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**Side effects of having informed choice
as an objective of government
intervention in food labelling**

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1. Introduction

The view that the public has a ‘right to know’ about any number of things about the food they eat is becoming more commonly accepted as a given. Less common is hearing mention of any downside of having ‘information to enable informed consumer choice’ as a specific objective of national food policy.

In Australia, this objective was inserted into food standards law in 2001, apparently in response to pressure for comprehensive labelling of genetically modified (GM) food, which Food Standards Australia New Zealand (FSANZ) had previously argued could not be justified on the basis of scientific evidence on health and safety impacts (ANZFA 1998, Parbery 2004). It was added to the existing, overarching, uncontroversial objectives of protecting public health and safety, and preventing misleading or deceptive conduct.

This paper explores a hypothesis that the existence of ‘informed choice’ in food legislation, as well as arguably being unnecessary, could be creating problems in itself. These might include unrealistic expectations and policy outcomes that are costly and inefficient. Moreover, although a National Review of Food Labelling was set up in 2009 to look into these issues, its methodology did not generate systematic analysis of food labelling costs and benefits to different groups of producers and consumers.

The paper concludes with suggestions for policy directions. There could be more efforts to strengthen compliance with existing law, rather than additional prescriptive regulation. Also useful would be more empirical research aimed at eliciting the actual values consumers place on labels in ‘real’ retail environments. In particular, lower socioeconomic groups should be better-represented in studies, particularly into the benefits of front-of-pack nutritional labelling.

2. The role for government in food labelling

The problem of food ‘adulteration’ has been recognised since ancient times, and is the most enduring issue in the history of food regulation (Law, 2010). Special vigilance is required because of the inability of consumers to differentiate adulterated products (because of asymmetric information associated with credence attributes) and the consequent ever-present incentives for fraud. It has long been known that fraud can lead to health risks, if the adulteration is unsafe, and economic risks, if lower quality goods (such as watered-down-wine) drive honest producers out of business (Akerlof 1970).

Health risks and economic risks lead to two long-established and non-controversial objectives of food regulation - the protection of public health and safety; and the prevention of misleading and deceptive conduct (Law, 2010).

Over the years, the variety of credence attributes marketed has increased beyond ‘adulteration’ as consumers become interested in foods’ impact on the environment,

animal-welfare, health and social welfare (eg 'fair trade') and many more areas. This interest is likely to continue to grow. Trouble establishing credibility of credence claims tends to prompt calls for more government intervention in setting standards, endorsing privately developed labelling schemes, 'traceability', mandatory labelling and similar mechanisms (Consumer Affairs Victoria, 2010). However, economists researching these areas often conclude different roles for government will be more efficient and effective (Caswell and Mojduska 1996, Golan, Kuchler and Mitchell 2000, Cole and Harris 2004 and 2005, McCluskey 2000, McCluskey and Loureiro 2005).

This research has concentrated on refining roles for government around credence attributes, to enhance the delivery of the fundamental objectives of food regulation. It highlights the need for policy around mandatory labelling to be very clear about the market failure it is addressing. Asymmetric information will be a necessary but not a sufficient condition for intervention. The information government mandates will also need to be sufficiently valued so that benefits outweigh costs. This will be the case if the 'standardised' information is useful enough that it becomes generally accepted and adopted by shoppers as part of product selection and comparison. This will not just include certain groups of shoppers, with special interests, but 'shoppers as a whole'.

This means governments should not become involved in mandatory labelling to influence choice unless there are social, or wider public benefits from people changing their food choices. For example, nutritional profiles on food packaging in standardised formats address information asymmetries by making it easier for consumers to collect and compare nutritional attributes. But governments only care about this because there are wider health benefits, and lower health costs, for the general population. Examples of 'standardised' labelling with private benefits, but no wider social benefits, meaning the private sector provides it, are restaurant 'hat' ratings and accommodation 'star' ratings (CAV 2006a). Examples where there are some possible wider benefits but where mandatory labelling is rarely effective or efficient include most environmental and similar spillover effects associated with food production (Golan et al 2000).

