



Consumers Health
Forum **OF** Australia

SUBMISSION

**Department of Health and Aged
Care Consultation: Options to
limit unhealthy food marketing
to children**

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Consumers Health Forum of Australia (2024)
*Submission to DOHAC Consultation on options to
limit unhealthy food marketing to children.*
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Overview & background

Australians' diets are currently sub-optimal, with the majority of people consuming inadequate amounts of core foods and too many discretionary foods. This has negative impacts on population health, including through increased rates of overweight and obesity and a range of associated chronic diseases.

Exposure to marketing for unhealthy foods and drinks can influence food choices and dietary intake. This is especially true in childhood, when children are forming food habits and marketing can be a powerful socialisation agent. Current measures to reduce children's exposure to unhealthy food marketing in Australia are predominantly industry-led and voluntary in nature, with minimal regulatory protections in place.

The Australian Government is investing in a feasibility study on options to limit unhealthy food marketing to children. The study will provide a better understanding of the options available to limit such marketing, including relevant costs and benefits, feasibility, acceptability, impact on priority populations and monitoring and evaluation implications. This work is supported by the National Preventive Health Strategy 2021-2030, National Obesity Strategy 2022-2032 and the National Diabetes Strategy 2021-2030, which all include restricting unhealthy food marketing to children as a policy goal.

Stakeholder views are being sought as part of the study to obtain a better understanding of the impacts of Government action to limit unhealthy food marketing to children. The findings from the consultation will inform the list of policy options to be considered. The costs and benefits of these options will be analysed and inform the final recommendations provided to Government.

The Consumers Health Forum of Australia (CHF) is the national peak body representing the interests of Australian healthcare consumers and those with an interest in health consumer affairs, including health-based research. Over 250 members reflect a broad spectrum of organisations including state-based consumer peaks, condition-specific groups, volunteer patient groups, professional associations, Primary Health Networks (PHNs) and the research community.

CHF works in collaboration with members, national partners and research collaborators to influence policy, programs and services to ensure they are in the consumer and community interest. CHF is pleased to make this submission on behalf of members, in response to this DOHA Consultation.

Note that this consultation was administered as an online survey and this document has been adapted from the CHF submission to that survey.

CHF Submission to online questions

Section 1- Policy Objective

Proposed policy objectives for consultation

Based on the context and evidence outlined above, and through targeted consultation, the following policy objectives are proposed.

- Option 1.1 To reduce children's exposure to unhealthy food marketing and the persuasive power of this marketing (short-term objective, within 1-2 years).
- Option 1.2 To reduce children's exposure to unhealthy food marketing and the persuasive power of this marketing (short-term objective, within 1-2 years) AND to improve children's dietary intakes (medium-term objective, within 3-4 years).

Figure 1- Potential policy objectives proposed in DOHAC Consultation paper (pg. 9)

Q1- Which is the most appropriate policy objective?

Option 1.2

We support policy option 1.2 as per the recommendation of the *Food for Health Alliance*. We support the policy objectives including both a) reducing exposure to and power of marketing and b) improvement in children's dietary intakes, because the latter is the fundamental purpose of making any changes to the former. So if the latter is not deliberately and purposefully being achieved, there is no point doing the former.

We additionally note that a plan needs to be developed, in consultation with consumers and public health experts, around how the policy will be implemented and monitored to review if the objectives are being met.

Section 2- Approach

Proposed policy approaches for consultation

Based on the context and evidence outlined above, and through targeted consultation, the following policy approaches are proposed.

- Option 2.1 Status quo, which relies on a self-regulatory approach whereby food marketing is governed by industry Codes of Practice.
- Option 2.2 A mandatory legislative approach with policy development, monitoring and enforcement led by the Australian Government.

Figure 2- Potential policy approaches proposed in DOHAC Consultation paper (pg. 11)

Q2- Which policy approach has the greatest chance of achieving the policy objective(s)?

