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Public Consultation: Feasibility study on options to
limit unhealthy food marketing to children

March 2024

About The Royal Australasian College of Physicians (RACP)

The RACP trains, educates and advocates on behalf of over 21,000 physicians and 9,000 trainee physicians, across Australia and Aotearoa New Zealand. The RACP represents a broad range of medical specialties including general medicine, paediatrics and child health, cardiology, respiratory medicine, neurology, oncology, public health medicine, infectious diseases medicine, occupational and environmental medicine, palliative medicine, sexual health medicine, rehabilitation medicine, geriatric medicine, and addiction medicine. Beyond the drive for medical excellence, the RACP is committed to developing health and social policies which bring vital improvements to the wellbeing of patients and the community.

We acknowledge and pay respect to the Traditional Custodians and Elders – past, present and emerging – of the lands and waters on which RACP members and staff live, learn and work. The RACP acknowledges Māori as tangata whenua and Te Tiriti o Waitangi partners in Aotearoa New Zealand.



The RACP's perspective

The RACP thanks the Department of Health and Aged Care (DoHAC) for the opportunity to respond to the public consultation: *Feasibility study on options to limit unhealthy food marketing to children*.

Australia's paediatricians and physicians are deeply committed to advising the Australian Government on a fit-for-purpose national regulatory system which upholds the health and wellbeing of children. As part of this commitment, we have long called for effective national regulation to reduce and prevent the marketing of junk food and sugary drinks to children, most recently through our SwitchOffTheJunk [campaign](#).

The RACP supports a mandatory legislative approach, led by the Australian Government, to reduce children's exposure to unhealthy food marketing and improve children's dietary intakes.

Our responses to this consultation consolidate and draw upon existing RACP positions, coupled with supplementary evidence. We trust the responses will support meaningful and robust regulatory action, noting that the international evidence base points to the ubiquity of junk food and drink marketing as well as its harmful outcomes for children's dietary preferences, consumption and, ultimately, their health and wellbeing.¹

The RACP trusts this feedback will support DoHAC in assessing and determining the rank and priority of the proposed policy options, as well as their benefits, key barriers and enablers. We look forward to continuing to work constructively with DoHAC to deliver improved health and wellbeing outcomes to Australia's children.

Responses to consultation document

Question - What is your preferred policy objective?

The RACP places importance on both strategic objectives in 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).

The [RACP obesity position statement](#) defines overweight and obesity as physiological responses to unhealthy environments. It states that the underlying macro drivers of obesity are the societal systems (political, commercial, economic, and socio-cultural) which create the obesogenic food and activity environments which in turn interact with people's biological, psychological, social and economic susceptibilities to create unhealthy weight gain.² The RACP considers that initial implementation of the first component of the option (reducing exposure) would support its second component (improving diet) over time.

Children's exposure to unhealthy food marketing can only be reduced if there are no loopholes in the proposed policy response; policy design is crucial. It is also important to establish early and robust monitoring and evaluation systems that can capture multiple potential indicators of policy success. Impact on body weight is expected to take considerable time to be seen and weight can be influenced by many contributing factors.

The RACP also believes that longer term child health and psychosocial outcomes are important to consider in monitoring the overtime efficacy of regulations and resulting change, including complications of childhood overweight and obesity, type 2 diabetes in childhood, direct complications of poor dietary intake such as dental caries and dietary iron deficiency, and stigma related to body weight outcomes.

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

The RACP strongly supports option 2.2

A mandatory legislative approach with policy development, monitoring and enforcement led by the Australian Government.

¹ World Health Organisation, Policies to protect children from the harmful impact of food marketing: WHO guideline, 2023

² RACP Position Statement on Obesity, 2018 [online]; [racp-obesity-position-statement.pdf](#)

The RACP sees this as involving advertising, food and beverage industries being removed from making regulatory decisions of any kind. The regulatory and policy design must be developed by the Government, in consultation with public health experts and without influence by the food, drink and marketing industries.

The regulatory system must maintain strict independence from industry influence across all facets of its operation. The system should be underpinned by legislation, with enforcement support lent by ACMA and, as appropriate, FSANZ, specifically in defining the threshold for healthy and unhealthy products within regulatory scope.

