian and international standards, and contemporary scientific evidence about nutrition.

The approach taken to defining 'healthier dietary choices' also varies across processed food companies. For example:

#### ► Kellogg's definition

Kellogg's self-imposed definition requires that products advertised to children under 12 must contain no more than 2 grams of saturated fat per serve, no more than 12 grams of added sugar per serve or no more than 230mg of sodium.

In real terms, this means that Kellogg's children's cereals containing up to 38% of sugar by weight (in the case of Froot Loops) are considered by the company to be 'healthier dietary options' appropriate for marketing to children using recognisable characters.



*A healthier dietary choice according to Kellogg's Company Action Plan, yet it receives only 2 stars under the government's Health Star Rating food labelling system.<sup>18</sup>*

#### ► Unilever's definition

Unilever, the manufacturer of Paddle Pops, which uses promotional characters including the Paddle Pop Lion, defines 'healthier dietary choice' by reference to the *Fresh Tastes @ School NSW Healthy School Canteen Criteria* (Criteria) which promotes healthy food choices in schools.

Under the Unilever Company Action Plan, products are considered 'healthier dietary choices' suitable for marketing to children where they fit within the 'green' or 'amber' categories, containing less than 300kJ (energy) per serve, and less than 100mg of sodium (for sugar sweetened drinks and ices). There is no upper limit for sugar content.

This means that Streets 'Trop-o-saurus Slime' Paddle Pop icy poles, which contained more than 3 teaspoons of sugar per serve (equivalent to 20% sugar by weight), were considered appropriate to be marketed to children under the codes.<sup>19</sup>

This permissive definition of 'healthier' also extends to Paddle Pop 'Dragon Poppers'. Promoted as 'topped with exciting popping candy', they contain 298kJ of energy per serve, which comes largely from sugar, a mere 2kJ short of being classified as 'red' foods under the Criteria, which would preclude them from being sold in schools or marketed to children.<sup>20</sup>



*Paddle Pop's Dragon Poppers are considered to be suitable for marketing to children under the Unilever Company Action Plan.<sup>22</sup>*

**In short, unlike the previous wording, the term 'healthier' is a relative expression. It reflects the lack of standards and rigour applied to the nutrition criteria in the company action plans.**

The change reflects the poor nutrient profile of many signatories' products targeting children, to which it would not be appropriate on any common sense view to apply the term 'healthy'.

The change also highlights the ease with which the codes can be amended by the AFGC to suit the marketing preferences of the companies it represents and maximise their marketing reach, while maintaining the public profile benefit that subsists in claiming 'a commitment to responsible marketing practices'.

A consistent approach is urgently needed. The Food Standards Australia New Zealand nutrient profiling scoring system for identifying foods eligible to make health claims has been rigorously tested and is based on current nutrition standards and scientific evidence. It provides a robust, simple to use model that could be easily adapted to define "unhealthy food" for the purpose of restricting food advertising directed to children.

## Weakness 2: The meaning of marketing “directed primarily to children” has been eroded

**The Advertising Standards Board has always interpreted the meaning of “directed primarily to children” very narrowly.**

The food and advertising industry’s regulatory codes aimed at protecting children from unhealthy food marketing only cover marketing that is ‘directed primarily to children’. The codes do not apply to marketing directed at adults, or adults and children.

When a complaint about an advertisement is made to the Board, it assesses whether the ad is ‘directed primarily to children’ by looking at the ‘theme, visuals and language’ used.<sup>22</sup>

The codes do not apply if the Board considers the advertisement to be *primarily* directed at parents, to convince them to buy the product for their children (despite the advertised product being intended for consumption by children and being promoted in a way that also appeals to children).<sup>23</sup> This means that although the codes purport to protect children from being influenced by unhealthy food marketing, they do not apply to material that *actually has this effect*, only to marketing *intended* to have this effect.

As discussed in Exposing the Charade, this means that a huge amount of child-oriented, influential marketing is not covered by the codes.

