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Submission to:

**The Senate Community Affairs Committee
Into the Food Standards Amendment
(Truth in labelling genetically modified material) Bill 2010**

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Gene Ethics Vision

Gene Ethics envisages a safer, more equitable and more sustainable GM-free society.

Gene Ethics Mission Statement

Gene Ethics is a non-profit educational network of citizens and kindred groups. We want the precautionary principle, scientific evidence and the law rigorously applied to all proposed uses of genetic manipulation (GM) technologies and their products. Gene Ethics generates and distributes accurate information and analysis on the ethical, environmental, social and economic impacts of GM. Our education programs critically assess GM for the public, policy-makers and interest groups.

Preamble:

Thank you for bringing the Food Standards Amendment (Truth in Labelling-Genetically Modified Material) Bill 2010 to the Senate. However, Gene Ethics is concerned that the Bill (as drafted) could make it harder to have all foods made using GM techniques labelled. It may also undermine GM-free labeling.

Any new law should seek to amend Standard 1.5.2 so that all foods made using genetic manipulation techniques are labelled, without exception. This means revoking the exemptions under Standard 1.5.2 which now allow for a broad range of foods made using GM techniques to go unlabelled. This silence is false and misleading.

Truthful, transparent and accurate information must be on all food labels, with promotion, advertising and high level health claims banned from this limited space. Labelling should satisfy every shopper's right to know how processed food ingredients were made, especially new and untried ones, as well as what is in the products.

Over 90% of Australians consistently have said for the past 18 years that they want all GM foods labeled, for a variety of environmental, health, social and ethical reasons. We recommend the law should ensure:

- Shoppers' right to be fully informed by labels, so they can choose either GM or GM-free foods if

they want, is met.

- Truthful, transparent and accurate information is on all food labels, with promotion, advertising and high level health claims banned from this limited space.
- Food labels are informative and give people the right to make informed choices, without being negative or positive.
- Labelling satisfies every shopper's right to know what is in a processed food and how its ingredients, especially new and untried ones, were made.
- Free access to full information by all parties to transactions is required to optimise the functioning of free markets. Misleading or deficient labelling is a restraint of free trade which requires full, transparent and truthful labeling for its optimal functioning.
- Labelling should include all foods produced using GM which are currently exempt under Standard 1.5.2 - GM vegetable oils; starches and sugars; processing aids and additives; flavorings; restaurant meals; meat, milk, eggs, honey etc from animals fed GM feed.
- There is zero tolerance for any GM in foods labelled GM-free, so foods containing any GM should also be fully labelled so that every shopper has real choice at the point of sale.
- The current 1% threshold for 'accidental' GM contamination should be monitored so it is not routinely used to include ingredients made using GM in processed foods.
- FSANZ labelling guidelines require businesses to maintain a documented paper trail showing whether GM foods are being used and whether or not they are approved GM varieties. These guidelines should be in the Food Standard and should be enforced.
- Consistency must be established between ACCC and FSANZ policies on labelling of foods made using GM techniques. Shoppers must be able to clearly identify which foods are made using GM and which are not.
- AQIS should be empowered and required to monitor imports for foods produced using GM and whether they meet the requirements of the Imported Food Control Act 1992.
- An independent Commonwealth Food Labelling Office staffed by an ombudsperson should be created as a one stop shop for food labelling, policy development, registration, assessment, monitoring and enforcement.

It is particularly important to label fully where new materials and processes such as Genetic Manipulation (GM) techniques and nano-materials are used in making food products. These processes and ingredients have little or no history of safe use in the human food supply and the jury is still out on whether they are safe or not, especially in the long term. Our preferred option is to ban such foods but, failing that, they should all be clearly labelled without exemption.

The Bill:

We see at least three main problems with the Bill, as now drafted.

1. The Bill says: "The purpose of this Act is to require producers, manufacturers and distributors of food to label all products **that contain genetically modified material.**" But the Bill would only strengthen the GM labeling Standard if 'genetically modified material' were defined to include food ingredients **made using GM techniques** which contain zero GM DNA and/or protein.

The Bill reflects the status quo as, like the present Act, it focuses on the assumed nature of the end product (no DNA or protein) rather than on the genetic manipulation techniques and processes of production used to make food ingredients. Under Standard 1.5.2, a GM label must be attached to any food that contains foreign DNA or protein, or has some changed nutritional or other characteristic.

But most foods made using GM techniques are now exempt from labelling because the extraction processes are assumed (despite evidence to the contrary) to remove all foreign DNA and protein from vegetable oils, starches and sugars. Likewise, the products from animals fed GM feed (meat, milk, eggs, honey) do not require GM labelling as the foreign DNA and protein in the feed is assumed (despite evidence to the contrary) to be denatured during digestion and to not modify the animals or their products in any way.

