

ARA SUBMISSION

FEASIBILITY STUDY ON FOOD MARKETING TO CHILDREN: POLICY OPTIONS FOR PUBLIC CONSULTATION

MARCH 2024

The Australian Retailers Association (ARA) welcomes the opportunity to make this submission to the Department of Health Feasibility Study into potential limitations on food marketing to children.

The ARA is the oldest, largest and most diverse national retail body, representing a \$420 billion sector that employs 1.4 million Australians – making retail the largest private sector employer in the country. As Australia's peak retail body, representing more than 120,000 retail shop fronts and online stores, the ARA informs, advocates, educates, protects and unifies our independent, national and international retail community.

We represent the full spectrum of Australian retail, from our largest national and international retailers to our small and medium sized members, who make up 95% of our membership. Our members operate in all states and across all categories - from food to fashion, hairdressing to hardware, and everything in between.

The matters outlined in the Department's Feasibility Study provisions do not apply to all ARA members but some of our largest members in the supermarket, quick service restaurant (QSR) and food retail segments have a keen interest in these issues.

EXECUTIVE SUMMARY

The ARA supports the Australian Government's intent to explore the landscape of food marketing to children and recognises community concerns about the exposure of children to advertising for discretionary foods and beverages. However, we do have a number of concerns about some of the matters raised in the Feasibility Study, particularly in relation to government intervention to ban certain types of marketing.

The sector understands and supports the need for there to be some restrictions around advertising occasional food to children, and we believe that the current method of industry self-regulation is still best placed to deliver the outcomes that the Government is seeking to achieve. The Australian advertising industry has some of the world's strictest rules for food and beverage advertising contained in the Food & Beverage Advertising Code (F&B Code), enforced by an independent community panel managed by Ad Standards.

The F&B Code and complementary Children's Advertising Code have been continually strengthened to minimise the potential for children to be targeted by certain advertising, with the most recent update of the Children's Advertising Code launched as recently as December 2023.

The ARA believes that these measures provide adequate protections for children without impinging on the ability of retailers and brand owners to engage in marketing activities directed at adults.

Our concern is that some of the measures outlined in the Feasibility Study represent a potential overreach in terms of the marketing of legal food and non-alcoholic beverages to adults in Australia without sufficient evidence that such restrictions would effectively combat obesity and other health conditions in children, considering advertising bans implemented in other countries have failed to have any impact on the reduction of obesity rates.

RECOMMENDATIONS AND RATIONALE

The ARA broadly supports the submission made by the Australian Association of National Advertisers (AANA) and makes the following recommendations in response to the Feasibility Study, from the perspective of our grocery, QSR and food retail members.

Recommendation 1: Policy objective

The ARA supports the option of *'Other, please specify'*.

We believe that any policy intervention must have a demonstrable impact on children's diet and/or exercise.

As such the ARA recommends the policy objective be:

- *To reduce the amount of unhealthy food marketing that is directed to children (short-term objective, within 1-2 years) and*
- *To improve children's dietary intakes (medium-term objective, within 3-4 years).*

In addition, further research should be undertaken into the factors affecting children's diets to ensure that any policy solution has a good likelihood of success.

The retail sector is already actively engaged in delivering against these objectives through the expansion of healthier food options for children, adoption of the F&B Code and Children's Advertising Code and investment in community sport. Further, many of our food retail members comply with state-based kilojoule labelling laws at the point of sale that enable consumers to make healthier choices.

Recommendation 2: Policy approach

The ARA supports Option 2.1, which continues to rely on a self-regulatory approach whereby food marketing is governed by industry Codes of Practice.

Given that the current F&B Code is one of the strictest self-regulatory systems for food and beverage advertising in the world, the ARA believes the current self-regulatory system is working well and represents the best and most effective policy response to government and community concerns.

The industry is very supportive of the current self-regulatory approach and believe that the current code, and the way it is administered, remain the best option to ensure responsible marketing of food to children. We also believe it would be difficult for government to implement a system as comprehensive and far-reaching as the F&B Code and Ad Standards complaints handling system.

Additionally, these industry-led Codes are reviewed every five years in order to keep pace with changing community standards.

As noted in the AANA submission, other international jurisdictions (such as Chile, the UK and Quebec) that have imposed legislative bans on advertising of discretionary foods, have shown an increase in childhood obesity rates. This data suggests that there is no correlation of data between viewing advertising (or not viewing) and obesity rates.

Recommendation 3: Age definition of children

With regards to the age definition of a child, the ARA supports Option 3.2, which defines children as person less than 15 years of age.

The current age definition in the Code uses government definitions to determine the classification of a child and, was only recently increased from 14 years of age to 15 years of age. However, there is no evidence to suggest that extending such restrictions to people above 15 years of age will have any impact on the eating habits of young people or the rates of childhood obesity.

Additionally, it would be very difficult to police the proposed policy changes for someone who already has a large amount of autonomy in society – from having a drivers licence, to being able to work a job (more often than not in places of employment that would be affected by these changes).

The other aspect that hasn't been investigated sufficiently by this feasibility study is how these changes would affect children employed in industries that would be considered 'unhealthy'. Many teenagers 15 and above undertake paid employment in these industries where they legally and safely handle, sell, purchase and consume these products without parental consent or involvement, yet they may be restricted from seeing it on TV.

Recommendation 4: Foods and beverages to be restricted from marketing

The ARA supports Option 4.2, which calls for government-led food classification system aligned with national dietary guidance that restricts the marketing of designated food products. Marketing of food brands (without referring to a specific product) would be exempt from restrictions.

