



Voluntary Regulation



Marketing junk food to children is a hot topic at the moment, and while little actual legislation has been implemented in Australia, voluntary self-regulation is making a difference, as **Clifford Flax** writes.

Over the last two years, the Australian government and health industry bodies have employed a number of measures to regulate the consumption, sale and marketing of certain types of food products. The Australian National Preventative Health Agency was established to help the government promote health and reduce health risk inequalities and the federal government relied on public education such as its Swap It Don't Stop It campaign to improve Australian diets.

On a legislative level, proposals for statutory bans on marketing junk food to children were put forward by the Obesity Policy Coalition and the Greens. While none of these proposals have been accepted to date, they attest to the burgeoning status of the widely-held concern that junk food advertising is responsible for Australia's

growing childhood obesity rate.

In addition, the Australian government and health industry bodies have introduced initiatives to assist consumers in protecting themselves against 'junk food' marketing. Fast Choices legislation was introduced in New South Wales requiring fast food and beverage chains to display the average energy content of foods on menus, price tags and labels.

The Obesity Policy Coalition released a smartphone application with a traffic light system for processed foods. The NSW State Government released a website and a mobile phone application providing users with information on the amount of kilojoules they should be eating to maintain or lose weight. The NSW Cancer Council published a Fat Free TV Guide ranking TV shows in order of the amount of junk food

advertisements that run during each show. The National Heart Foundation announced plans to withdraw its "Tick" licensing program in the takeaway food environment, citing a decision to take a tougher stance on improving healthy eating options. In February 2012, an advertisement for Paddle Pop, which aired in programs popular with children, was withdrawn after the Advertising Standards Board found that it did not positively encourage good eating habits or physical activity.

Voluntary self-regulation by the food industry

In response to these developments and shifting attitudes towards promoting healthy lifestyles, a number of food companies have opted to self regulate.

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have signed up to one or more of the several voluntary initiatives providing frameworks for the promotion of healthy dietary lifestyles to Australian children on television and other forms of media. These initiatives include the Australian Association of National Advertisers (AANA) Food and Beverage Code, AANA Code for Advertising and Marketing Communications to Children, Responsible Children's Marketing Initiative of the Australian Food and Beverage Industry and Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children.

Views on the effectiveness of the adoption of these voluntary self-regulatory measures are divergent. The Australian Communication and Media Authority (ACMA) recently reported that the adoption of these codes have made little or no difference to children's actual exposure to junk food advertising.

The Australian Food and Grocery Council disagreed with ACMA's report, stating that industry self-regulation to reduce advertisements for high fat, sugar and salt foods aimed at children "is categorically working in Australia".

Regardless of the actual impact, the readiness with which major food companies have voluntarily adopted these

measures illustrates the emphasis food companies place on being aligned with responsible product promotion.

In addition to this, a number of large

fast food and confectionery companies have chosen to adopt measures to provide healthier options and promote healthier consumption, including McDonalds, KFC, Hungry Jack's and Mars.

Impact of voluntary self-regulation

On the one hand, food companies may view voluntary self regulation as a backwards step. Voluntary self-regulation could be seen to create the perception that food companies are not only malleable to public pressure, but that they concede that their products and marketing practices should be modified. Furthermore, companies that self regulate could lose their competitive advantage

against suppliers who do not voluntarily subject themselves to similar restrictions.

Crucially, voluntary self regulation could also be viewed as acceptance, by food companies, of a degree of responsibility for health issues allegedly caused by consumption of their products. This could pose a risk to the industry if, as some predict, food related health issues, such as obesity, become the subject of future Australian product liability litigation. Such litigation has already been brought in the Supreme Court of New York and the Columbia District Court against McDonalds and KFC, respectively.

On the other hand, voluntary self regulation also offers a number of potential benefits to food industry members. It affords food companies greater autonomy and flexibility in the way their business

practices are modified. Through offering a greater range of products to choose from, food companies could expand their target market, which could lead to increased profits. Furthermore, a company's proactive approach to self regulation could be an attractive selling point to potential consumers who could in turn benefit from being provided with healthier eating options and more detailed information on the products they purchase.

This increased consumer awareness and choice could also benefit food companies

by shifting responsibility for food choices back to consumers, potentially minimising the risk of future successful product liability claims. Tobacco companies, at first resistant to government imposed labelling legislation, later argued that health warnings on cigarette packets provided smokers with enough information to assume responsibility for accepting the health risks allegedly caused by smoking.

Through voluntarily adopting robust self regulatory measures, food companies may be able to exercise a degree of control over the way they do business and avoid prescriptive intervention by the Australian government. In light of the potential shift towards holding the food industry accountable for consumption-related health claims, the voluntary adoption of self regulatory measures could ultimately benefit food companies by encouraging consumer confidence, increasing profits and reducing the risk that companies be held responsible for the actions of consumers.

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