We support option 2.2 as per the *Food for Health Alliance* recommendation and strongly recommend a mandatory legislative approach with policy development, monitoring and enforcement led by the Australian Government, as this is essential to ensure the policy is effective.

We strongly oppose retaining the status quo and self-regulation, as the existing status-quo of self-regulation has contributed to the current problems we are facing. Allowing the processed food and/or advertising industries to set their own rules does not effectively protect children from exposure to unhealthy food marketing. This is supported by evidence from around the world, as set out in the consultation paper, and demonstrated by the past and current rules that industry sets, monitors and enforces for itself in Australia.

Section 3- Age definition of children

Proposed child age for consultation

Based on the context and evidence outlined above, and through targeted consultation, the following child age definitions are proposed.

Option 3.1 Children are defined as less than 18 years of age.

Option 3.2 Children are defined as less than 15 years of age.

Figure 3- Potential definitions for age of children proposed in DOHAC Consultation paper (pg. 12)

Q3- Which age definition is most appropriate to achieve the policy objectives(s)?

We agree with the *Food for Health Alliance* and support option 3.1 to define a child as under 18 years.

We note that any policy that did not define children as under 18 years old would fail to reflect international recommendations, would be out of step with wider government regulation relating to children and would not be fit for purpose in achieving the policy objectives to reduce children's exposure to unhealthy food marketing or to improve children's diets. As the consultation paper notes, children of all ages are negatively influenced by unhealthy food marketing, children aged 14-18 years consume the highest amount of unhealthy food and children use and engage more with screen-based media as they get older, with a peak in adolescence. It is critical to include all children in the policy.

We highlight the Australian Government's recent response to the Privacy Act Review Report, where it said it would apply protections to all children under 18 years of age. The same approach should be adopted here.

Section 4- Foods and beverages to be restricted from marketing

Proposed food classification systems for restricting food marketing for consultation

Based on the context and evidence outlined above, and through targeted consultation, the following food classification systems are proposed.

- Option 4.1** A government-led food classification system aligned with national dietary guidance that restricts marketing of unhealthy food products AND food brands that are associated with unhealthy products.
- Option 4.2** A government-led food classification system aligned with national dietary guidance that restricts marketing of unhealthy food products. Marketing of food brands (without referring to a specific product) would be exempt from restrictions.
- Option 4.3** A government-led food classification system aligned with national dietary guidance that restricts marketing of unhealthy food products. Marketing of food brands would only be permitted when a healthy food product owned by the brand was included in the marketing content.

Figure 4- Proposed systems for classifying and restricting for marketing from DOHAC consultation paper (pg. 15)

Q4a- Which food classification approach has the greatest chance of achieving the policy objective(s)?

We concur with the *Food for Health Alliance* and support option 4.1. We recommend a food classification approach that includes all marketing of food brands that are strongly associated with unhealthy food products. If brand marketing is not covered, companies that mostly sell and are essentially synonymous with unhealthy food, like global fast food chains or soft drink companies, will simply replace their unhealthy food advertising with advertising that prominently features their brand either alone or placed with a healthier food in their product line. This will significantly reduce the effect of the policy and may mean that it cannot achieve its objectives.

For example, option 4.2 will allow major fast food brands, sugary drink companies and confectionery companies to advertise in children's social media feeds, on billboards and in prime time television so long as the ads feature only the brand and not a product.

Option 4.3 will allow fast food chains to advertise their brand to children anywhere they want to as long as they show a water and salad wrap somewhere in the advertisement – a product that the child may be very unlikely to purchase and doesn't reflect the brand's top selling products.

To support this policy, an appropriate definition of a 'brand strongly associated with unhealthy food' or similar will need to be developed in consultation with consumers

and public health experts, with careful consideration of how it will apply to different brands in practice. The brands of highest concern are those that are well-known, are frequent advertisers and that are mostly known for unhealthy foods that contribute to poor diets and overweight and obesity, and/or are likely to appeal to children.

