



**Submission to the Council of Australian
Governments**

FOOD LABELLING LAW AND POLICY REVIEW

Institute of Public Affairs

May 2010

1.0 INTRODUCTION

The Council of Australian Governments has commissioned a review into Australia's food labelling policy and laws chaired by Dr Neal Blewett AC.

In its issues consultation paper, the committee raised a series of questions addressing possible justifications and proposals for reform of Australia's food labelling regulations.

As a think tank committed to smaller government the IPA is keen to ensure that Australia's food labelling regulations are well designed and do not place unnecessary burdens on enterprise, encourage consumers to obfuscate responsibility for their own behaviour and unnecessarily empower government to make decisions on behalf of individuals. This submission will address some of the issues arising from the thirty-nine questions asked in the issues consultation paper.

2.0 FALSE OR MISLEADING CONDUCT

It is clear from the issues consultation paper that there are concerns in the community that current food labelling regulations are providing opportunities for producers to engage in false or misleading conduct.

As the issues consultation paper points out, the Trade Practices Act already provides avenues to investigate and prosecute those engaged in commerce who are also engaged in false or misleading conduct. It is therefore odd that false or misleading conduct, and opportunities for recourse against it, is given significant attention by the review.

There will always be interpretative issues in food labelling between consumers and producers. For example the introduction of 'traffic light' labelling could easily appear deceptive to a consumer. For example, a product labelled 'green' may suggest to a consumer that the product is good for you deceiving the consumer into thinking that they don't need to consider its consumption as part of a healthy, balanced diet.

The interpretative issues surrounding government regulated labelling are likely to be worse than those created by industry because some consumers may interpret government regulations as more independent than the claims made by industry who have a vested interest in having an appealing branding.

In this situation it is actually more desirable to place the burden of honesty on businesses that can, at least, be held to account for their behaviour through litigation. By comparison the consequences of government labelling are far less likely to provide consumers with an avenue for recourse.

Considering the absence of evidence that there are currently serious problems with false or misleading conduct on the part of food manufacturers, and that there are serious consequences of introducing more rigid regulations, there appears to be no justification to introduce more burdensome regulation.

3.0 INFORMATION ASYMMETRY AND ALTERNATIVE POLICY OBJECTIVES

A well functioning marketplace requires a limited role for government and that may include disclosure in food labelling that assists in balancing out the asymmetry of information between consumers and producers.

A clear example is the listing of ingredients on food products to ensure that consumers can make reasonably informed decisions of what is included in the food product that may not be observable to the naked eye, or because it is concealed as a result of packaging.

The consequences of not doing so are very clear because of the health risks immediately associated with allergies or certain intolerances such as gluten or lactose intolerance.

3.1 *Indirect policy objectives*

However, many advocates for further labelling appear to be arguing for more extensive labelling to address indirect consequences of food consumption, such as the impact particular foods may have to poor diets that may result in obesity.

Food labelling should not be used as a backdoor form of policy regulation to achieve an alternative public policy objective that has multiple causes. In the case of obesity, food consumption is part of a broader mix of factors including lifestyle choices, the environment and their level of physical activity, as well as their diet.

3.2 *Indirect political objectives*

Similarly, food labelling should not be used as a mechanism for addressing socio-political or environmental concerns. Included in the issues consultation paper was a question related to the specific labelling of palm oil.

As outlined in Section 4.0 food labelling regulations is not the best mechanism to address socio-political or environmental concerns in labelling. And as outlined in the IPA's recent submission¹ to the Senate Community Affairs Committee's Inquiry into the *Food Standards Amendment (Truth in Labelling – Palm Oil) Bill 2009*, and repeated below, the foundations for the campaigns against palm oil are entirely contestable. It would be an extremely dangerous precedent to regulate in favour of a political campaign through food labelling.

3.3 *Anti-palm oil campaigns*

Recent political campaigns against palm oil have been driven by Australia's publicly funded zoos in conjunction with international environmental activist organisations, who claim that

¹ Wilson, T., 2010, "Submission to the Senate Community Affairs Committee Inquiry into the Food Standards Amendment (Truth in Labelling – Palm Oil) Bill 2009", Institute of Public Affairs, Melbourne, Australia

wildlife and orang-utans are dying as a consequence of the Indonesian and Malaysian palm oil industries. The claim is that forest used as a home by wildlife and orang-utans is being cleared for the production of palm oil.

But palm oil is not responsible for deforestation. Poverty is.

Deforestation occurs around the world as poor farmers seek to lift themselves out of poverty through the production of commodities that are in demand in domestic and international markets.

As the world's largest traded oil, palm oil is in heavy demand throughout the developing and developed world because it is a high-yield, trans-fat free, Vitamin A-rich, low-cost oil.²

Without palm oil, deforestation would still occur in the developing world. But instead of palm oil, growers would simply produce different crops, such as replacement oil seeds. Such a scenario would lead to expanded environmental degradation and deforestation because of the relatively low-yield of alternatives.