A key point that can be missed when labelling is called for, and publicly debated, is that it is only one potential choice in a suite of potential policy instruments that need to be ordered by merit. Corden (1974) developed a policy hierarchy approach to do this. He argued that once an issue is identified for government action many policies may be conceivable, but it should always be possible to order them in a hierarchy from first-best, to second-best, and so on. The first-best policy makes the 'correction' as close as possible to the 'point of divergence' which is the source of the divergence between social requirements, indicating government intervention, and the laissez-faire outcome. In other words, the first-best policy targets the identified problem as specifically as possible with a policy that causes minimum distortions on the rest of the economy. At each step down the hierarchy, additional by-product distortions are imposed, and the extent of the correction of the divergence declines¹.

¹ Corden used the example of choosing a policy instrument to protect manufacturing jobs from import competition, and argued that a subsidy to domestic labour costs is first best, with export subsidies

Labelling to address *environmental* impacts of food production is not usually a highly-rated policy instrument because it is too far removed from the root cause of the problem and therefore has side-effects. For example the term ‘food miles’ refers to the distance travelled by food between production and consumption. ‘Fewer food miles’ is intended to convey reduced greenhouse gases from transport, and more support to regional producers. However, it is an inadequate and potentially misleading measure of the environmental and economic impact of food (Rama and Lawrence, 2008). It can distort international trade outcomes, potentially reducing market access for Australia’s exports (Hogan and Thorpe, 2009). Another example is mandatory labelling of palm oil to protect orang utan habitats (threatened by deforestation to grow palm oil). This is a common policy suggestion but is not ‘first best’ because it would not directly protect forests or change behavioural incentives. Labelling would only work if the majority of people read it, and reacted to it, and there was universal compliance. If palm oil cannot even be detected by the average consumer as an ingredient, it seems optimistic to expect labelling could reliably aim to protect a species. This is not to say palm oil labelling is without any merit and that, of course, people wishing to make product choices based on palm oil content deserve to have confidence in the truthfulness of voluntarily-labelled products.

This leads to another point about roles for government around credence attributes - they must go much further than having the legislation in place. Continuing vigilance around compliance and enforcement is essential, as incentives to cheat will be on-going. There will be not only a loss of economic efficiency if markets don’t flourish, but a perception that existing law is not sufficient, leading to calls for ‘stronger’ government regulation, such as mandated definitions of words such as ‘organic’ and ‘free range’.

McCluskey (2000, 2005) has researched the requirements for high-quality credence attribute markets to flourish – repeat-purchase relationships and third-party monitoring. There has also been research into how sellers can signal their honesty, or credibility, to overcome asymmetric information problems. Signalling can take forms such as third-party certification (eg RSPCA); renting the reputation of a retailer such as a supermarket (Chu and Chu 1994) and visible investments like shopfronts that are foregone if cheating occurs. Macho-Stadler and Perez-Castrillo (1997) show that signalling *may* lead to a ‘separating equilibrium’, with high and low quality good (eg free range and cage laid eggs) co-existing depending on the:

- costs of signalling;
- additional cost of producing the credence attribute (or high quality product);
- marginal benefit to consumers (the extra price they will pay for high quality).

Not all sellers will be able to signal cost-effectively, thus highlighting the importance of governments enforcing legislation that prohibits misleading or deceptive claims.

and tariffs being least preferred because they cause consumption distortions (more expensive goods for consumers) and trade-biases, while also being less effective in protecting jobs.

3. Informed choice becomes a specific objective

The position of Australia's food regulator, Food Standards Australia New Zealand (FSANZ) in 1998 (ANZFA² 1998) was:

A mandatory requirement to label foods that are substantially equivalent³ to their conventional counterparts is not prescribed as:

- (i) it cannot be justified on the basis of sound scientific principles*
- (ii) it is not necessary for the protection of health and safety...*
- (iii) is more [trade] restrictive than necessary to achieve a legitimate outcome.*

However, substantial equivalence as an approach became extremely controversial because there was no clear definition, and no tests to definitively establish that GM food posed no health and safety risks (Parbery 2004). Consumer organisations, environmental groups and a few leading scientists criticised substantial equivalence for helping to play down the novelty of genetic engineering to facilitate its commercialisation. Now, the capability to classify a novel food as being substantially equivalent no longer justifies a lack of safety assessments, but is only used as a guide to inform safety assessments.