Q4b- Which specific food classification system would be most appropriate?

- COAG Interim Guide
- FSANZ Nutrient Profiling Scoring Criteria
- Health Star Rating system
- Other

We defer to the expertise of the *Food for Health Alliance* on this question and support their call to not use any the three listed options but instead develop a new, specific a definition of unhealthy food that:

- reflects the Australian Dietary Guidelines, noting they are currently under review, and best captures foods that are discretionary and/or should be limited in accordance with the guidelines;
- is category based, with clear categories of discretionary food that cannot be advertised at all, including sugary drinks, confectionery, desserts and ice-creams, sweet snacks, drinks sweetened with non-nutritive sweeteners, fast food meals such as burgers, chips, pizzas, fried foods, pies, cakes and others;
- applies appropriate nutrient thresholds to some food categories that can include healthy and unhealthy products, such as breakfast cereals and yoghurts; and
- applies effectively to fast food and meals as well as packaged food.

We note that to achieve this, the COAG National interim guide to reduce children's exposure to unhealthy food and drink promotion (COAG guide) *could* be used as a starting point and expanded and refined in line with those criteria, in consultation with consumers and public health experts. The Australian Government should also refer to other existing category and nutrient threshold based models, such as the World Health Organization nutrient profile models, including one tailored to the Western Pacific Region that Australia, as a region member, was consulted on during development.

Although the COAG guide is a good starting point, we agree it should not be used without further improvement. This is because it excludes some key categories of unhealthy products, including those that are commonly marketed to children, for example high sugar breakfast cereals.

We strongly oppose the use of the Health Star Rating or the FSANZ Nutrient Profiling Scoring Criteria as these have not been designed for this purpose and are unlikely to effectively align with the dietary guidelines, as they permit some foods high in

sugar/salt/saturated fat to achieve a high rating. Evidence shows these models are more likely than other models to permit foods to be marketed.

Section 5- Media platforms, settings and marketing techniques to be restricted

5.1- Television Advertising

Proposed TV food advertising restrictions for consultation

Based on the context and evidence outlined above, and through targeted consultation, the following TV food marketing restrictions are proposed.

- Option 5.1.1 Restrict unhealthy food advertising on TV between 5:30am and 11:00pm. Restrictions apply across all TV services and platforms.
- Option 5.1.2 Restrict unhealthy food TV advertising that is 'directed to children', including in children's programs (C and P programs), on children's channels and during children's peak viewing times (based on the number of children watching). Restrictions apply across all TV services and platforms.
- Option 5.1.3 Restrict unhealthy food advertising on *all* broadcast media between 05:30 and 11:00 pm (all TV services and platforms, radio, cinema, podcasts and music streaming services).

Figure 5- Potential TV advertising restrictions proposed in DOHAC consultation paper (pg. 18-19)

Q5- Which option for restricting TV food advertising has the greatest chance of achieving the policy objective(s)?

We endorse the position of the *Food for Health Alliance* and strongly support option 5.1.3 to restrict all unhealthy food marketing on all broadcast media between 5.30am and 11pm. As outlined in the consultation paper, evidence shows the highest numbers of children watch TV during these hours, and the policy should protect children during those times.

We agree this policy option should apply to radio and cinema, as well as all streaming services, subscription and catch up TV, radio and movie services (unless they are captured by a broader restriction on digital marketing). It should also apply to podcasts and music streaming services. It is important to ensure that regulation is comprehensive, future proofed and extends to similar platforms to those where there is evidence of exposure and impact, where it can reasonably be assumed that a similar effect would be seen.

We do not support the option to restrict only TV advertising that is directed to children, as this is unlikely to effectively protect children at the times they are likely to be watching. A focus on TV alone will also not be sufficient to effectively protect children and should be expanded to all broadcast media as listed above. A comprehensive approach that is simple to apply will best achieve the policy objectives.