Based on data from Oil World³ palm oil remains the most efficient oil seed. Even one of palm oil's critics and sponsors of the Bill, Senator Bob Brown, acknowledges that "oil palm is the most productive oil seed".⁴

Table 1 | Comparison of oil yield (tonne / hectare)

Oil	Tonnage per hectare
Soybean oil	0.37
Sunflower oil	0.5
Rapeseed oil	0.75
Oil palm	4.09

Source: Oil World, 2010, "Oil World Annual 2020", Hamburg, Germany

Table 1 outlines the yield potential of four major competing oils and clearly identifies the high-yield potential of palm oil. Should alternative oils be grown, more land would be needed to produce an equivalent volume of oil to replace palm oil, likely resulting in further deforestation.

Unfortunately food manufacturers and celebrities are not heeding this message. In a recent episode of Channel 10's popular program, *The 7pm Project*, a panellist stated "I get worried when I hear somebody say ... there's no viable alternative (to palm oil)."⁵

² UNICEF, 2004, "Vitamin and mineral deficiency: A global damage assessment report", United Nations, New York

³ Oil World, 2010, "Oil World Annual 2020", Hamburg, Germany

⁴ Brown, B., 2009, "Second reading speech: Food Standards Amendment (Truth in labelling – Palm oil) Bill 2009", Australian Senate, Commonwealth of Australia, Canberra, Australia, at [http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=;db=;group=;holdingType=;id=;orderBy=;page=;query=BillId_Phrase:"s739"%20Dataset:hansardr,hansards%20Title:"second%20reading";querytype=;rec=0;resCount=](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=;db=;group=;holdingType=;id=;orderBy=;page=;query=BillId_Phrase:)

But French retailer, Groupe Casino, has found an alternative and has announced that it will be replacing palm oil for rapeseed and sunflower oils in more than 200 different food products.⁶ But as a result of Groupe Casino's decision up to nine times more land will be needed to produce the same oil quantity to replace palm oil as an ingredient in food products. The consequence is that to achieve the perceived benefits of not using palm oil, Groupe Casino is likely to use more of the world's scarce resources to produce the same (or smaller) quantities of products. It is hardly a win for the environment.

No doubt many environmental groups will disagree with these arguments.

And it is precisely because of the contestable arguments surrounding socio-political and environmental campaigns, that food labelling regulations should not be used to achieve these objectives.

4.0 MARKET-BASED FOOD LABELLING WORKS

Many of the concerns raised by advocates for more extensive food labelling regulation relate to concerns about false or misleading conduct, or a lack of information provided to consumers to make informed decisions. But there are viable, responsive market-based alternatives that address their concerns that don't warrant further regulation.

Certification marks that have consumer awareness, understanding and trust are a much stronger alternative to extensive government regulation that seeks to impose a one-size-fits-all-model on food production.

Private certification marks already exist to assist consumers in making informed decisions. And they are regularly innovated much earlier than government regulations because the marketplace is more responsive to consumer concerns. For example:

- The Heart Foundation's red tick of approval certification mark to assist consumers in identifying products that posed a lower risk in promoting cardiovascular disease, was created in 1989.
- The contemporary Fair Trade certification mark to assist consumers in identifying perceived 'ethical' consumption based on environmental and social objectives in the developing world was created in 2002, following the development of earlier forms of the mark.
- Roundtable for Sustainable Palm Oil certification to assist consumers in ensuring palm oil ingredients are sourced from sustainable plantations, was founded around 2004.

⁵ The 7pm Project, Channel 10, 5th April 2010

⁶ Groupe Casino, 2010, "Groupe Casino undertakes to discontinue the use of palm oil in its own brand products, 200 palm oil-free products by 2010 and all products in the long term", Paris, France, at <http://www.groupe-casino.fr/IMG/file/COM-100325en.pdf>

Private certification marks are radically different from labelling requirements because they involve a form of certification, at production and through the supply chain to the consumer.. These certification marks secure credibility by providing an overall concept of value to consumers that they understand, generally to achieve political objectives.

The value held in these certification marks is also a result of the significant resources dedicated to their promotion and the voluntarily nature into which they are entered.⁷

By comparison, government-mandated labelling requirements remove the capacity for the market to address these problems, and they introduce a coercive labelling regime.

5.0 CONCLUSIONS

There has been increasing pressure on governments to reform food labelling regulations because of concerns that they do not properly assist consumers in making informed decisions.

False and misleading conduct by those who mislabel products can already be addressed under the Trade Practices Act. And should government seek to regulate further and introduce new, proposed forms of labelling, consumers could be worse off because of a lack of recourse of misleading labelling regulated by government.

