

Regulatory governance pathways to improve the efficacy of Australian food policies

Yandisa Ngqangashe,¹ Sharon Friel¹

In 2018, it was estimated that 31% of Australian adults were living with obesity and 8.4% of the total disease burden was attributable to overweight and obesity.¹ Food policies aimed at creating food environments that support availability and access to healthy food options are widely recognised as a strategy to curb the burden of obesity and diet-related noncommunicable diseases.^{2,3} Since the World Health Organization (WHO) Global Action Plan on diets and physical activity,⁴ many countries have instituted food policies such as nutrition labelling, marketing restrictions, product reformulation and taxation to improve population nutrition.^{5,6} While the Australian Federal and State/Territory governments have followed suit and implemented a number of food policies,^{7,8} these policies are not achieving their full potential to create food environments that provide healthier food options, change consumer behaviour and improve health outcomes.^{9,10} To help understand how to improve the effectiveness of food policies in Australia, we examined the regulatory governance factors associated with the development and implementation of food policies that effect positive outcomes in the food environment, consumer behaviour and diet-related health outcomes internationally. In this paper, we critically assess Australian food policies for the presence of these factors. The regulation of food systems to improve nutrition outcomes is complex and highly contested, with multiple approaches used in the development, design and implementation of the policies. Some jurisdictions opt for industry self-regulation, where the industry leads the design and implementation of the policies, while other

Abstract

Background: Effective regulatory governance, which entails the actors, processes and contexts within which policies are developed, designed and implemented, is crucial for food policies to improve food environments, consumer behaviour and diet-related health.

Objective: To critically assess Australian food policies for the presence of necessary and sufficient regulatory governance conditions that have been shown to effect positive nutrition outcomes from food policies.

Methods: We assessed the Australian National Association of Advertisers (AANA) Food and Beverage Advertising Code, Health Star Rating Front of Pack labelling system and Sodium reformulation under the Healthy Food Partnership (HFP). The policies were analysed for the presence/absence of five regulatory governance conditions – the extent of industry involvement, regulatory design, instrument design, monitoring and enforcement.

Results: All three policies lack one or more regulatory governance conditions crucial for policy success. Each policy has high industry involvement, an absence of government-led policy-making underpinned by legislation and lacks comprehensive enforcement. Except for the Health Star Rating system, the policies did not have comprehensive monitoring – a necessary condition for policy success.

Public health Implications: The efficacy of these three policies can be enhanced by minimising industry involvement, improving government oversight and improving monitoring systems.

Key words: Food policy, efficacy, regulatory governance, policy outcomes, Australia

jurisdictions opt for mandatory government regulation.^{3,6} A holistic approach to regulation is needed to understand which regulatory circumstances produce the best outcomes. In this study, we adopted the concept of regulatory governance, defined as the actors, political and institutional contexts and processes in which policies are developed and implemented.¹¹ According to Guidi et al. (2020), these regulatory governance factors shape policy outcomes.¹² This study aims to examine the regulatory governance of select Australian food policies to understand the extent to which they reflect regulatory governance conditions associated with policy success identified in the international

literature and make recommendations for maximising the efficacy of these Australian policies.

The necessary and sufficient regulatory governance conditions examined in this study were identified through a review of international literature on regulatory governance¹¹ and a subsequent qualitative comparative analysis (QCA). The premise of this analysis is that there is more than one pathway from food systems governance to population nutrition outcomes. This broad approach to understanding causality is useful for identifying ways of regulating complex food systems that produce the best population nutrition outcomes.

1. Menzies Centre for Health Governance, School of Regulation and Global governance, Australian National University, Australian Capital Territory

Correspondence to: Yandisa Ngqangashe, Menzies Centre for Health Governance, School of Regulation and Global governance, Coombs Extension Building 8, Fellows Road, Australian National University, Acton 2601; e-mail: yandisangqangashe@gmail.com