**However, in a rare win for health groups in 2013, the Board rejected arguments by Kellogg’s that a Coco Pops advertisement was designed to evoke nostalgia and directed to adults.**<sup>24</sup>

In the ad the small chocolate Coco Pops (with childish giggling voices) played ‘Marco Polo’ in a bowl full of milk, crying out playful expressions including ‘fish out of water’.

Kellogg’s conceded Marco Polo had been enjoyed by children for generations, but argued the imagery was used ‘to prompt nostalgic recollections of main grocery buyers regarding the “fun” times they may have experienced during their own childhood...’

The Board disagreed, finding that objectively weighed, the elements of the ad as a whole would be of principal appeal to children, and therefore was directed primarily to children. Kellogg’s withdrew the advertisement Australia-wide given it did not actively promote good dietary habits or physical activity, as required under the RCMI.

**The release of the the new Australian Association of National Advertisers (AANA) Code of Advertising and Marketing Communications to Children Practice Note (see BOX 3) soon followed, demonstrating how easy it is for industry to manipulate the Codes and how even limited protections can be easily eroded.**

The new Practice Note provided that ‘Marketing communication which appeals to an adult using imagery reminiscent of childhood may be directed to adults and not to children’. These notes provide guidance to advertisers and the Board on interpretation of the Codes.

The language of the Practice Note in relation to ‘nostalgia’ closely echoes the argument advanced by Kellogg’s unsuccessfully in the ‘Marco Polo’ decision described above.

**Advertisers (including Kellogg’s) have since relied on the Practice Note with great success.**

Advertisers have since used the Practice Note to defend themselves against complaints that their unhealthy food ads used animation, animals and childish themes likely to appeal to children.

For example, Kellogg’s successfully relied on the Practice Note in response to a complaint by the Obesity Policy Coalition about a Coco Pops ad in 2014 (the ad was very similar to the ‘Marco Polo’ ad that was previously rejected by the Board).

The advertisement featured a ‘breakfast making contraption’ with animated clouds, spoons, cogs and musical instruments, which the advertiser argued was ‘somewhat old fashioned, featuring wooden instruments... and is designed to appeal to [the main grocery buyer’s] sense of nostalgia and not young children’.

The Board agreed with the advertiser and dismissed the complaint.<sup>27</sup>



Kellogg's Coco Pops, Marco Polo ad, complaint upheld<sup>25</sup>



Kellogg's Coco Pops “get mornings done” ad (2014, complaint dismissed).<sup>26</sup>



### BOX 3

#### AANA Practice Note (April 2014)

The Practice Note introduced a range of guiding principles that appear to increase the range of marketing activities that may be used by an advertiser to appeal to children. It provides that

- ▶ the codes do not cover 'marketing communications for toys or child entertainment which can be enjoyed by children but which are directed to adults or parents to purchase the toy or entertainment' (regardless of whether they are also of strong appeal to children).
- ▶ 'marketing communication which appeals to an adult using imagery reminiscent of childhood may be directed to adults and not to children'.

This AANA Practice Note was introduced by the industry body without oversight or consultation, in apparent response to unfavourable rulings by the Board in relation to certain advertising.

The Practice Note was also successfully relied upon in response to a complaint about Wonka Cookie Creamery chocolate products, where the advertiser argued that an animation sequence referencing magical and whimsical themes from the children's story Willy Wonka, were designed to appeal to an adult's sense of nostalgia for childhood.<sup>28</sup>

While a narrow interpretation of 'directed primarily to children' was always applied by the ASB, its interpretation has been further confined by this unilateral industry move.

The willingness of industry to respond to complaint outcomes considered unfavourable to manufacturers by simply changing the rules highlights the lack of accountability within the self-regulatory system.



Wonka Cookie Creamery chocolate TV advertisement (complaint dismissed)<sup>29</sup>

### Weakness 3: Complaints system lacks transparency and accountability

A number of decisions by the Board since 2012 demonstrate the ongoing lack of accountability, accessibility and transparency in the complaints process administered by the Board.

