

Beyond unhelpful dichotomies: a co-regulatory approach to protecting children from junk food marketing

8 September 2015

Amanda Wood



The Health Minister is currently deciding how to best address children's poor health due to diet-related diseases. It is a good time to reflect not only on the content of those approaches, but also the regulatory frameworks for those approaches. This blog explores a co-regulatory approach that could be applied to the strengthening of junk food marketing restrictions to children.

"Black and white thinking limits understanding and feedback, two necessary ingredients for successful resolution in creative conflict and successful understanding."

— David W Earle

I'll admit it, I'm not too sure who David W Earle is, but I *do* know that I agree with his reflection 100%, and applied to food policy, I agree 200%. Everyone seems to 'get' that politics is messy, convoluted and nebulous. Then why do we assume that *policy* (if you believe these two things are different) is exempt from this hazy classification? Often we see

black or white policy options — mandatory or voluntary regulation. But is it always so black or white?

Take the current issue of junk food marketing to children. Food marketers are keen to maintain the status quo of voluntary marketing codes. However, many experts, parents and action groups are pushing the Government to step in and regulate. Does it have to be black or white, mandatory or voluntary? Of course not (1), but what does a commitment to co-regulation really look like?

Yes, co-regulation is between full-on regulation and voluntary codes, but clarifications about who is involved or the governance arrangements can be pretty fuzzy (2, 3). Co-regulation could be a third-party or regulatory agency verifying industry-developed codes (4), or maybe the government threatening mandatory regulation if stakeholders fail to reach certain goals (5).

The key here is that legislation is not the only way to ensure action — government-facilitated collaboration or creation of competition, pressure or incentives can also achieve desired goals while enlisting little or no true ‘regulation’ (6,7). In fact, many public and private stakeholders see great potential for co-regulation to address the challenging, complex problems we face today (8).

Fortunately for the New Zealand Government, they won’t have to navigate this grey-zone of co-regulation alone. The move toward co-regulatory measures is already underway, with the shift from ‘government to governance’ illustrating the decreasing reliance on state-centric hierarchical control in favour of greater collaborative governance (9, 10). For example, the Australian Government recently tried a new way of engaging stakeholders to develop a front-of-pack food labelling (FoPL) policy that wasn’t mandatory, yet had the input of a wide range of stakeholders (11). By ‘front of pack labels’ I mean nutritional information on the front of food packages meant to help you figure out what you’re about to eat.

Just like the junk food marketing debate, industry and public health groups were battling for either voluntary or mandatory FoPL. In Australia, the Government had enough of this head banging and told these two groups that they had to negotiate a solution for FoPL. Well on our way to co-regulation. Add in a senior health official at the helm and the threat of future regulation if industry compliance was unsatisfactory, and you’ve got a shiny example of a co-regulatory development process.

Drawing on my research about FoPL co-regulatory approaches used in Australia and several other countries, I’ve identified six keys to co-regulatory success that the New Zealand Government could apply to the junk food marketing dilemma.

1. **Involve the right people** — Right, NZ Government, you must start with involving the advertising authorities, industry groups whose products will be affected, and public health groups to ensure alignment with public health goals. Great start. ‘Taking everyone along with you’ in the development process is key. But when it comes down to it, you don’t invite groups to the table, you invite people. Make sure they have the authority to make decisions if acting on behalf of an organisation. This will enable decisive action when the groups come together and will cost less than a drawn-out process.
2. **Commit strong political will to the issue** — Why would groups be motivated to

give up their entrenched positions if you (NZ Government) don't even seem to care about the issue? Yes, we know you're dealing with a few other crises at the moment, but by sending in a senior official with some clout, stakeholders will have more confidence that this is the real deal and they need to be on good behaviour (or at least be civil).