Pressure mounted in the late 1990s for GM foods to be comprehensively labelled. According to Parbery (2004), when this policy was finally adopted in December 2001⁴ it had to be reconciled with recently adopted statutory directives to base policy on science consistent with Australia's WTO commitments. FSANZ had argued comprehensive labelling could not be justified on scientific grounds (see above) and, in addition, government and industry were anxious that mandatory labelling should not stigmatise GM foods in the eyes of the public by appearing to signal some novel risk. The response appears to have been to establish 'information to enable informed consumer choice' as a statutory objective in its own right, where previously this had been a means to FSANZ's primary objectives of food safety and fraud prevention (Parbery 2004, Box 1⁵).

² Australia New Zealand Food Authority (ANZFA) was the previous name of Food Standards Australia New Zealand (FSANZ).

³ Substantial equivalence was a term 'invented' for GM issues, to embody the concept that if a new food or food component is found to be substantially equivalent to an existing food or food component, it can be treated in the same manner with respect to safety (ie the food or food component can be concluded to be as safe as the conventional food or food component).

⁴ Standard 1.5.2 requires all genetically modified food and ingredients to be labelled where they contain novel deoxyribonucleic acid (DNA) and/or novel protein in the final food or have altered characteristics. To comply with the standard, food businesses such as manufacturers, packers, importers and, where appropriate, retailers should take all reasonable steps to find out whether a food or ingredient (including additives and processing aids) is produced using gene technology, and if so, to find out whether the food or ingredient produced using gene technology is permitted under the Code; and determine the labelling requirements for the GM food or ingredient. It is the responsibility of the food business applying the food label, or selling the food, to meet the requirements of the standard and ensure the accuracy of the label.

⁵ <http://www.foodstandards.gov.au/foodstandards/foodstandardscode/fsccommentary.cfm> accessed 27 October 2010

The GM food labelling standard was reviewed by FSANZ three years after its introduction and their final report, released in May 2004 (FSANZ, 2003) re-emphasises that “the labelling requirements for GM food are not about safety; they are designed to enable consumers to make informed choices about what foods they eat”. GM standards are proclaimed as the most comprehensive, both in scope and breadth of capture, of any country in the world.

Box 1.

The Australia New Zealand Food Standards Code

The Code is a collection of individual food standards with the force of law - relevant State, Territory and New Zealand Food Acts and Fair Trading Acts (replaced in Australia by the Australian Consumer Law in January 2100).

Food standards are developed or varied by the Food Standards Australia New Zealand (FSANZ), an independent statutory agency established by the *Food Standards Australia New Zealand Act 1991*. FSANZ must have regard to the following overarching objectives, in priority order:

1. The protection of public health and safety.
2. The provision of adequate information relating to food to enable consumers to make informed choices.
3. The prevention of misleading or deceptive conduct.

The Authority must also have regard to matters such as:

- the need for standards to be based on risk analysis using the best available scientific evidence;
- the promotion of consistency between domestic and international food standards;
- the desirability of an efficient and internationally competitive food industry; and
- the promotion of fair trading in food.

Since the introduction of the separate ‘information for choice’ objective, there has been ongoing discussion about whether this is appropriate or not, particularly because potentially consumers might want choice about any number of attributes and not all can or should be mandatory on labels.

4. The National Review of Food Labelling

To address concerns about food labelling, the Council of Australian Governments (CoAG) and the Australia and New Zealand Food Regulation Ministerial Council commenced, in October 2009, a national Review of Food Labelling Law and Policy (the ‘Blewett Review’⁶). Box 2 contains a summary of the context and terms of reference of this Review⁷.

⁶ <http://www.foodlabellingreview.gov.au/internet/foodlabelling/publishing.nsf/content/home>

⁷ <http://www.foodlabellingreview.gov.au/internet/foodlabelling/publishing.nsf/Content/terms>

Box 2.

The Australia New Zealand Food Standards Code

Context

There are tensions between the varying objectives sought to be achieved from food labelling laws by the different stakeholders in the food regulatory system. Calls are regularly being made for new labelling requirements to address a range of issues of concern to diverse groups within the community. Increasingly these do not relate to the characteristics of the food itself, but are about food production systems or attributes.