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QCA analyses causality by combining a comparative case-based approach, often used in qualitative research, with mathematical approaches used in quantitative research. The QCA analysis of $N=29$ policy cases implemented in 13 countries in the areas of food reformulation, nutrition labelling, food taxation and food marketing identified combinations of regulatory governance factors that were necessary and sufficient for food policies to have positive impacts on food environments, consumer behaviour and/or nutrition-related health outcomes.¹³ The five regulatory governance conditions entail 1) Extent of industry involvement in shaping the formulation and implementation of policies; 2) Strictness of regulatory design (whether a policy uses a mandatory, government-led approach or voluntary public-private partnerships or pure industry self-regulation); 3) Instrument design (the extent to which a policy is designed following international best practices for public health in terms of policy goals, standards and terms); 4) Comprehensive monitoring (the existence of a monitoring system that is transparent, robust and independent of industry, and 5) Comprehensive enforcement, which entails the existence of enforcement systems with sanctions for noncompliance.¹³ In this study, we examine the extent to which Australian food policies possess these conditions. An overview of the three key findings from

the previous QCA is outlined below and presented in Table 1.

1. The international evidence shows that comprehensive policy monitoring that is independent of the food industry is almost always present when policies succeed – this is a *necessary* regulatory governance condition.¹³
2. A combination of minimal industry involvement, a government-led policy with mandatory regulation, use of international best practice instrument design and comprehensive monitoring and enforcement.¹³
3. A combination of minimal industry involvement, best practice instrument design and comprehensive monitoring.¹³

There are two combinations of regulatory governance conditions that are *sufficient* for policy success:

Methods

We used a collective case study approach to examine the regulatory governance of three Australian policy cases. Collective case studies involve studying multiple cases to gain insight into an issue (here, regulatory governance).¹⁴ We purposefully selected the Australian National Association of Advertisers (AANA) Food and Beverage Advertising Code (aana.com.au/self-regulation/codes-

guidelines/food-and-beverages-code/); Health Star Rating Front of Pack labelling system (healthstarrating.gov.au/internet/healthstarrating/publishing.nsf/content/home); and Sodium reformulation under the Healthy Food Partnership (HFP) (www1.health.gov.au/internet/main/publishing.nsf/Content/Healthy-Food-Partnership-Reformulation-Program-Frequently-Asked-Questions).¹ These policies were chosen because they are current and similar to the international policies analysed in the QCA. For each of the policies, we analysed five key regulatory governance conditions (extent of industry involvement, regulatory design, instrument design, monitoring and enforcement) identified in the international evidence as being necessary and sufficient for food policies to have positive impacts on food environments, consumer behaviour and/or nutrition-related health outcomes.¹³

Findings

Australian National Association of Advertisers Code

The Australian Food and Beverage Advertising Code (hereafter the Code) is an industry self-regulation code developed by the Australian Association of National Advertisers (AANA). The Code sets out standards for food and beverage commercial communications to children across different mediums. Television broadcasting Codes of Practice are registered by the Australian Communications and Media Authority (ACMA) under the co-regulation system established by the Broadcasting Act of 1992 also include an expectation that advertisers will ensure compliance with the self-regulatory codes developed by the AANA. The Code applies to “occasional food and beverage products”, defined as foods that do not meet the Food Standards Australia Nutrient Profile Scoring Criteria. Some of the Code stipulations include that the food and beverage advertisements must not be misleading or deceptive, must not undermine the importance of healthy or active lifestyles and advertisements with health and nutrient claims must be supported by evidence.¹⁵ These stipulations apply to children under the age of 15 years.¹⁵ The complaints process is managed by Ad Standards, a secretariat founded by the advertising industry.¹⁵ The public complains directly to Ad standards, which assesses the complaint to determine if it is eligible to be examined by the Ad Standards Community Panel. If an

Table 1: Necessary and sufficient regulatory governance conditions for effective/ineffective food policy.

Necessary conditions	Coverage	Consistency
Comprehensive Monitoring	0.80	0.94
Sufficient conditions	Raw Coverage	Consistency
High Industry Involvement ^a Strict Regulatory design ^b Best practice Instrument design ^b Comprehensive Monitoring ^b Comprehensive Enforcement ^b	0.47	0.96
Danish trans-fat ban South African Sodium reformulation legislation, Philadelphia Sugar-Sweetened Beverage Tax, Chile labelling and Advertising Law, King Country Calorie labelling, New York City Trans-fat ban, Berkeley SSB Tax, United Kingdom Soft Drinks Industry Levy South Korean Food marketing policy Quebec Consumer Protection Act Ireland rules on food marketing to children		
High Industry Involvement ^a Strict Regulatory Design ^a Best Practice Instrument Design ^b Comprehensive Monitoring ^b Comprehensive Enforcement ^b	0.17	0.82
United Kingdom Sodium Reformulation the Food Standards Agency United States National Salt Reduction Initiative		

Notes:

a: absence of condition

b: presence of condition

advertisement is found to be in breach, the advertiser must remove it.