3. **Set up clear governance arrangements** — The policy may not end up being fully mandatory, but it needs to be clear who is making the final decisions. Feel free to delegate responsibility in order to utilise expertise, but make sure everyone's on the same page about roles, responsibilities and decision-making authority. It will also help to clarify how these new governance arrangements will work within existing governance structures. And by the way, NZ Government, you do have ultimate authority to change the rules of the game as you go. Remind groups of this if they are getting derailed.
4. **Lay down those terms of reference** — These need to be crystal clear. What is the purpose of the policy? If it's framed as an advertising issue, then industry expertise is needed. If it's framed as a public health issue, then public health expertise is needed. Want to involve them both? Say it's an advertising issue addressing a public health need and bam! you've legitimised the participation of the whole group. Beyond this, clear terms of reference will tell stakeholders exactly what's on and off the table for negotiation. Tip: taking *both* polar options off the table will level the playing field by making *both* coalitions move away from their entrenched positions.
5. **Don't let the perfect be the enemy of the good** — Ultimately, years spent perfecting underlying criteria might mean extra decades of junk food ads to kids. Sometimes getting a bronze medal is better than going home empty-handed. So, NZ Government, be ready to step in and make some (fair) calls, and make sure both sides are giving a little. If you're as good as you say you are then people will respect your judgement, even if they don't always agree.
6. **Keep decision-making contained to the group** — If you have to wait on anyone — from the board of some stakeholder group to the obscurely related Ministry — get them involved instead. And there's no point having a Ministry or group lead this collaborative effort if they can't make final calls about junk food marketing. It just means one more link in the chain where ideas developed by the collaboration can get 'transformed' or downright lost.

Let's recap — public health groups are making a case for restricting junk food marketing to children, the public are highly supportive of tighter restrictions and things are moving in this space internationally. So it's probably a good time to start doing something about this problem. One co-regulatory approach is for the Government to lead as a facilitator committed to getting an outcome, with both the food industry and public health groups stepping up to the plate, making compromises and agreeing on a feasible solution.

Author: Amanda Wood, PhD candidate, University of Auckland

References

1. Ayres I, Braithwaite J. (1992). *Responsive regulation: transcending the deregulation debate*. New York: Oxford University Press.
2. Brandsen T, Boogers M, Tops P. (2006). Soft governance, hard consequences: the ambiguous status of unofficial guidelines. *Public Admin Rev*, 66(4), 546-553.

3. Karlsson-Vinkhuyzen S, Vihma A. (2009). Comparing the legitimacy and effectiveness of global hard and soft law: an analytical framework. *Regul Gov*, 3, 400-420.
4. Braithwaite J. (1982). Enforced self-regulation: a new strategy for corporate crime control. *Mich L Rev*, 80(7), 1466-1507.
5. Heritier A, Eckert S. (2008). New modes of governance in the shadow of hierarchy: self-regulation by industry in Europe. *J Public Pol*, 28(1), 113-138.
6. Commonwealth Interdepartmental Committee on Quasi-regulation. (1997). *Grey Letter Law*. Canberra.
7. Fredriksson M, Blomqvist P, Winblad U. (2011). Conflict and compliance in Swedish health care governance: soft law in the 'shadow of hierarchy.' *Scand Polit Stud*, 35(1), 48-70.
8. Saurwein F. (2011). Regulatory choice for alternative modes of regulation: how context matters. *Law Pol*, 33(3) 334-366.
9. Stoker, G. (1998). Governance as theory: five propositions. *Int Soc Sci J*, 50(155), 17-28.
10. Lowndes V, Skelcher C. (1998). The dynamics of multi-organizational partnerships: an analysis of changing modes of governance. *Pub Admin*, 76, 313-333.
11. Department of Health. (2015). *Front-of-pack labelling updates*. Retrieved from <http://www.health.gov.au/internet/main/publishing.nsf/Content/foodsecretariat-front-of-pack-labelling-1>.

Public Health Expert Briefing (ISSN 2816-1203)

Source URL:

<https://www.phcc.org.nz/briefing/beyond-unhelpful-dichotomies-co-regulatory-approach-protecting-children-junk-food>