Food labelling should not be used as a backdoor mechanism to achieve alternative public policy challenges or to support socio-political or environmental campaigns.

Food labelling should ensure consumers are able to make informed decisions based on identification of labelling that they trust.

The best way to ensure consumers can discern between products based on diverse concepts of value is through private certification and the representation of certification marks that consumers understand and identify with, not additional mandated labelling.

Private certification marks achieve the same level, if not more, awareness with consumers and ensure that consumers continue to have choice about whether they want environmental concerns included as part in their concept of value.

Doing so also provides a level of choice for producers based on where they wish to position their product in the marketplace.

⁷ Wilson, T., "Fair trade and voluntarism", in Macdonald, K. & Marshall, S. (Eds), 2010, "Fair trade, corporate accountability and beyond: Experiments in global justice", Ashgate Publishing, Surrey, United Kingdom

6.0 REFERENCE LIST

Brown, B., 2009, "Second reading speech: Food Standards Amendment (Truth in labelling – Palm oil) Bill 2009", Australian Senate, Commonwealth of Australia, Canberra, Australia, at [http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=;db=;group=;holdingType=;id=;orderBy=;page=;query=BillId_Phrase:"s739"%20Dataset:hansardr,hansards%20Title:"second%20reading";querytype=;rec=0;resCount=](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=;db=;group=;holdingType=;id=;orderBy=;page=;query=BillId_Phrase:)

Groupe Casino, 2010, "Groupe Casino undertakes to discontinue the use of palm oil in its own brand products, 200 palm oil-free products by 2010 and all products in the long term", Paris, France, at <http://www.groupe-casino.fr/IMG/file/COM-100325en.pdf>

Oil World, 2010, "Oil World Annual 2020", Hamburg, Germany

The 7pm Project, Channel 10, 5th April 2010

UNICEF, 2004, "Vitamin and mineral deficiency: A global damage assessment report", United Nations, New York

Wilson, T., 2010, "Fair trade and voluntarism", in Macdonald, K. & Marshall, S. (Eds), "Fair trade, corporate accountability and beyond: Experiments in global justice", Ashgate Publishing, Surrey, United Kingdom

Wilson, T., 2010, "Submission to the Senate Community Affairs Committee Inquiry into the Food Standards Amendment (Truth in Labelling – Palm Oil) Bill 2009", Institute of Public Affairs, Melbourne, Australia

7.0 ABOUT THE INSTITUTE OF PUBLIC AFFAIRS

The Institute of Public Affairs, founded in 1943, is the world's oldest free market think tank. The IPA is a not-for-profit research institute based in Melbourne, Australia with staff and associates based around Australia.

Think tanks act as public policy incubators and develop public policy solutions. The objective of the IPA is to promote evidence-based public policy solutions rooted in a liberal tradition of free markets and a free society. The IPA achieves these objectives by:

- undertaking and disseminating research.
- participating in national and international policy debate through the media.
- engaging with opinion leaders, stakeholders and public policy makers.

All work completed by the IPA is published in the public domain for the consumption of governments, politicians, domestic and international policy makers and the public-at-large.

The IPA has a demonstrated track record of contributing to, and changing the terms of the public policy debate in Australia and internationally. In particular, in recent years the IPA has been at the centre of public discussion in Australia and in appropriate international fora on:

- Regulation
- Trade
- Intellectual property
- Water
- Energy
- Housing
- Industrial relations
- Taxation
- Investment

8.0 ABOUT THE AUTHOR | TIM WILSON

Tim is Director of the Intellectual Property and Free Trade Unit at the Institute of Public Affairs.

He is regularly published in Australian and international newspapers and journals, including the *Wall Street Journal Asia* and *Europe*, the *Australian Financial Review* and *The Australian*. He is a frequent commentator on television and radio, including as panellist on ABC1's current affairs program *Q&A*, ABC2's *News Breakfast* and Triple J's radio program *Hack*.

In 2009 Tim was recognised by Australia's national daily broadsheet, *The Australian*, as one of the ten emerging leaders of Australian society. He is currently a member of the Department of Foreign Affairs and Trade's IP Industry Consultative Group and serves on the steering committee of the Sydney Opera House's *Festival of Dangerous Ideas*.

Tim has completed a Masters of Diplomacy and Trade majoring in International Trade from the Monash Graduate School of Business and a Bachelor of Arts majoring in Public Policy and Politics from Monash University. He has also completed a Diploma of Business and the IP Summer School at the World Intellectual Property Organization Academy. He has also completed the Global Health Diplomacy Executive Program and the WTO, International Trade and Development Program at the Institut de Hautes Études Internationales et du Développement, Geneva. He is also a trained carbon accountant.

He is currently completing a Graduate Diploma of Energy and the Environment (Climate Science and Global Warming) from Perth's Murdoch University and the University of Melbourne's Asialink Leaders Program.