As summarised in Table 2, our assessment of the AANA Code shows that it is not likely to achieve policy success in relation to population nutrition outcomes. The Code does not have the necessary or sufficient combination for policies to improve the food environment, behaviour and health outcomes. The Code is designed and administered by the advertising industry with no government oversight. This means that the decisions on what types of marketing are subject to the regulations, the standards used to set policy parameters, monitoring and compliance enforcement are all made by the advertising industry. This is consistent with high industry involvement, which previous research has shown to be one of the conditions for policy failure in terms of population nutrition outcomes.¹³ The Code is pure-industry self-regulation, meaning that it is not underpinned by legislation, there is no government involvement, and compliance is not mandatory. The Code is also not designed according to best practice standards for health in terms of its objectives, standards and policy terms. In instances where there is no legislation, and the policy is not mandatory, what has been shown to work in other countries is a combination of best practice instrument design and comprehensive monitoring.¹³ The Code lacks both of these conditions. For example, with regard to instrument design, the WHO set of recommendations for regulating the marketing of food and beverages to children recommends that the goal of food marketing restrictions should be to reduce exposure to unhealthy food through marketing.¹⁶ However, the stated goal of the AANA Code of advertising is to “ensure that advertisers develop and maintain a high sense of social responsibility in advertising food and beverage products.”¹⁵ The Code also does not apply to all forms of marketing and only applies to children under the age of 15 years, which shows that the design of the Code is not according to best practices for public health. The Code also lacks comprehensive monitoring, which makes it challenging to evaluate the effectiveness or for external stakeholders to hold decision-makers accountable for its performance. The monitoring is complaints-based, and there is no baseline measure of children’s exposure to food marketing or independent monitoring to check the effectiveness of the Code. Lastly,

there are no incentives or sanctions against non-compliance with the Code.

Health Star Rating Front of Pack labelling system

The Health Star Rating system is a voluntary front-of-pack labelling system that was instituted through a partnership between the Australian and New Zealand governments and the food industry in 2014.¹⁷ Implementation of the Health Star Rating system is done through a quasi-regulation approach – there is government involvement, but compliance by industry is not mandatory, and it is not underpinned by legislation.¹⁷ The Health Star Rating is governed by the Health Star Rating Advisory Council (HSRAC), which supports the Food Ministers Meeting in the implementation of the system, including organising reviews every five years.¹⁷ The Food Ministers Meeting consists of ministers (usually health ministers) from Australian state and territory governments and the Australian and New Zealand governments and is responsible for developing guidelines for Food Standards Australia New Zealand and overseeing the implementation. The HSRAC is chaired by the Australian Government Department of Health and consists of the New Zealand government, Australian State and Territory governments, Food Standards Australia New Zealand and representatives from the food industry and public health and consumer groups in Australia and New Zealand.¹⁷

As summarised in Table 3, our analysis found that the Health Star Rating system has some of the conditions for policy success while others remain missing. According to the previous QCA findings, for nutrition labelling schemes to be successful, there

must be minimal industry involvement in the governance of the policy, especially around the design of the label and the setting of nutrient criteria that is used to score food.¹³ In the Health Star Rating system, the industry is involved in the setting of nutrient criteria which subjects the design of the policy to bias and is counter to policy design best practices. The second challenge with the Health Star Rating is its regulatory design – it is voluntary and not underpinned by legislation. While the QCA study found that voluntary policies can work if combined with minimal industry involvement and comprehensive monitoring,¹³ our assessment of the Health Star Rating system shows high industry involvement and challenges with instrument design. While the design is interpretive as recommended by the international organisations and the label is able to identify healthy and unhealthy food,¹⁸ there have been challenges with the algorithm of the label regarding how sugars were treated and the energy icon only variant of the label was difficult to understand.¹⁹ Some of these design challenges have been corrected in the 2020 review of the HSR system.²⁰ The five-year independent review and monitoring by HSRAC constitute comprehensive monitoring which is one of the strengths of the Health Star Rating and was previously identified as a necessary condition for policy success.