There is no evidence that penalising brands for having some products that do not meet the nutritional criteria would have any impact on obesity rates.

As such, the ARA believes that brands and logos should be exempt from restrictions and the focus should be on the food and drink items themselves.

We also support the use of the option: *FSANZ Nutrient Profiling Scoring Criteria (NPSC)*

Part of the issue with obesity rates is consumers not eating enough of the right foods. The Industry led Code allows the promotion of essential, everyday food/drinks, and for the purposes of the Code, the best tool is one that determines essential food and drinks that people should be eating every day. For this reason, the Food Standards NPSC is the best tool as it is designed by nutrition experts and determines essential, everyday food and drinks.

The added benefit of the NPSC is that it results in a black and white score which can be easily used by authorities to determine compliance.

However, other guides provide descriptors such as "burgers" or "nachos", which can both be highly nutritious if prepared appropriately. We believe it is not the name of the food or drink that is important, it is the nutritional content of the food and the NPSC looks beyond a name and rather assesses the nutritional content in food and drinks.

We do not support the use of the Health Star Rating (HSR), which is a comparative tool for consumers comparing foods within product categories – not an indication of whether or not a food or beverage item is everyday, essential food. For example, diet soda can get 3.5 stars in the HSR system however it is NOT an everyday, essential beverage, so we would strongly support the use of the NPSC rather than the HSR.

Recommendation 5: Media platforms, settings and marketing techniques to be restricted

The ARA supports Option 5.1.2, which would 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.

Regarding digital platforms, the ARA supports the existing system which is working well and believes no additional regulation is required. Regarding outdoor advertising, the ARA supports the existing system which is working well and believes no additional regulation is required.

Currently occasional food and beverages ads cannot be shown during children's content, C or P rated programs, 150 meters from schools or where the proportion of adults in the total audience is less than 75% anytime of the day or night. We believe this strikes the right balance.

There is also little evidence to correlate advertising to obesity. For example, in Chile, where a 10:00pm watershed ban was imposed on TV advertising, children saw 73% fewer TV ads for unhealthy food and drinks. However, childhood obesity rates increased from 51.2% in 2016 to 58% in 2022. This further reinforces that there is a lack of evidence to suggest that further TV advertising restrictions beyond the ones currently in place under the F&B Code would have any impact on childhood obesity.

Regarding online advertising, the F&B Code covers online marketing (including paid, non-paid, website and email marketing) and is working well to adequately restrict online marketing of occasional food and beverage products. The F&B Code restrictions are based on audience data and these restrictions apply regardless of the time of day, to ensure that the Code keeps pace with changing children viewing habits.

Again, the ARA supports the existing system which is working well and believes no additional regulation is required.

In regard to outdoor advertising, the F&B Code already covers outdoor media and explicitly bans occasional food and beverage advertising from appearing within 150m of a school.

There is no evidence that extending these restrictions to all outdoor media or 750m from schools or transport corridors would have any greater impact than the current restrictions. However, such drastic restrictions as the ones proposed would deprive State and Territory governments of vital funding for public transport.

Recommendation 6: Proposed food packaging restrictions

The ARA does not support further restrictions on food packaging.

There are already existing food safety and labelling laws in place to ensure consumers are able to inform themselves about the contents of the food or drink they are buying. Beyond that, consumers are increasingly switching to online shopping for their grocery shopping, which has a range of benefits for consumers including the ability to view more nutritional information more readily. This option of online shopping provides consumers with a way to avoid children seeing packaging for products they do not want them to consume.

Again, there is no evidence that such repackaging would work. In Chile, where plain packaging has been implemented, obesity rates have continued to climb.

Recommendation 7: Proposed food sponsorship restrictions

The ARA does not support restricting sports and arts food sponsorship.

The current Code allows branded equipment and merchandise but does not allow any visuals of occasional food and drinks, or their packaging. We believe the current code strikes the right balance.

As noted by the AANA, advertising and sponsorships fund journalism, free TV, radio, online content, sport and the arts; and we are concerned that blanket ad bans and sponsorship bans such as the ones being proposed will have a negative impact and huge cost on these industries that rely on this funding, without any demonstrative benefit. Advertising and sponsorship restrictions will result in a reduction in the financial support for children doing sport.

Recommendation 8: Proposed food retail marketing restrictions

Regarding the restricting of retail marketing, the ARA supports the 'Status quo' option where food marketing within food retail outlets is determined by the retail industry.

The F&B Code covers in-store promotions and AANA has conducted training of the major grocery chains to ensure they are aware of the need not to target children with occasional food or drinks.

Combined with efforts by the grocery stores to promote fresh fruit and vegetables at the entrance of the stores, provide free fruit for children to snack on and give away magazines with healthy and affordable recipes, the ARA believes that the retail sector is actively working to support efforts to combat obesity.

The commitment to assist parents in making healthier decisions when ordering their children's food is highlighted by the changes that have been made by members to provide more choices specifically around children's meals i.e. fruit, yogurts and waters with children's meals. Additionally, kilojoules are also shown on the menus to ensure consumers have the information necessary to make their own healthy choices for themselves and their children.

As such, the ARA believes no government intervention is required.

CONCLUSION

The ARA and our members are proud of the positive role that our sector plays in the responsible marketing of occasional food and beverage products to children, and the efforts taken to help combat childhood obesity in recent years including healthier food options, responsible advertising and sponsorship of community sport.

The ARA and its members thank the Department of Health for the opportunity to engage in this consultation. We encourage the Department to continue engaging with the business community, particularly Grocery and QSR.

For any queries in relation to this submission, please contact policy@retail.org.au