5.2- Online marketing

Proposed online media food marketing restrictions for consultation

Based on the context and evidence outlined above and through targeted consultation the following online media food marketing restrictions are proposed.

- Option 5.2.1 Restrict all 'paid for' (monetary and non-monetary) marketing for unhealthy foods through online media. Restrictions apply across all online communication technologies.
- Option 5.2.2 Restrict *all* marketing for unhealthy foods through online media. This includes all marketing that has been 'paid' for (monetary and non-monetary) and 'non-paid' marketing where a company has acted to promote an unhealthy food (e.g., through sharing user content or encouraging user generated content with the intention of promoting an unhealthy food or brand).

Figure 6- Potential marketing restrictions for online media proposed in DOHAC consultation paper (pg. 22-23)

Q6- Which option for restricting online food marketing has the greatest chance of achieving the policy objective(s)?

We agree with the *Food for Health Alliance* and support option 5.2.2 to restrict all paid and non-paid unhealthy food marketing on online media. As the consultation paper outlines, children spend significant amounts of time online, are exposed to large amounts of unhealthy food marketing during online activity and are negatively influenced by it.

Online or digital media is an important part of children's lives. They use it for education, to access information, to communicate with friends and family and for leisure time. Children use digital media in much the same way that adults do, and we know that they use many of the same platforms. This means that a broad restriction on all digital marketing of unhealthy food will best protect children online.

We do not support allowing unpaid advertising of unhealthy food online as this may result in some significant gaps. For example, we highlight the consultation paper's explanation that the websites and social media pages of companies that make unhealthy food are popular with, and often targeted to, children. If this is permitted, it is likely that brands will expand this further and increase unpaid advertising online to the greatest extent possible. Such content can promote engagement and then be shared online without payment by users through their social media networks, amplifying its reach and impact. The policy must ensure that this type of marketing is not permitted.

5.3- Outdoor Advertising

Proposed outdoor food advertising restrictions for consultation

Based on the context and evidence outlined above and through targeted consultation the following outdoor food advertising restrictions are proposed.

- Option 5.3.1 Restrict unhealthy food advertising on all outdoor media.
- Option 5.3.2 Restrict unhealthy food advertising on outdoor media at government-owned and managed places, on public assets, within 750m around schools and along major transport corridors.

Figure 7- Potential marketing restrictions for outdoor advertising proposed in DOHAC consultation paper (pg. 25)

Q7- Which option for restricting outdoor food advertising has the greatest chance of achieving the policy objective(s)?

We endorse the *Food for Health Alliance's* support of option 5.3.1 to restrict unhealthy food marketing on all outdoor media, and agree with their recommendation this be broadly defined to include all public spaces and events. Limiting protection to near schools and/or government-controlled assets will not best protect children as although these are important settings, it is not comprehensive of all the places children exist and spend time in the community. Children see unhealthy food marketing placed outdoors as they travel and go about their daily lives in their community, and the policy should apply to all public advertising that children may see, regardless of where it is placed.

We agree this policy should include all public outdoor advertising, as well as public transport vehicles and infrastructure, education, healthcare, sporting and recreation facilities, cultural institutions, for example libraries, museums and galleries, sporting, cultural and music events, and shopping centres. The policy should also extend to marketing on retail outlets and restaurants that is displayed so it can be seen from the street.

5.4- Product packaging

Proposed food packaging restrictions for consultation

Based on the context and evidence outlined above and through targeted consultation, the following food packaging marketing restrictions are proposed.

- Option 5.4.1 Restrict on-pack marketing considered to be 'directed to children' on unhealthy foods.

Figure 8- Proposed option for marketing restrictions on food packaging proposed in DOHAC consultation paper (pg. 26)

Q8- Do you support restricting on-pack marketing?

We strongly support option 5.4.1 to restrict child-directed marketing on unhealthy food packaging, as recommended by the *Food for Health Alliance*.