However, all food labelling requirements impose costs. Therefore it is important that all food labelling laws are evidence based and effective at achieving their policy purpose; do not impose unjustifiable regulatory burdens on business; and are capable of being enforced in an effective, proportionate and consistent manner.

There is a finite amount of information on labels that people can absorb. Poorly designed labels can confuse rather than assist consumers. There is also a finite amount of information that can reasonably be included on food packaging. At present, each request for change to food labelling standards is assessed on a case by case basis. There is no process for examining the cumulative burden and cost of incrementally increasing labelling requirements.

There is limited scope within the food regulatory system for innovative approaches to labelling issues. Food regulators currently have a very limited range of enforcement tools which makes proportionate enforcement of labelling requirements difficult to achieve.

A stated objective of food laws is to prevent misleading or deceptive conduct in relation to food. The prevention of misleading or deceptive conduct is also an objective of general consumer protection laws. There is overlap between these two areas of law. Both business and consumer stakeholders have voiced concern about variation in enforcement of food labelling laws across jurisdictions.

Matters for Review

The review panel will be required to:

1. Examine the policy drivers impacting on demands for food labelling.
2. Consider what should be the role for government in the regulation of food labelling. What principles should guide decisions about government regulatory intervention?
3. Consider what policies and mechanisms are needed to ensure that government plays its optimum role.
4. Consider principles and approaches to achieve compliance with labelling requirements, and appropriate and consistent enforcement.

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5. Evaluate current policies, standards and laws relevant to food labelling and existing work on health claims and front of pack labelling against terms of reference 1-4 above.
6. Make recommendations to improve food labelling law and policy.

Revealing the strength of interest, the review panel received more than 6,500 submissions in only a few weeks (by the closing date of 20 November 2009). These were divided into stakeholder groups as follows (Food Labelling Review Panel (2010a):

- individual consumers (6486)
- food and related industries (52)
- non-government organisations (48)
- government agencies and health services (16)
- research and education institutions (11)
- members of parliament and political parties (7)

Eighty-five per cent (more than 5,000) of these were campaign submissions with identical messages about comprehensive labelling of GM content, nanotechnology and additives and allergens. Other areas of interest to ‘individual consumers’ were animal production methods; palm oil content; nutritional labelling and country-of-origin labelling. There is no mention of individual consumers expressing views about labelling adding to food costs. However, food affordability in the general population, and the cumulative impact of labelling regulations on small businesses, were raised in submissions by ‘government agencies and health services’. Research and education institutions mainly focussed on nutritional labelling and related issues, suggesting a front-of-pack ‘traffic light scheme’ would benefit consumers ‘with low literacy in particular’. Some stakeholders in this category felt the existence of numerous voluntary front-of-pack nutrition labelling schemes confuses consumers. However, mandatory front-of-pack nutritional labelling was strongly opposed in submissions from ‘food and related industries’, with stakeholders citing the existing voluntary front-of-pack labelling schemes, developed by industry, as demonstrating the food industry’s willingness to assist consumers in making healthier food choices.

These submissions helped compile thirty-nine open-ended questions in an Issues Consultation Paper (Food Labelling Review Panel, 2010b) in March 2010. The panel provided a template containing the questions so respondents could answer them directly. Some examples of the types of questions are:

- Q4. What principles should guide decisions about government intervention on food labelling?
- Q5. What criteria should determine the appropriate tools for intervention?

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- Q13. To what extent should the labelling requirements of the Food Standards Code address additional consumer-related concerns, with no immediate public health and safety impact?
- Q14. What criteria should be used to determine the inclusion of specific types of information?
- Q17. Is there a need to establish agreed definitions of terms such as 'natural', 'lite', 'organic', 'free range', 'virgin' (as regards olive oil), 'kosher' or 'halal'? If so, should these definitions be included or referenced in the Food Standards Code?

As discussed in section two, the economic literature is quite conclusive about appropriate roles for government in food labelling. These roles were reiterated in the submission the Victorian Government made to the Review (Victorian Government 2010). The part of the submission which refers to information to inform consumer choice is summarised in Box 3.

Box 3.