Sodium reformulation under the Healthy Food Partnership

The Healthy Food Partnership (HFP), instituted in 2015, is a public-private partnership between the Australian Commonwealth Government, public health experts and the food industry. The broad objectives of the HFP are to reduce

Table 2: Overview of the performance of the Australian National Association of Advertisers Code.

Necessary and sufficient regulatory governance conditions as identified in international literature	Assessment
Comprehensive monitoring	Present
Minimal industry involvement plus government-led mandatory regulation plus Best practice instrument design plus Comprehensive monitoring and enforcement	None of the conditions
Minimal industry involvement plus best practice instrument design plus Comprehensive monitoring	None of the conditions

Table 3: Overview of the performance of the health star rating.

Necessary and sufficient regulatory governance conditions as identified in international literature	Assessment
Comprehensive monitoring	Present
Minimal industry involvement plus Government led mandatory regulation plus Best practice instrument design plus Comprehensive monitoring and enforcement.	None of the conditions
Minimal industry involvement plus Best practice instrument design plus Comprehensive monitoring	Challenges with design and Industry involvement

overweight and obesity, improve diets and reduce diet-related NCDs.²¹ Reformulation to reduce sodium, fat and sugar is one of the policy levers for achieving these objectives.²¹ The HFP has an executive committee that oversees different working groups that are tasked with setting priorities for different initiatives of the Partnership.²¹ The focus of this analysis is sodium reformulation. The now-discontinued Reformulation Working Group was tasked with evaluating existing reformulation initiatives, assessing foods and nutrients to be included in reformulation and setting targets.²¹ In May 2020, the reformulation group released 27 targets for sodium.

As summarised in Table 4, our analysis shows that sodium reformulation under the HFP lacks the necessary and sufficient conditions for policy success. While the partnership is government-initiated, the executive committee that oversees the partnership's activities includes the industry. The food industry was also involved in the reformulation working group tasked with making decisions on the foods/categories subject to reformulation, setting targets and evaluating the impact of the reformulation activities. High industry involvement in the governance of voluntary initiatives is one of the conditions for policy failure.¹³ The partnership is not underpinned by legislation and participation in the reformulation is voluntary. There are challenges with the design of the reformulation program, particularly around the setting of targets, and public health experts have argued that the targets that were set are too conservative and do not cover all food groups.²² There is no comprehensive monitoring except self-reports by the food companies that are participants, and there are no plans to review the partnership.

Discussion and policy recommendations

This study assessed the regulatory governance of three key Australian food policies, examining the extent to which they

have the conditions that are both necessary and sufficient for policy success in relation to population nutrition outcomes. The identified regulatory governance challenges can be improved by minimising industry involvement in the governance of the policy process, improving the regulatory design of the policies and improving the governance of the policy implementation process, especially policy monitoring. Below we discuss these findings and suggest recommendations for improvement in each policy that we examined.

All three policies had significant industry involvement in the governance and design of the policy. The involvement of these actors in policy design enables the industry to shape the policies in ways that align with their interests, which are often in conflict with public health interests.²³ While collaborative efforts and cooperation from industry are essential in the development of nutrition policy, international best practices for nutrition policy recommend government-led policy-making with industry only involved at the implementation stage.^{4,24}

One way of minimising industry involvement is by increasing the government's involvement. In the regulation of food marketing, this can be done by improving and strengthening the current co-regulation and self-regulation initiatives. Meta-regulation, which entails sharing roles between government, regulatory agencies and civil society, is recommended as an alternative to pure self-regulation.^{25,26} In this arrangement, the industry designs codes with input from government and civil society and the monitoring of compliance are done by third parties to ensure accountability.^{25,26} The Broadcasting Act of 1992, which delegates the ACMA to register Codes and Practice of the broadcasting industry,²⁷ affords ACMA legislative powers to play a more significant role in the content of the codes and administration of the codes. The co-regulation agreement also includes the expectation that the television industry codes of practice also comply with the AANA advertising Code.²⁷ The ACMA could collaborate with