The truth of the assumption that vegetable oils, starches and sugars contain no foreign DNA or protein depends on the extraction process employed. Moreover, the allergenicity of highly refined peanut oil also shows that DNA and protein are not the only potentially allergenic factors in refined food products.

2. The implications of the Bill for the labelling of GM foods with altered characteristics is unclear. Standard 1.5.2 now requires all GM foods with altered characteristics (such as high oleic acid or omega 3 soybean) to be labelled, apparently regardless of whether or not they contain any foreign DNA or protein. It would be a step backward if the Bill were to allow foods with intentionally altered characteristics, but containing no foreign DNA or protein, to not be GM labelled. Please guard against this eventuality.

3. The state governments already have adequate powers to monitor, enforce and prosecute cases where processors deliberately or routinely label as GM-free any ingredients made using GM techniques. The ACCC also has a role in ensuring that GM-free label claims are not false or deceptive. Head of ACCC Graeme Samuels has said a GM-free label claim is only true when there is zero tolerance for the use, presence of, or contact with, any GM process or product at any point in the production process - from seed to spoon. So ACCC also has powers to monitor and enforce GM-free claims.

We are more concerned that some foods which may routinely contain GM DNA or protein and should therefore carry a GM label do not do so (such as S26 infant formula which Greenpeace tested several times). To fulfill their responsibilities, state governments should GM test and monitor but only NSW has complied, according to information that Greenpeace obtained under Freedom of Information.

FSANZ treats GM-free claims on labels as voluntary and does not regulate them. So we are concerned that genuine processors who can now honestly label GM-free may also be caught in the Section 16D net and may cease labelling GM-free. Honest food processors can now label GM-free with clear consciences and quality assurance by sourcing organic produce or, say, GM-free Australian soybeans only.

But if, as the Bill proposes, FSANZ sets a standard under Section 16D on foods labelled GM-free which enforces a strict testing and compliance regime, honest processors may be unable to bear the extra compliance costs and possible contamination risks of GM-free labels. The loss of genuine GM-free labels would greatly affect the choice of discerning shoppers.

Australia is now a 'high risk country' in the Bill's terms, for GM canola and cottonseed products. Imported GM soy, corn, canola and cottonseed and their derivatives, much of which goes into unlabelled animal feed, also poses a compliance problem. All processors are at risk of being caught by this provision whether they are reckless or diligent about complying.

The Imported Food Control Act 1992 allows only GM foods which FSANZ has assessed for safety and granted an exemption under the Food Standards Code to lawfully be sold in Australia. GM foods not approved by FSANZ are therefore "risk foods", which should have 100% AQIS inspection rates to prohibit their importation. We have no assurances that AQIS and FSANZ are requiring importers to notify if their imports may contain unapproved GM foods, or that AQIS has been sufficiently empowered to monitor for unapproved GM foods. Starlink, where GM food approved only for animal feed found its way into the human food supply was an example.

We hope the law can maximise the opportunity for food processors to comply with the law and also honestly label GM-free but think the present Bill may not achieve this. It is unfair that the whole food industry could suffer as a result of GM users' excesses of non-compliance.

Novel foods require labels:

GM foods are among the novel 'Foods Requiring Pre-Market Clearance'. Under Food Standard

1.5, novel, GM and irradiated foods must undergo Food Standards Australia New Zealand (FSANZ) pre-market health and safety assessments (not testing) as they contain materials and/or use manufacturing processes that are completely new or have a very limited history of safe use in the human food supply.

The Codex Alimentarius international food standards require irradiated foods to be labelled with the process of production. This sets a strong precedent for the products of all other new and untried food technologies and food production processes - such as GM, nanotechnology and novel foods generally - to also be labelled. Their novelty and incomplete safety science means these foods pose uncertain risks to health that FSANZ acknowledges by amending data sheets on these foods with new scientific evidence as it is published.

Codex deliberations on labelling of GM foods are inconclusive. So, there is no compulsion for Australia to align itself with any international labelling standard. If we are to align with other countries it should be the EU which has the strongest, most precautionary system in the world.

We note that the Blewett review of food labelling, recommendation 35, calls as a matter of urgency for the labeling of foods made using nanomaterials.

Since novel foods are in the special category of requiring pre-market safety assessment, they should also be fully labeled without exception. The Blewett review recommends that such labels be for at least 30 years.

The right to know and to make informed choices:

Food Labelling should respect the public's right to know what is in our food and how it was produced. Labelling should be informative and objective - not positive or negative - so shoppers can make fully informed choices. Citizens have an unqualified right to informative food labels that give notice of all relevant food product specifications - including origin, new processes of production - especially those with limited history of use - and the composition of key ingredients.

