

COVER SHEET FOR SUBMISSIONS

REVIEW OF FOOD LABELLING LAW AND POLICY

This completed form must be included with your submission. If completing by hand, please ensure your writing is clear and legible.

DETAILS FOR PUBLICATION	
Individual name/group name/organisation name for publication on the website	Gene Ethics
CONTACT DETAILS	
We need to collect your contact details should further information or clarification be required on your submission. Contents of your submission may be included in subsequent publications. Please provide at least one contact address. If you are making a submission for a group or organisation, please provide contact information for one member of your group or organisation.	
Title	
First Name	Bob PHELPS and
Surname/Family Name	Adam BREASLEY
Postal Address	Floor 2, 60 Leicester St, Carlton 3053
Email Address	info@geneethics.org
Telephone Number	003 9347 4500
INTERNET PUBLICATION	
Please tick this box if you wish for your submission to remain confidential and do not consent to having your submission published on the internet.	☐
If you wish for only parts of your submission to remain confidential and not be published on the website, please outline the confidential sections clearly below (with page numbers where possible). If you wish for only parts of your submission to be treated as confidential, it would be appreciated if you could provide the confidential parts of your submission as a separate document.	
ANONYMITY	
Please tick this box if you want your submission to be treated as anonymous and you do not consent to having your name, or the name of your organisation, published on the internet with your submission.	☐
THIRD PARTY PERSONAL INFORMATION	
Please tick this box if your submission contains personal information of third party individuals.	☐
EVIDENCE OF CONSENT	
You should not include personal information about a third party unless you are able to provide evidence of written consent. Please tick this box if you have attached evidence of written consent.	☐

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.

Executive Summary

Gene Ethics welcomes the opportunity to make this submission to the Review of Food Labelling Law and Policy.

Gene Ethics supports the outcomes of the current Review helping the Ministerial Council to develop comprehensive and robust Food Labelling Policy to guide the development of labelling in the Food Standards Code.

We want all foods made using genetic manipulation (GM) techniques be labelled, without any exemptions. 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, and what is in the products.

We ask the Review to recommend the following to the Ministerial Council.

Key recommendations:

- | |
|--|
| • Food labels should be informative and give people the right to make informed choices, without being negative or positive. |
| • Labelling should satisfy 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 is required to optimise the functioning of free markets. So misleading or deficient labelling is a restraint of free trade. Free markets require full, transparent and truthful labelling. |
| • 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 a real choice at the point of sale.

- 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

The protection of public health and safety and the environment are the top priorities and better labelling of novel food production, processes and novel ingredients – as defined by Food Standard 1.5.2 - would serve those objectives.

Q&A

Q2. What is adequate information and to what extent does such information need to be physically present on the label or be provided through other means (eg: education or website)?

Recommendation: 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.

The right to know and to make 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 safe 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.

Q3. How can accurate and consistent labelling be ensured?

Recommendation: Standard 1.5.2 should be amended so that all GM foods are labelled, without exceptions. This means revoking the exemptions under Standard 1.5.2 which now allow for a broad range of GM foods to go unlabelled, as this is false and misleading.

Are GM foods labelled in Australia?

Standard 1.5.2

Standard 1.5.2 mandates the labelling of some foods produced using GM techniques but most foods are exempt. The issues paper falsely implies that all GM foods are labelled in Australia.

Under the FSANZ Standard GM labelling requirements allow for a broad range of exemptions. Most GM foods and ingredients are not labelled as such. Exemptions from labelling are GM vegetable oils, starches and sugars; processing aids and additives; restaurant meals; meat, milk, eggs, honey etc from animals fed GM feed; and GM food that is under a 1% threshold for 'accidental' GM contamination.

The assumption that oils starches and sugars contain no foreign DNA or protein depends on the refining process employed. The allergenicity of highly refined peanut oil also shows that DNA and protein are not the only potentially allergenic factors in refined products. Also, some producers appear to use the 1% threshold as a cover for routinely (not adventitiously) including some GM in their products without labelling them.

Labelling exemptions under Standard 1.5.2 are false and misleading

The Inquiry's issue paper falsely claims GM foods are labelled, ignoring the exemptions in Standard 1.5.2 that allow most foods made with GM to be unlabelled.

It is false and misleading not to label all GM foods. Fulfilling FSANZ own primary objectives should require that all GM foods be labelled as FSANZ legislated objectives are:

- “• the protection of public health and safety; and
- the provision of adequate information relating to food to enable consumers to make informed choices; and
- the prevention of misleading or deceptive conduct.”

Our daily bread – GM or not GM?

FSANZ own guidelines for labelling GM foods 'Labelling Genetically Modified Food User Guide to Standard A18/1.5.2 – Food Produced Using Gene Technology' 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).

It unacceptable that most GM foods are not labelled because of exemptions in Standard 1.5.2

Q4. What principles should guide decisions about government intervention on food labelling?