#### First barrier for consumers: the process for lodging a complaint is complex, fraught with delay and can be expensive

Consumers who want to lodge a complaint about an advertisement must first go to the Board's website to answer seven questions to determine whether the issue is within the Board's remit. Complainants must then identify the relevant code and issues involved in an online form.

It can then take the Board months to make a decision. For example, a complaint made in May 2015 about a Fanta TV ad and app was upheld two months after the initial complaint was made. A complaint to the Board in 2013 about an ad for Mondelez Oreo cookies (Wonderfilled ad) was initially dismissed, but following an application to the Board for independent review, was ultimately upheld more than three months after the initial complaint was lodged.

Between the time these complaints were made and finally upheld, no action was taken to moderate the influence of the advertisements on children.

Furthermore, to apply for independent review of the Oreo Wonderfilled ad decision, the Obesity Policy Coalition, a not-for-profit organisation, had to pay a \$500 fee. The fee for an individual is \$100, and the fee for advertisers is as high as \$2,000. These fees are refundable only if the review results in the original decision being overturned.



Nabisco (Kraft) Oreo Wonderfilled TV advertisement (2013, complaint initially dismissed but upheld on review)<sup>30</sup>

### Second barrier for consumers: process of investigating complaints is not transparent or procedurally fair

In response to the initial complaint about the Oreo Wonderfilled ad, the advertiser relied on a report from an expert psychologist, which cited evidence that the advertisement would not be readily understood by children under the age of 11.<sup>31</sup>

The Obesity Policy Coalition made numerous requests to the Board that the report be provided to it (to enable it to assess and respond to the material). But the report was not provided and as a result its case was disadvantaged by such lack of transparency and arbitrary procedure.

### Third barrier for consumers: food companies remain unaccountable for breaching the codes due to absence of sanctions

The Obesity Policy Coalition complained to the Board about an ad for Peter's 'Zombie Guts' and 'Zombie Snot' icy-poles. The Board wrote to the Obesity Policy Coalition to advise that although the complaint raised issues relevant to the codes, the complaint would not be considered because by the time it reached the Board, the ad campaign had ended.<sup>32</sup>

This does not preclude the campaign being run in the future and undermines the important deterrent effect of determining complaints.



Image from Peter's Zombie Guts and Zombie Snot icy-poles ad broadcast on Foxtel in October 2013.<sup>33</sup>

No sanctions can be imposed on companies for breaching the codes. This means there is no disincentive for advertisers to repeatedly test the limits of the codes and, in the case of short campaigns that will be over before the Board may have the chance to consider any complaints; ignore them entirely.

### Fourth barrier for consumers: many food companies refuse to take part in voluntary codes covering food ads to children

Many food advertisers have refused to sign up to their own industry's voluntary system of codes governing food marketing to children.

Unlike other self-regulatory systems, such as the Alcohol Beverages Advertising Code scheme, the Board refuses to consider complaints about non-signatories.<sup>34</sup>

For example, between 2012 and 2014, ads for Mamee Noodle Snacks, a high fat, nutrient poor product, were broadcast on TV, using cute blue monsters to promote the product. The product's advertiser had not signed up to the codes, making the company unaccountable under the food industry's code, the RCMI.



Mamee noodle snacks TV ad, not covered by the RCMI<sup>35</sup>

Online, the Wizz Fizz website, which promoted Wizz Fizz confectionary items to young children using characters, cartoon monsters, 'comps and promos' and games, was also not covered by the RCMI for the same reason.



Whiz Fizz website, not covered by the RCMI<sup>36</sup>

This lack of coverage of the codes creates an uneven playing field for businesses and provides incentives for the signatory companies to stretch the rules under the codes.

The uneven playing field for signatory companies is likely to get worse as more non-signatory companies enter the Australian market under the globalisation of the processed food industry. Consequently larger numbers of food companies are likely to target more Australian children with ads for unhealthy food products.

## Section 3: Conclusions – A way forward

### **Children's exposure to unhealthy food marketing has not been reduced in any meaningful way since 2012**

The lax definitions, unilateral changes and lack of accountability and transparency of the industry self-regulatory codes have meant that Australia's system for protecting children from unhealthy food marketing has gone backwards.