Everyone is entitled to make fully informed choices about what they, their families, and animals eat. We have a right to know. Only comprehensive, factual and truthful labelling can empower everybody to act in their own best interests, to protect and promote their own health and safety. The absence of informative labels leaves people vulnerable to shopping and eating in ignorance. That is unacceptable.

FSANZ guidelines: Businesses are required to keep a paper trail on GM

FSANZ guidelines on labelling GM foods 'Labelling Genetically Modified Food User Guide to Standard A18/1.5.2 - Food Produced Using Gene Technology' require food businesses to know whether their foods contain GM ingredients and to keep a documented paper trail which must be produced upon request.

Food producers are required to ascertain from their suppliers if their products contain permitted GM ingredients. If they are unable to get the information from their suppliers, they are required to conduct their own tests to find out.

Under the guidelines they are required to keep a documentary paper trail as to whether their products contain GM, and whether these are permitted varieties under Standard 1.5.2. This means there should be no obstacle to food producers labelling their products as they are already required by FSANZ to be aware and to keep evidence of any GM ingredients they may be using.

FSANZ guidelines for labelling GM foods give the example of bread. In the FSANZ example, from a total of 10 ingredients of which 6 were produced using GM, only 1 would require labelling under current laws. Thus, the label for bread under FSANZ current guidelines is given as:

wheat flour, yeast, soy flour (genetically modified), water, vegetable oil, sugar, salt, emulsifiers (471, 472E), preservative (282), enzyme (amalyse).

But soy flour in the bread in this example is not the only GM ingredient. The soy is labelled as genetically manipulated, however, other GM ingredients also include the vegetable oil that the producer has determined is from a GM source; the sugar which has been determined by the producer as coming potentially from a GM source but hasn't tested; the emulsifiers (471, 472E) both of which were derived from GM soy; the enzyme (amalyse) which is a GM variety. All of these other GM ingredients are granted an exemption under Standard 1.5.2.

In this example, we consider the more correct label should read:

wheat flour, yeast, soy flour (genetically manipulated), water, vegetable oil (genetically manipulated), sugar (genetically manipulated), salt, emulsifiers (471, 472E) (genetically manipulated), preservative 282, enzyme (amalyse) (genetically manipulated).

Consistency and fairness needed in Government approaches to new technologies:

We call for consistency in Government's approach to labeling, regulating, developing and promoting new technologies and their products. To be consistent and fair, governments must mandate the full labelling of food and other products from these new technologies, as labels are the most accessible, direct and relevant source of information available to everyone.

The rationale for these expensive programs is that shoppers can be taught to make 'informed choices' about these food products. But despite these claims to educate and inform, the most direct and accessible forms of information are denied to shoppers as current Food Standards do not require the labelling of food products made using these new and potentially hazardous technologies, where FSANZ concludes that their products are safe.

The National Enabling Technologies Strategy (NETS) on nano and biotechnologies will cost us all at least \$38.2 million over the next four years and \$10 million dollars of that budget is to generate public acceptance of these products. The NETS website says that: 'The Strategy will also support: activities aimed at encouraging greater community engagement in debates about the development and use of enabling technologies;' This objective would be profoundly undermined if citizens were denied labelling of the foods derived from these radical new and potentially more risky new enabling technologies and materials which have limited history of use in the food supply.

The Commonwealth, with its scientific and commercial partners, also funded the Gene Technology Information Service (GNTIS) for almost a decade, until June 2008. It is still funded and now operates as TechNYou. Its partners include: Australian Office of Nanotechnology; University of Melbourne; CSIRO Education; Department of Agriculture, Fisheries and Forestry; Food Standards Australia New Zealand; Molecular Plant Breeding Cooperative Research Centre; Australian Centre for Plant Functional Genomics Cooperative Research Centre; Sugar Industry Innovation through Biotechnology. The TechNYou website says it: 'was established to meet a growing community need for balanced and factual information on gene and nano-technology.' and: " provides balanced and factual information on gene and nano-technology to help the public make informed choices." The information on labels should also be balanced and factual, to facilitate informed shopper choice. Labels are the most direct, accessible and targeted information available, provided without fail where it is needed and can be most immediately used.

FSANZ is among the supporters of TechNYou's programs of information delivery on nano and biotechnologies so the public can make 'informed choices'. Yet they argue that the food products made using these technologies need not be labelled. This contradiction makes their opposition to the labelling of all novel foods covered by Food Standard 1.5 insupportable.

Government indifference to labelling all new GM and nanofoods is inconsistent and insupportable.

ACCC says non-GM means zero tolerance

All foods made using GM techniques must be labelled, without exception. There is zero tolerance for any GM in foods labelled GM-free, so foods containing any ingredients made using GM processes should also be fully labeled so that every shopper has a real choice at the point of sale.