As the consultation paper outlines, product packaging is a common and influential form of marketing to children, with cartoon characters and other features that have strong appeal to children commonly used. The policy must ensure that unhealthy food products cannot use packaging that includes features that are likely to appeal to children, including images, activities, competitions, promotions, characters or prizes that are likely to appeal to children.

5.5- Sponsorship

Proposed food sponsorship restrictions for consultation

Based on the context and evidence outlined above and through targeted consultation, the following food sponsorship restrictions are proposed.

Option 5.5.1 Restrict unhealthy food sponsorship of elite and professional sports, community sports and arts and cultural events involving children as participants

Figure 9- Potential food sponsorship restrictions proposed in DOHAC consultation paper (pg. 29)

Q9- Do you support restricting sports and arts food sponsorship?

We support the *Food for Health Alliance's* recommendation and support option 5.5.1 to restrict unhealthy food sponsorship of sports, arts and cultural events. Children should be able to play sport, watch their favourite sports stars play and go to art and cultural events without being bombarded with marketing for unhealthy food.

This policy should stop all sponsorship by brands that are strongly associated with unhealthy food, with an appropriate definition being developed in consultation with public health experts including consumers. All forms of sport sponsorship by unhealthy food brands at all levels, from children's sporting activities to professional sports, should be restricted. As outlined in the consultation paper, Australian children have significant engagement with sport as both players and as spectators, and unhealthy food sponsorship is common at the community level and extensive at the professional level.

We recognise the importance of children's and community sport to population health, and the challenges of securing funding to support those organisations. This does not mean, however, that the processed food industry should be enabled to target unhealthy food marketing at children. Although, as the consultation paper notes, sponsorship income is not a major proportion of revenue for community sport organisations, we encourage government to consider and implement alternative funding proposals, noting these are also set out in the consultation paper.

We note that providing funding to particularly ensure community sport and children sport are able to operate is a critical task for government, given the increasing reliance on not only unhealthy food advertising but gambling/sports betting has starkly negative effects on the health and wellbeing of consumers and the community.

The policy must also extend beyond sport to arts and cultural events. This is particularly important to ensure the policy is future proofed, and to stop expansion of unhealthy food sponsorship into new areas.

5.6- Retail Marketing

Proposed food retail marketing restrictions for consultation

Based on the context and evidence outlined above, and through targeted consultation, the following retail marketing restrictions are proposed.

- Option 5.6.1 Status quo, whereby food marketing within food retail outlets is determined by the retail industry.
- Option 5.6.2 Restrict placement-based promotions of unhealthy foods within food retail outlets (e.g. end-of-aisle, check-outs).
- Option 5.6.3 Restrict price-based promotions of unhealthy foods within food retail outlets (e.g. multi-buys, temporary price promotions).
- Option 5.6.4 Restrict placement-based and price-based promotion of unhealthy foods within food retail outlets.

Figure 10- Potential marketing restrictions in food retail environments proposed in DOHAC consultation paper (pg. 32)

Q10- Which option for restricting retail marketing has the greatest chance of achieving the policy objective(s)?

We endorse the *Food for Health Alliance's* position of supporting option 5.6.4 to restrict both placement and price-based promotion of unhealthy food within in-store and online retail environments.

We agree with their recommendation to introduce:

- restrictions to ensure that retailers cannot place unhealthy food in prominent locations in store, such as near the point of sale (checkouts) and at the ends of aisles, and online, such as at the top of search results or prominently featured on a webpage or mobile app; and
- restrictions on price promotions designed to encourage purchasing of unhealthy foods. This should include restrictions on temporary price discounts and multibuys (eg. Buy 2 for \$5) for unhealthy foods.

Noting that any restrictions on retail marketing must apply equally to the in-store and online environments, including both apps and webpages.