**Provision of information to inform consumer choice
(from the Victorian Government submission to the National Review of Food Labelling, pages 5-6)**

While informing consumer choice is an important policy objective, food labels and food labelling laws cannot feasibly address the full range of calls for information about food made by multiple diverse groups within the community. A food label is limited in size and, therefore, is limited in the amount of information it can communicate. Too much information can crowd out the most critical messages. Further, regulators are limited in resources and, therefore, are limited in the volume of legislation they can effectively enforce. Laws that are introduced and not enforced may discredit the food regulatory system.

Evolving technologies and food products and changing consumer preferences will inevitably result in changing consumer demands for information about food products. Not all of these demands for information need be met through food labelling standards. New information technologies and other methods of communication can provide information to meet changing consumer preferences and may increase the volume of information that can be communicated to consumers.

Food laws ought to be targeted at issues of importance to the entire community (i.e. public health and safety) and matters where regulation is deemed to be in the national interest, rather than at issues of interest to particular sectors of the community. This approach is consistent with the principle of generating the maximum net benefit to the community.

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Accordingly, it should not ordinarily be the role of the Food Standards Code to regulate “credence claims” about food products (e.g. claims about production attributes or quality – such as whether food is organic, biodynamic, vegan, halal, kosher, free range, and the like). These attributes are over and above legislated minimum standards that are in place to protect public goods (such as safety) and offer benefits to select consumers and producers. The demand for such information can be met through market driven standards and industry, or third party certification schemes, supplemented by economy wide consumer protection laws.

Consumer Affairs Victoria (CAV) recently published a discussion paper on credence claims *Credence attributes: making honesty the best policy* (CAV, 2010a). This report describes the development of a national standard that defines ‘organic’. This process was funded and developed by organic certification bodies through Standards Australia and is compared to the government-led process that occurred in the US to develop national organic standards. The US process took ten years, was very costly and resulted in overly complex regulations. In an environment where production systems, technologies and consumer concerns are continually advancing industry-led standards provide greater flexibility and capacity for innovation, while still providing a shared understanding of the meaning of a claim between producers and consumers and criteria against which consumer protection law can be applied.

The Panel received an ‘overwhelming’ amount of input via written submissions, meetings and discussion forums, which was ‘fundamental to the review process’ (Food Labelling Review Panel, 2011⁸).

‘Labelling Logic’, the final report of the Panel, released on 27 January 2011, contains 61 recommendations. It is likely to generate extensive discussion over a long period.

5. Current and ongoing issues

This paper aims to contribute to ongoing discussions about food labelling by suggesting that having ‘information to enable choice’ as a specific objective of food legislation could be at the bottom of some of the issues the Review Panel has grappled with. Although it is difficult to try to make this argument without seemingly going around in circles, it could be at least partly responsible for current and ongoing issues such as the following (which are interrelated).

1. An environment of high and increasing *expectations* about information that should be labelled on food.
2. Emphasis on the ‘right to know’ at the expense of, or without sufficient weight to,

⁸ In ‘Foreword by the Chair’, Dr Neal Blewett AC, 27 January 2011 piii

other aspects of decision-making such as labelling costs (compounded by the lack of systematic ways of deciding the issues FSANZ takes on).