Graeme Samuel, head of the Australian Consumer and Competition Commission recently reiterated their policy that zero tolerance for GM contamination or use applies to the food labels "GM-free" and "non-GM". Any use of the processes or products of gene technology in products so labelled would be deemed false and misleading and the ACCC would act against any perpetrators. He warned that the 0.9% threshold for contamination set by Australian governments at the behest of the GM industry would not be a defence.

There is an inconsistency between FSANZ standards and the ACCC policy. FSANZ says that ingredients made using GM such as GM canola oil do not need to be labelled because FSANZ claims they do not contain any novel DNA/novel protein. However, these same ingredients could not be marketed as non-GM or GM-free as according to ACCC this would be deemed false and misleading.

We call for a level playing field between GM-free and GM labels – zero tolerance for dishonesty in both cases.

Optimum free markets rely on open information access:

Free market economists assert that to operate optimally in everyone's best interests markets should be as free and competitive as possible. Enabling everyone to optimise their decisions on how to spend food-shopping budgets means that shoppers must all have full and fair access to the same information as the sellers possess, then well-informed shoppers can make rational choices that serve their own best interests. Thus, they also optimise the social benefits for everyone. Free marketeers and the food industry should support the full labelling of all foods, as an integral part of competitive market processes.

The Australian Food And Grocery Council submission to the Blewett Review (20 November 2009) argued: "the need for labels to attract consumer purchase and the corollary that mandatory labelling requirements should not unnecessarily undermine the commercial viability of the product, or be a de facto tool to prohibit the manufacture and marketing of foods."

Free markets require transparent, truthful labelling. Transparent, accurate information should be on labels to allow shoppers to clearly identify foods at point of sale. We want factual, objective labelling for all GM foods. It should be mandatory and information based, neither positive nor negative. It is up to producers to promote their wares in other ways than on food labels. How shoppers interpret the information provided to them on labels is outside the responsibilities of regulators.

The Swinburne Technology and Society Monitor found that the majority of Australians remain consistently uncomfortable with GM agriculture and food. ('Public Perceptions of GM Agriculture in Australia' Carol Whitfield, Everada G. Cunningham and Michael Gilding, Monash University, People and Place Vol.17)

The jury is still out on the safety of GM foods

Labelling is especially important as the jury is still out on GM crop impacts and GM food safety as Scientific American (Editorial, August 2009) and Nature Biotechnology (volume 27 number 10 October 2009) recount. They report that GM patent owners refuse to supply the seed and approvals for independent research and prevent negative evidence from being published. Substantially more independent research must be done to confirm GM foods are safe for the environment and public health. The public's right to choose among foods would be greatly

enhanced by the labelling of all novel foods. There is much evidence of harm to experimental animals fed GM feed but FSANZ discounts or ignores this evidence. Instead FSANZ should require further evidence to be gathered and not rely on available evidence.

Criteria to determine the legitimacy of informational claims on food labels should be based on commonly held ethical principles such as precaution, truthfulness, care for animals, care for human beings, respect for the environment, principles of social justice and equity and human rights. Such principles are the lynchpins of our society and many, such as human rights and the Precautionary Principle have standing under international law.

Europe as the model

In contrast, the positive example set by the excellent food safety assessment and labelling system which operates successfully in the European Union sets a benchmark to which Australians aspire. Their system is the best in the world (though it too could be improved) and it should be adopted as the gold standard worldwide. For instance, Europe has comprehensive labelling requirements for all foods made using GM techniques (with some exceptions for animal products where GM animal feed is used). But imported animal feed is required to be labelled so that farmers can choose what to feed their animals.

Unlike Australia and North America, Europe prohibits the use of hormones and the non-therapeutic use of antibiotics in intensive animal husbandry, is phasing out many synthetic pesticides and herbicides, and bans all recycling of animal wastes into animal feed. These precautionary production requirements are appropriate to complex modern food production systems and we support their introduction to Australia.

Around 80% of Australia's food industry is foreign owned, so many companies operating here also prosper under the EU rules. It would not impose unreasonable burdens to comply with the European system here, as the organic industry already does. Australians should enjoy at least the same right to information as people living in the European Union.

Governments and regulators should rigorously apply the 'precautionary principle' to product safety, environmental assessments and labelling. The concept of precaution as it is defined by the Convention on Biological Diversity should be used as it has international standing and is already incorporated into many state and Commonwealth laws. The 'precautionary approach' that FSANZ and Ministers now use is ill defined, ineffectual and gives priority to trade and technical issues.

Conclusion

All Novel Foods, within the meaning of Food Standard 1.5, should be fully labeled without exception.