Government initiatives to promote healthy eating messages to children and families are being sabotaged by the self-regulatory system's abject failure to reduce unhealthy food marketing to children.

The food and advertising industries are only motivated to limit their marketing (and potentially, therefore, their profits) to create the appearance of corporate responsibility and ward off government regulation.

The conflict of interest faced by industry in self-regulating was recognised when the overarching broadcast regulation legislation, the Broadcasting Services Act 1996 (Cth) (Act), was introduced into parliament in 1992. In the Explanatory Memorandum to the Act it was noted that: 'frequently community's interests and concerns will conflict with the commercial entity's responsibility to its shareholders to maximize profits, a factor requiring special consideration by the Australian Communications and Media Authority (ACMA) in administering regulation of broadcasting.'<sup>37</sup>

Importantly, there are mechanisms and laws that can be used by governments to find a way forward. Australia has legislative and regulatory structures that set out a clear mandate for the national broadcast regulator, the ACMA, to intervene and protect children from broadcast marketing that may be harmful to them.

Australia's national broadcasting regulator, the ACMA, should take action to protect children from unhealthy food marketing.

Under the Act, the ACMA must prioritise the protection of children from exposure to program material which may be harmful to them<sup>38</sup> including marketing and sponsorship material.<sup>39</sup> The ACMA has a clear legislative onus to investigate and monitor the operation of broadcasting codes to assess whether 'appropriate community safeguards' are in place.

As unhealthy food marketing to children has been identified by Australian and international experts as a key contributor to poor dietary health, and evidence of the failings of self-regulation continues to emerge, the ACMA has a clear obligation to undertake independent monitoring to inform itself as to the nature and extent of children's exposure to unhealthy food advertising on television. It cannot continue to take the view that the evidence is unclear or that self-regulation is providing appropriate safeguards.

The Australian government's engagement in the development of relevant international standards and resolutions also supports urgent investigation and monitoring of the nature and extent of food marketing to our children.



*McDonald's Hoop Time<sup>40</sup>*



## Recommendations - a plan for action

The message is clear. Australia urgently needs a comprehensive approach to reducing children's exposure to unhealthy food marketing and reducing the power of these marketing communications to children.

*Monitoring by the ACMA of children's exposure to unhealthy food marketing on television in Australia must be a key first step in developing government led and comprehensive regulations to protect children.*

**As a first step**, the ACMA should exercise its powers under the Act to monitor children's exposure to unhealthy food advertising on television.

**Government led reform must also be prioritised.** If Australian governments remain unwilling to regulate unhealthy food marketing to children at this stage, they should at the very least encourage the broadcasting, advertising and food industries to strengthen their existing approaches.

In particular, any regulations, codes or initiatives going forward should be comprehensive and aimed at reducing children's 'exposure' to unhealthy food marketing.

To achieve this they must:

- 1. Clearly define key terms**, including 'unhealthy food', 'unhealthy food marketing', 'children' and 'directed to children'.

- 2. Consistently and transparently define "unhealthy food"** in accordance with government and scientific guidelines

- 3. Apply to all forms, media and locations of marketing** of unhealthy food (including brand marketing) that is directed to, or appeals to children.

- 4. Restrict advertising content and placement.** They must prevent the use of techniques that appeal to children when marketing unhealthy food, as well as ad placement in mediums that attract children, including on free to air television during **times when large numbers of children are likely to be watching** (i.e. weekdays 6–9am and 4–9pm, and weekends and school holidays 6am–12pm and 4–9pm).

- 5. Ensure compliance is regularly monitored** so that identification of breaches is not entirely dependent on complaints from the public. Meaningful sanctions capable of deterring and penalising breaches must also apply.<sup>41</sup>

### **It is time to End the Charade and offer meaningful controls that will help protect our children's health!**

By restricting unhealthy food marketing to children as part of a comprehensive approach to improving children's diets and reducing rates of overweight and obesity, Australian governments can make great gains in their efforts to stem the rise of obesity and improve public health now and into the future.





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