Although this policy focuses on unhealthy food, it is also critically important that the Australian Government also introduces policies to increase affordability and accessibility of healthy foods across Australia, with particular focus on priority populations, including Aboriginal and Torres Strait Islander people, people in low socio-economic groups and people living in rural and remote areas. It is well known that the unaffordability of 'healthy' food options is a strong contributor to consumers food purchasing choices and thus overall diet and health.

Restrictions on price promotions are reflected in the National Obesity Strategy and restricted promotion of unhealthy food and drinks at the point of sale and end of aisle in prominent food retail environments is included in the National Preventive Health Strategy. Evidence shows that unhealthy food and drinks are more likely to be price promoted than healthier foods, with larger discounts applied, and that price promotions lead people to buy more unhealthy food than they usually would, and do not save consumers money overall (See the [Obesity Evidence Hub page on unhealthy food price promotions](#) for more detail on the evidence).

We note that this policy should also be expanded to ensure it is future-proofed and captures all forms of unhealthy food marketing within in-store and online retail environments, such as on-shelf promotions, interactive displays and promotions within branded apps.

5.7- Marketing directed to children

Proposed restrictions on marketing 'directed to children' for consultation

Based on the context outlined above and through targeted consultation the following restrictions on marketing 'directed to children' are proposed.

Option 5.7 Restrict direct unhealthy food marketing to children and any unhealthy food marketing that uses promotional techniques with child appeal across all media and settings. This policy would be combined alongside time and media- or settings-based food marketing restrictions (e.g. Sections 5.1 to 5.6) to cover marketing not restriction under other provisions.

Figure 11- Potential additional restriction on 'marketing directed to children' from DOHAC consultation paper (pg. 33)

Q11- Do you support restricting unhealthy food marketing 'directed' to children, in addition to policy options 5.1-5.6?

Yes, we concur with the *Food for Health Alliance* and support option 5.7 to ensure that there are no gaps that allow the processed food industry to use marketing tactics that target children. We support this as a restriction *in addition* to the other policy options.

It is important to include a specific restriction on marketing targeting children in addition to other setting and media based restrictions that focus on children's

exposure. That is because, even if all of those policies set out above were implemented together, there may still be some gaps. The exact nature of those gaps cannot be identified until the policy elements and details are finalised.

It is important that marketing techniques that target children should not be permitted. We concur with the *Food for Health Alliance* that this includes, but is not necessarily limited to:

- marketing that uses any feature or technique that is likely to appeal to children including images, activities, characters and prizes, including on product packaging.
- marketing in any physical place or form of media that is primarily for children.
- marketing sent or displayed directly to a child by email, text message or in any other way.

5.8- Priority ranking for food marketing regulation

Q12- Which media and settings do you see as the top priority for action? Please rank in order of priority.

Media or setting	Priority (1 = highest priority, 2 = second highest priority etc). Or 'not a priority'
TV / Broadcast media	2
Online media	1
Outdoor advertising	5
Product packaging	7
Sports and arts sponsorship	3
Retail marketing	4
Marketing 'directed' to children	6

We endorse the above ranking priority of the media setting as proposed by the *Food for Health Alliance*. We strongly support their call for a comprehensive policy that combines all elements recommended in our response together to effectively protect children from exposure to unhealthy food marketing. It is important to consider the likely shift in marketing practices that will occur if restrictions are introduced in one or two areas and not in others will likely undercut any potential benefits from the regulations. It is critical to design a comprehensive policy that is future-proofed.

While priority could initially be given to those 'high ranked' forms of marketing that children are most exposed to and that are most likely to impact children, we concur with the *Food for Health Alliance* that a comprehensive package of restrictions that are evidence-based is ultimately required across all seven identified media setting.

Our prioritisation is on the assumption that the policy options we have supported will be adopted in each media/setting and reflects the options that we agree will have the most significant impact on children's exposure to unhealthy food marketing, on reducing the power of that marketing and on children's diets.