Only a mandatory legislative approach (Option 2.2) would meet contemporary international best practice, with the WHO and UNICEF recently strongly recommending that jurisdictions implement advertising regulations.^{3 4} Only option 2.2 has potential to address the increasing public expectation that harmful food and drink products will not be advertised to children as identified in a recent ACMA community consultation report.⁵

Option 2.1 (status quo self-regulatory approach using industry codes of practice) relies on voluntary conformity. Industry self-regulation via the Australian Association of National Advertisers (AANA) is insufficient. Children are bombarded by junk food advertising despite the AANA encouraging advertisers to avoid depiction of material contrary to 'prevailing community standards on health' in its Code of Practice.⁶ Option 2.1 will see children continue to be exposed to large volumes of unhealthy product advertising.

Our experience with the Health Star Rating System (HSR) reveals the limitations to voluntary industry uptake of policy controls that could reduce sales or encourage product reformulation for the food and beverage industry. HSR uptake has been uneven between food suppliers and producers and certain products that should display an HSR to alert consumers to their harmful dietary contents are less likely to include an HSR rating.⁷ Similarly, the ubiquity of unhealthy food and drink advertising under the status quo clearly indicates that the current approach is not working.

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

The RACP advocates for a regulatory system applicable to all advertising, in all forms, for children under age 16 years at minimum. We support age 18 as a higher age threshold aligned with the legal definition of adulthood.

Sound reasons for regulations that are inclusive of advertising viewed by all adolescents up to adulthood exist:

- Adolescents' stage of brain development makes them highly susceptible to marketing overall, especially marketing for tempting products that require well-developed self-regulatory abilities to resist.
- Newer forms of marketing – such as product placements and social and mobile media marketing – are often disguised as entertainment or messages from friends, making them more difficult to recognise. Much of this marketing takes advantage of adolescents' unique developmental vulnerabilities.
- Companies have increased marketing to children 12 years and older for some of the least healthy food and beverage products.
- Children ages 12 to 14 face heightened risk from the influence of unhealthy food marketing due to their greater independence and higher levels of media consumption.
- Children ages 12 and older also have some of the highest rates of consumption of unhealthy advertised products.⁸
- Dietary patterns established in adolescence up to early adulthood may inform dietary patterns throughout the life course.

³ World Health Organisation, Policies to protect children from the harmful impact of food marketing: WHO guideline, 2023

⁴ UNICEF, Taking action to protect children from the harmful impact of food marketing: a child rights-based approach, 2023

⁵ ACMA, What audiences want – Audience expectations for content safeguards A position paper for professional content providers, June 2022

⁶ Australian Association of National Advertisers (AANA) Code of Ethics [online]; [The AANA Code of Ethics sets the standard for advertising in any medium.](#)

⁷ Shahid M, Neal B, Jones A. Uptake of Australia's Health Star Rating System 2014-2019. *Nutrients*. 2020 Jun 16;12(6):1791.

⁸ Yale Rudd Centre for Food Policy and Obesity, Policy Briefing, Older but still vulnerable: All children need protection from unhealthy food marketing, 2014

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

The RACP supports 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.

Brand marketing must be included for the system to reduce children's exposure to unhealthy marketing. Failure to include brand marketing will severely undermine the system. Brand marketing and product marketing are both vital to promoting and growing a loyal customer and business base in marketing.⁹ Brand marketing is known to evoke emotions and associations, which can then influence perceptions of products sold by the brand and resultant product purchases. This is especially problematic for children who have already been exposed to junk food product-specific marketing and consume or prefer junk food. Brands influence despite the regulation of product marketing. We would also expect advertisers to replace product with brand marketing.

RACP partner, the Food for Health Alliance (FHA) proposes the following measures to reduce brand advertising:

- The best option will be to define brands strongly associated with unhealthy products, and to restrict all marketing of those brands in the same way that unhealthy food marketing would be restricted. This definition can then also be used in contexts where brands are typically promoted without specific products, for example sponsorship. It also targets only those brands strongly associated with unhealthy food and still allows other food brands to use brand marketing.
- The definition of a 'brand strongly associated with unhealthy food' could be based on a qualitative assessment by an expert panel, or a quantitative assessment based on the highest selling items or the overall product catalogue. Further work, including consultation with public health stakeholders, should be done to develop this definition, considering how it will apply to different brands in practice.
- Brands strongly associated with unhealthy products but which also sell healthier items should be considered within the scope of the policy. If unaddressed, we are likely to see major global corporations continue to prominently market their brands via alternative products. For example, soft drink companies will likely continue marketing their brand in the same way, just using their 'diet' or 'no sugar' products, and fast-food chains will likely continue marketing their brand while featuring a healthier version of a fast-food meal. This is important to consider in the context of evidence that shows that, when a fast-food brand advertises a healthier meal, it does not increase the chance that a child will choose a healthier option, but instead increases children's liking for fast food generally.