3. Dilution of important messages due to their smaller relative size on a label (which may be inevitable if more and more mandatory labelling is added).
4. Consumer confusion and/or 'bounded' ability to absorb different types of information on labels, especially while in the typical food-shopping 'at a glance' environment where decisions are made.
5. Confusion about the objectives of food legislation on the part of consumers. For example, country-of-origin labelling (CoOL) does not fulfil a health or safety function, but many appear to think it does (see 7 below), which may also be the case with GM labelling, and other possible labelling such as 'clone-free' or 'hormone-free'.
6. Increasing costs to consumers without sound evidence of the value of labels to consumers in 'real' retail environments, including empirical evidence for different socioeconomic groups (see Box 4).
 - Time costs might legitimately be included in empirical work if increasing amounts of time are required to evaluate labels while shopping.
7. Increasing costs to producers that are difficult to justify.
 - For example, a benefit-cost analysis of CoOL by NZIER (2005) concludes (p9) that the 'right to know' is what people say they want (based on political, religious or ethical beliefs) but if it were sufficiently valued, it would be supplied voluntarily. They confirm there are no health and safety benefits from CoOL although it may 'reinforce certain prejudices about food from specific origins (p10)' which may, in turn, contribute to the perception it may be a trade barrier. Similarly the CIE (2006) reported a 'strong case' that the costs would not exceed the benefits of a proposed extension to CoOL⁹.
 - For example, FSANZ is undertaking an official process to measure the regulatory impact of a proposal to require all eggs to be uniquely stamped to ensure traceability back to farm (as opposed to allowing industry to decide how it meets traceability requirements). Without being able, at this stage, to present this analysis, it would seem inevitable it would be costly to implement (especially for small producers of relatively small-sized eggs), in a competitive industry, meaning sizeable benefits, not-achievable by other methods, would need to be clearly demonstrated.
8. A compounding of this tendency to impose costly regulatory requirements on food producers and consumers if efforts to collect information (such as public reviews) continue to be primarily based on open-ended questions and survey-type analysis.
9. Inquiries into labelling and reviews of labelling which may be unnecessary if the fundamental roles for government are already well known, counter-productive if they are not designed to elicit appropriate information, and potentially endless because of the nature of problems being investigated.

⁹ To require that all countries of origin be specified for each major component of packaged food products containing two (or fewer) fruits or vegetables.

- As noted in Box 3, the process of ‘defining’ the word ‘organic’ went on for a very long time in the United States. Even if a definition is eventually ‘nailed down’, complying with a standard is not necessarily what producers of specialty niche products are in the business of doing. They may in fact be in the business of doing exactly the opposite – convincing consumers that their product is something special ‘above the standard’ (perhaps ‘super biodynamic’) that justifies a price premium. Setting up official processes to try to define new terms invented by competitive industries, with ongoing incentives to innovate, is unlikely to be an efficient use of resources. It has even been argued that the length and costliness of the US organic standard development processes can be attributed to the government running it (Baum 2000, Ippolito 2003).
10. An emphasis on the ‘right to know’ being on issues of more concern to the relatively affluent, as opposed to those whose primary interest is in obtaining the cheapest food possible. This may be exacerbated by differences in the relative ‘voices’ of different groups in the community. As noted by Choice (2010) in their submission to the Review Panel, in most cases, individual consumers can only have input by making a written submission during formal public consultation, yet very few consumers have the capacity to do this. Choice believes regulators must engage consumers in other ways, for example through consumer research or consumer advisory panels, in order for consumers to have meaningful input.
 11. Equity concerns if the less affluent spend a larger proportion of their incomes on food and are impacted relatively more by higher costs when labelling requirements are strengthened.
 - The opposite of this may be true for front-of-pack ‘traffic light’ labelling. Consumers of lower socioeconomic status have a greater burden of chronic disease so any information designed to assist consumers to make healthy choices must be easily understood by the target group (Choice 2010). Research by a collaboration of public health and consumer research groups (Kelly et al 2008) found statistically significant differences between socioeconomic groups in their ability to differentiate between monochrome percentage daily intake (%DI), and traffic light systems. Consumers from lower socioeconomic groups were six times less likely to correctly identify healthier foods using %DI than with traffic lights.

Box 4.

Behaviour in ‘real’ retail environments

“Although corporations and policy makers are bombarded with international surveys purporting to show that average consumers do demand ethical products, lingering doubts remain as survey radicals turn into economic conservatives at the checkout” (Devinney, Auger and Eckhardt, 2009, ‘the myth of the ethical consumer’ p14)

In the area of food labelling, especially nutrition labelling, there have been many studies in Australia and overseas about what consumers want. Grunert and Wills (2007) reviewed fifty eight studies about nutrition

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labelling on how consumers perceive, understand, and like it, from 2003-06 in the EU-15 countries. They found ‘virtually no insight’ into how labelling information is, or will be used in a *real-world shopping situation* and conclude (p396):

“we are in urgent need of studies on real-world label perception and low involvement learning.... (because) almost all we know on label perception is based on consumer self-reports which are most likely grossly overestimated. In the real world, label perception, if it occurs at all, will be mostly in situations of time pressures and as part of decisions in which habitual behaviour and the use of heuristics play a big role.”