FSANZ, the Federal Department of Health and States/Territories governments to design the Codes in a way that aligns with international standards such as the WHO set of recommendations for the marketing of food and non-alcoholic beverages to children.¹⁶ For example, in the institution of the UK rules on food marketing, the Food Standards Agency played a crucial role in gathering evidence on the impact of food marketing on health and the development of a nutrient profiling model that was to be used to determine which foods cannot be advertised. At the same time, the department of health provided a roadmap for improving health which included restrictions on marketing to children.²⁸ In addition, Reeve and Magnusson (2018) recommended that making changes in the Code would include changing the objectives of the codes to focus on reducing exposure to unhealthy food marketing, using stringent standards to set policy parameters and getting an independent external body to monitor industry performance.²⁹

The efficacy of the Health Star Rating system and the Healthy Food Partnership, which are voluntary public-private partnerships (PPPs), could be improved by instituting legislation to ensure a government-led policy process and make the policies mandatory. International evidence shows that the legitimacy of PPPs is often challenged by competing interests and a lack of trust and accountability between public and private stakeholders.³⁰⁻³² Consequently, policy initiatives implemented under these frameworks, such as the Public Health Responsibility Deal³³⁻³⁶ in the UK, do not achieve the intended outcomes. While the Health Star Rating System has led to positive effects on behaviour and reformulation,^{37,38} studies suggest that the voluntary approach has resulted in relatively low uptake and has skewed the scheme towards healthier products, which restricts consumers' ability to compare products pick the healthier options.^{39,40} Jones et al. (2018) suggest that one of the ways of improving the coverage and efficacy is to make it mandatory.⁴¹ Mandatory FoP labelling would place the responsibility of designing the policy, including the criteria for scoring foods, on the Government, which is in line with international best practices for FoP label design.¹⁸ Making changes to the design and introducing mandatory sanctions for noncompliance combined with existing comprehensive monitoring systems will

Table 3: Overview of the performance of the Healthy Food Partnership.

Necessary and sufficient regulatory governance conditions as identified in international literature	Assessment
Comprehensive monitoring	Absent
Minimal industry involvement plus Government led mandatory regulation plus Best practice instrument design plus Comprehensive monitoring and enforcement.	None of the conditions are present.
Minimal industry involvement plus Best practice instrument design plus Comprehensive monitoring	Challenges with target setting; No comprehensive monitoring

ensure that the Health Star Rating System has all the key regulatory governance conditions to make a positive impact on the food environment, consumer behaviour and health. While it has been argued that governments do not always possess the necessary skills and resources to design, monitor and enforce comprehensive policies, meta-regulation, which empowers third parties such as civil society and regulatory agencies, is recommended as a middle ground between government command-and-control regulation and pure industry celebration.⁴² In addition, governments can still play a steering role where they oversee aspects of self-regulation initiatives.²⁵

If mandatory legislation is not possible, reformulation under the HFP could be improved by strengthening the design and monitoring systems. According to the previous QCA study, voluntary reformulation can work if there is minimal industry involvement in the decisions around the setting of targets and selection of reformulation, the targeted categories are comprehensive with stringent targets, and there is a monitoring system that is transparent and independent of industry.¹³ Jones et al. (2016) suggest that the Healthy Food Partnership can be improved by stronger leadership from the government, setting clear targets, managing conflict of interests and improving monitoring and evaluation.⁴³ International examples of voluntary sodium reformulation initiatives that were implemented with these regulatory governance features include the UK Sodium reformulation under the Food Standards Agency^{36,44} and the United States National Sodium Reduction Initiative.⁴⁵ The HFP would also benefit from introducing a systematic monitoring system to evaluate how food reformulation is progressing against the targets in the different categories as recommended. A wide range of indicators should be used to measure progress – these can include content analyses of the food supply, population nutrient intakes and consumer behaviours.^{46,47} Monitoring should be performed by an external body, and there should be scheduled reviews of the reformulation initiative.^{46,47}

Limitations

While this study presents an evidence-based critical analysis of Australian food policies, it was subject to some limitations. The main limitation of this study was

that it was based on desktop research comprised of literature reviews, government documents and websites. Our assessment may therefore be limited to the regulatory governance processes on paper, which may be different from what happens in reality. Interviews with some stakeholders would enhance the robustness of this analysis and recommendations.

Conclusion

While the Australian Government has instituted policies to improve population nutrition outcomes, shortcomings in regulatory governance compromise the ability of the policies to have optimum impact. The efficacy of the policies analysed in this study can be enhanced by minimising industry involvement, improving government oversight and improving monitoring systems.

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