Question - Which food classification system would be the most appropriate?

In the RACP SwitchOfftheJunk Campaign we propose that FSANZ clearly define both healthy and unhealthy products, and processed and ultra-processed products, for media regulatory purposes, given its oversight of Australia New Zealand Food Standards Code – Standard 1.2.7 – Nutrition, health and related claims.

Any food classification system used will require regular review and revision for currency against emergent evidence about food related harms and applicability to the evolving food environment.

The RACP does not support the current HSR arrangements, as they have not been taken up consistently and only apply to products within a single line of products, not across products. Many of the unhealthiest products do not feature a rating for sufficient differentiation of products in a regulatory system. Reform of the current system is necessary.

RACP partner the FHA supports use of the COAG national interim guide to reduce children's exposure to unhealthy food and drink promotion as a starting point. It was specifically designed for the purposes of food and beverage marketing and is clear to apply as it is category based. There is need for further consultation on how the COAG guideline could be adapted and applied for regulation to ensure it accurately reflects the dietary guidelines and can be easily applied by stakeholders. FHA also suggests further

⁹ Forbes Magazine, Branding Versus Product Marketing—And How To Sync The Two, article May 2022 [online]; [Branding Versus Product Marketing—And How To Sync The Two \(forbes.com\)](https://www.forbes.com)

consideration of nutrient profiling for some products that are likely to include some healthy and unhealthy options, for example breakfast cereals and muesli/snack bars.

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

The RACP endorses Option 5.1.3 - restricting 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).

Children have ever greater levels of access and exposure to content that is within traditional adult viewing hours and adult television programs.

Option 5.1.3 is aligned with the comprehensive Chilean regulatory approach that applies to all broadcast media. As a general observation, Chile has had less regulatory patchiness and subsequent advertisement displacement across mediums than other jurisdictions that have less comprehensive media regulations, according to literature reviewed by the RACP. On-demand television content sits in a grey area between television and digital marketing, and we would consider our recommendations for the restriction of online content to be applicable to on-demand and streaming television that is difficult to measure or restrict by time.

While the RACP notes the lack of specific evidence on the impact of cinema and radio advertisement for children, we stress that radio and cinema would continually reinforce brand and product symbols, messages, and imagery. Additionally, comprehensive broadcast media regulations would more broadly target media that parents and caregivers may access in the presence of children, during their waking hours.

Option 5.1.2 (restricting to advertising 'directed to children') is unlikely to meet the policy goal and may instead prompt an increase in the volume of advertisements within traditional adult viewing hours and programs, thereby continuing to expose children.

Experience from abroad highlights one of the major pitfalls of restricting regulations to one medium like Option 5.1.1, being that advertisers move content to lesser or unregulated mediums. This spillover is precisely what occurred in South Korea, where research observed an uptick the volume of internet advertisements after regulations were exclusively placed on television programs.¹⁰

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

The RACP supports Option 5.2.2 - restricting 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).

We urge regulation of unpaid advertising and reject differences between the intentions and outcomes of 'paid and unpaid advertising', as contemplated by Option 5.2.1.

Like FHA we support regulation of all digital and online marketing of unhealthy foods and drinks. It is important that any regulations are not only limited to social media but include website marketing, apps, and online gaming. The regulatory system should also be future proofed to capture any new marketing technologies.

For digitised communication platforms and internet content, a time-based restriction would be difficult to implement and enforce. Much social media advertising is personalised and only visible to the user – known as dark advertising or online behavioural advertising. Proactive auditing and monitoring would be a major transparency concern presently given there are limited ways to presently gauge exposure levels beyond retrospective interviews (or reactive complaints from users). Capturing overseas content in a time-based model would also be problematic when time zones do not align. Content maybe posted at any time of day in

¹⁰ Lee Y, Yoon J, Chung SJ, Lee SK, Kim H, Kim S. Effect of TV food advertising restriction on food environment for children in South Korea. Health Promot Int. 2017 Feb 1;32(1):25-34

another time zone and downloaded and viewed later by children. Brand sponsored applications and games are also always downloadable.