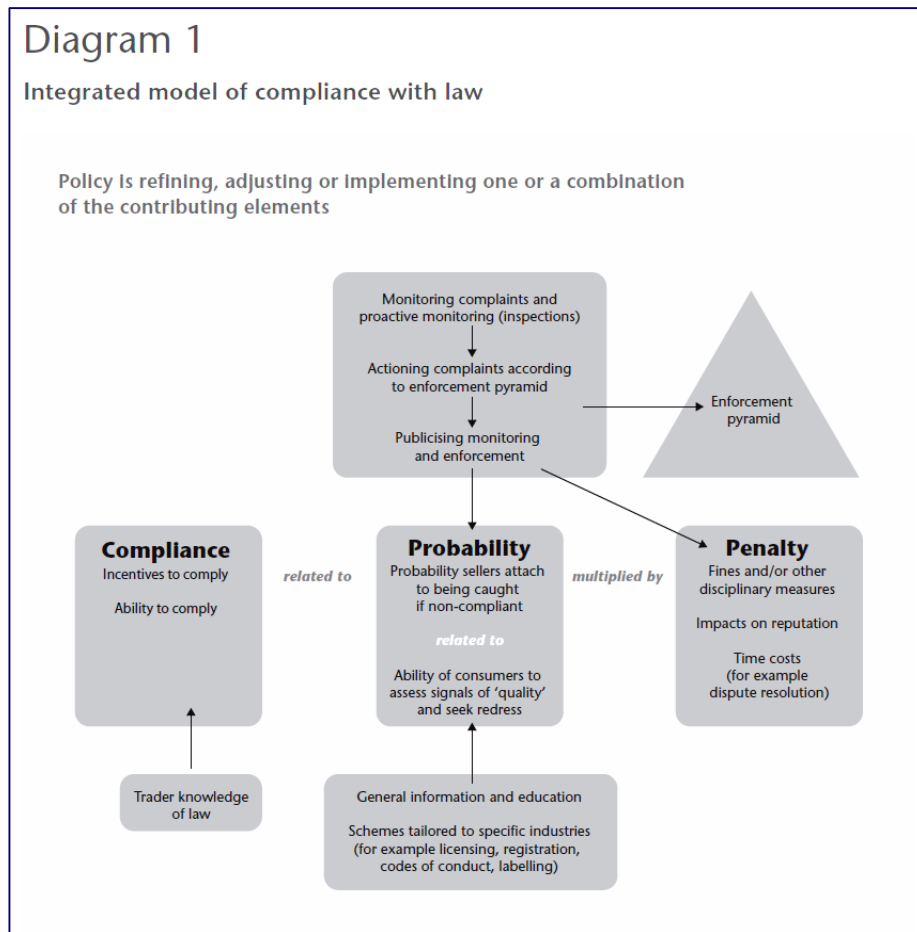
“Willingness-to-pay” for unpriced environmental public goods such as national parks has been studied by economists for many years. In the area of food labelling, economists overseas have used methods such as contingent valuation, choice experiments and experimental auctions to elicit preferences for food labels on attributes such as tenderness of beef, organics and GM-content (Gao and Schroeder 2009). Lusk and Marette (2010) review the literature about elicitation methodology and the reliability of value elicitation methods. They conclude that after numerous such studies researchers now have more knowledge about which approaches are more or less reliable and have increasing confidence and evidence about the validity of their methods. Lusk and Marette’s work on beef cloning is to help producers decide whether it is worth their while spending money to guarantee their own produce is not cloned, to provide a ‘niche’ product for consumers who do not wish to accept the FDA’s 2008 ruling that beef from cloned animals is safe to eat. This has echoes of the GM labelling debate.

In Australia much more empirical work is needed on value-elicitation, willingness-to pay and label-use in ‘real’ retail situations. It is needed across different socioeconomic groups, to ensure the different preferences and needs of lower socioeconomic groups are measured and incorporated into policy debates.

6. Policy priorities

More could be done to improve compliance with laws that prohibit misleading and deceptive conduct, as an alternative to thinking about introducing additional prescriptive regulation. This would then lead to fewer calls for additional labelling based on the ‘right to know’. Buyers already have the ‘right to know’ claims are true and sellers have the ‘right to know’ their claims will not be copied dishonestly by competitors of inferior goods sold more cheaply. If these rights are enforced, it avoids the economic risk of consumers losing confidence in ‘high quality’ products and markets for these products disappearing from the economy.

Victoria's submission to the Labelling Review presents an integrated compliance model (Diagram 1, CAV 2010a). This model recognises that governments have limited resources to enforce compliance with legislation but that these can be backed up with supporting initiatives aimed at producers and consumers. Improving the exchange of accurate and truthful information is particularly important. Such a model will provide the best balance of consumer protection, consumer choice and industry opportunities and will foster optimal use of government resources. This approach avoids governments using their resources sub-optimally by getting involved in standards or certification for some credence attributes and not others. It also avoids perceptions that governments introduce food standards that are unenforceable or not adequately enforced.



Limited compliance resources are not the only challenge organisations like CAV face in addressing misleading and deceptive food labelling – even gauging the extent of problems in any particular area is difficult. CAV has been conducting representative surveys of costs associated with ‘consumer detriment’ (the range of impacts on people when goods and services do not meet their expectations) regularly since 2006. CAV (2006b) found ‘food and drink’ to be the category with the highest number of problems in total, but with by far the lowest unit cost per incident, \$38, compared with the average of \$406 across all categories. High-profile ‘scams’, and ‘big ticket’ detriment may be more likely to attract enforcement action considering agencies have limited budgets.

The low relative costs of ‘food incidents’ may also mean they are less likely to be reported. CAV’s most recent consumer detriment survey (CAV 2010b) found six per cent of Victorians had had problems, in the previous 12 months in the food/drinks category for which they consider they had a genuine cause for complaint. 42 per cent of these related to a perception that the product was unsafe or a health hazard. Detailed questions about situations where consumers decided to take *no action* in relation to their problem (even with legitimate reason to complain) revealed that by far the most important reason, reported by 61 per cent of respondents, was that ‘the time and effort involved would have been too much’. The most common action for those who did something was to approach the trader in the first instance, from which about half were satisfied. A third took further action and of these, less than ten per cent came to the attention of CAV.

Apparently, therefore, hundreds of thousands of problems with food and drink go unreported. Moreover, this only includes problems people are actually aware of. Credence attributes, by their very nature, are not usually detected after purchase. Therefore, CAV’s research highlights the importance of *proactive monitoring* by government, of credence attribute markets to increase the probability of cheaters being inspected (see Diagram 1). This, combined with large fines, should aim to provide sufficient signals to those considering dishonest behaviour, that the probability of being caught is high enough to make it not worth the risk. Figure 1 also highlights the importance of more education for consumers and traders.

Another policy priority for food labelling is to apply ongoing vigilance to stop misleading or deceptive conduct, which is *not* related to the immediate health or safety of food, from ‘falling through the cracks’. This can occur if a problem potentially falls under more than one government agency (eg health, consumer affairs), more than one piece of legislation, and is not perceived to be important relative to other matters. The Victorian Competition and Efficiency Commission (VCEC) recognised this problem in their 2007 inquiry into food regulation in Victoria. They recommended the establishment of a ‘Committee of Food Regulators’ to improve coordination of enforcement of misleading or deceptive conduct, among other functions, and this has been adopted. VCEC considered but did not recommend an alternative model, that of a single ‘food authority’ like that in New South Wales, because it considered the costs of establishing an additional bureaucracy would not exceed the benefits.

7. Conclusion

The economics of food labelling is uncontroversial in that the fundamental objectives are well-entrenched and widely accepted. Health risks and economic risks, due to market failures based on asymmetric information, necessitate laws that protect public health and safety and prevent misleading or deceptive conduct.

It is difficult, however, to justify any further prescriptive labelling laws. Because of the side-effects and potential costs, including disproportionate impacts on lower

socioeconomic groups, more empirical research is needed. This needs to be aimed at eliciting the actual values consumers place on food attributes, not just stated values.

Having the 'right to know' as a specific and separate objective of food law might not be conducive to policy-making that reflects the values society as a whole, not just certain groups, place on food attributes. More could be done to pursue the 'right to know' via laws already in place and integrated compliance. This will achieve the best balance of consumer protection, consumer choice and industry opportunities.

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