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

The RACP supports Option 5.3.1 - restricting unhealthy food advertising on all outdoor media

This is the proposal most aligned with the RACP obesity policy evidence review (2018).¹¹

Regulations should include all public outdoor advertising and extend to include public transport vehicles and infrastructure, education, healthcare, sporting and recreation facilities and cultural institutions such as libraries, museums and galleries, sporting, cultural and music events, and shopping centres.

What is needed is the implementation of a health-in-all-policies approach across government, including transportation and urban planning design, prioritising active transport, healthy diets, and active recreation solutions. We also call for the introduction of a health and wellbeing principle as part of local government decision-making when considering land use planning and zoning permissions, as well as use of spaces in government owned premises.

The RACP stresses that interjurisdictional plans and mechanisms must be consulted and agreed on as a crucial and early part of thinking for option 5.3.1, as many powers for regulating public spaces and land use fall to the state jurisdictions and to local governments. Jurisdictions must be onboard to overcome monitoring and enforcement barriers.

Question - Do you support restricting on-pack marketing?

The RACP supports Option 5.4.1 - restricting on-pack marketing considered to be ‘directed to children’ on unhealthy foods.

Recent evidence from Chile that shows restrictions against on-pack marketing have had a role in reducing purchases of nutrients of concern.¹² In addition, unhealthy product packages should not use packaging that includes features that are likely to appeal to children, including images, activities, competitions, promotions, characters or prizes.

Together with the FHA, our position is that the regulations should also move beyond packaging and encompass promotions at the point of sale and in the broader retail environment for unhealthy products.

Question - Do you support restricting sport food sponsorship?

The RACP supports Option 5.5.1 - restricting unhealthy food sponsorship of elite and professional sports, community sports and arts and cultural events involving children as participants, which should be extended to televised events.

For regulation to effectively limit brand marketing of companies that sell products which are driving the obesity epidemic it makes little sense to distinguish activities watched and participated in by children, whether at the physical location of the event or on television; all should be in-scope as settings for exposure to unhealthy brand advertising. The health-in-all policies position of the RACP is well aligned with option 5.5.1.

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

The RACP supports Option 5.6.4 - restricting placement-based and price-based promotion of unhealthy foods within food retail outlets.

¹¹ RACP, Action to prevent obesity and reduce its impact across the life course Evidence Review, 2018 [online]; [raccp-obesity-evidence-review.pdf](#)

¹² Taillie LS, Bercholz M, Popkin B, Reyes M, Colchero MA, Corvalán C. Changes in food purchases after the Chilean policies on food labelling, marketing, and sales in schools: a before and after study. *Lancet Planet Health*. 2021 Aug;5(8):e526-e533.

The effectiveness of a national regulatory system will depend on its comprehensiveness and scope; patchiness allows loopholes in the marketing of unhealthy products to children that the RACP suggests will be used by advertisers, especially where other marketing channels are impacted by regulations.

Question - Do you support restricting unhealthy food marketing 'directed' to children

The RACP supports restricting marketing using promotional techniques with child appeal across all media and settings.

This policy should be combined alongside time, media or settings-based food marketing restrictions to cover marketing not restricted under other provisions to reduce messages, content symbols and images that reinforce unhealthy brands and products.

Further to the range of mediums that the consultation has explicitly noted to be within its scope, the RACP supports the FHA proposal that email and mail are included in regulations as unique channels for promotions that straddle between public advertising and personal correspondence.

Question - Which media and settings do you see as the top priority for action?

There should be a comprehensive scope encompassing all settings and contexts that most expose children to unhealthy product marketing

- This includes online, digital communications and broadcast media as core priorities
- Priority should also be given to front of packaging and promotions in retail outlets, public spaces, activities, events, and community settings)

Consideration must be given to meaningful sanctions, including reputational and/or financial.

Restrictions on advertiser trading privileges should apply

- Penalties should apply to direct breaches and breaches of policy intent or 'spirit.'
- The disincentives of any penalty must outweigh the potential financial and brand loyalty incentives of procuring the advertising.