Recommendation: Free markets require transparent, truthful labelling. Transparent, accurate information should be included to allow shoppers to clearly identify foods at point of sale.

Proper labelling promotes free trade

Full labelling does not impose unreasonable burdens on the food industry. It adds little to the overall cost of food and those costs can be recouped from sale of the products. Free access to full information is required to optimise the functioning of markets. Misleading, or deficient labelling is a restraint of free trade, so we call on free-marketeers in government and business to also embrace full labelling.

There are good grounds for making labelling laws and policies stronger, not weaker. The default position must be that every food is labelled. Then, if industry claims that reduced, optional or minimal labelling and regulation are justified, the onus of proof must fall entirely on them.

Q5. What criteria should determine the appropriate tools for intervention?

Recommendation: Labelling for all GM foods should be mandatory and information

based, neither positive nor negative. We want factual, objective labels that are 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.

Labelling for GM should be neutral and information based

The Panel's consultation paper says:

“3.3 Certain functional labelling requirements are primarily designed to protect health safety and arouse little controversy (e.g. product identification, batch/production lot identification and contact details of producer or importer).”

Mandatory GM labelling should fulfill these criteria as uncontroversial and necessary for the protection of public health and safety, monitoring and traceability and for purposes of product recall if necessary.

The Australian Food And Grocery Council submission to the Review (20 November 2009) argues that: “the Review consider 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.”

We agree that labelling should not be for purposes of promotion but should be information-based allowing shoppers to make informed choices and to clearly identify foods. It is not our intention to de facto force products off shelves.

Q6. Is this a satisfactory spectrum for labelling requirements?

Recommendation: The issues paper falsely implies all GM foods are being labelled. A satisfactory spectrum for labelling requirements would require all novel foods listed under Food Standard 1.5 should be clearly labelled, without exceptions.

The issues paper says:

“3.1 All packaged foods (with a few exceptions) require labelling, though requirements are minimal for some simple packaged foods. The exceptions include: packages that are very small; food made and packaged on the premises where it is sold; food packaged in the presence of the customer or packaged and delivered at the customer's request. Food sold in restaurants and most unpackaged foods are exempted from most labelling requirements. Some unpackaged food – certain fruits, vegetables, seafood and pork products – require country of origin labelling; food which has been genetically modified or irradiated must be labelled as such or have a label display; and certain mandatory declarations, advisory and warning statements

that apply to unpackaged foods must be provided on, or in connection with, the display of the food.”

Most GM foods are not being labelled because of exemptions under Standard 1.5.2. The issues paper falsely implies all GM foods are labelled.

Q7. In what ways could these misunderstandings and disagreements be overcome?

Recommendation: Government policy should be more consistently applied to all new technologies.

Recommendation: WTO is not the only international standard to consider when developing food policy. Concern for public health and safety and right to information should trump trade policy.

Recommendation: Australia should implement the Precautionary Principle in our approach to GM food labelling and regulating.

WTO compliance

AFGC in their submission assert:

“Each time mandatory regulation relating to the production and processing methods are introduced here there is the potential for clashes with Australia's international trade obligations under the World Trade Organisation. The Technical Barriers to Trade Agreement, specifically prohibits countries discriminating between products on the basis of production and processing methods.

AFGC supports free trade, and the principles embodied in WTO Agreements, as critical to the competitiveness of the food manufacturing industry in exports markets. The credibility of Australia's argument for the removal of trade barriers by other countries, requires an aligned domestic policy including in food regulatory policy.”

Sufficient evidence on health and safety aspects of GM foods exists to meet the requirements that we are not violating WTO Agreements including TBT by fully labelling all GM products.

WTO is also not the final arbiter in GM food safety assessments, nor is WTO the only international law which applies to GM foods. The Cartagena Protocol on Biosafety is the international law which governs trade in GMOs and is based on the Precautionary Principle.

Precautionary Principle

The Panel's issues paper says: "caution needs to be exercised in order that the development and application of these and other innovative technologies (GM; nanotechnology; irradiation; etc) are not unduly inhibited."

This is unethical and unacceptable, proposing to use secrecy and stealth to promote new, untried food technologies without regard to safety and shoppers' right to know how new foods are made. Food labelling should not be used to promote or hinder foods in the marketplace.

We want factual, objective labels that are 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.

WTO is not the only international law governing trade policy in GM foods.

Under the UN Convention on Biological Diversity, to which Australia is a signatory, the Biosafety Protocol is the international law for international trade in GMOs. It which is based on the Precautionary Principle enunciated in the CBD. The Consultation paper turns this important legal principle for public safety on its head by substituting precaution against inhibiting novel technologies ahead of precaution for public health and safety. Under the Precautionary Principle, the onus is on the owners of GM crops, animals and microbes to show their products are safe and to label them, but they fail both tests.

Consistency in Government approach to new technologies including GM

We call for consistency in Government's approach to labelling and regulating new technologies and their products.

Food Standards Australia New Zealand is among the supporters of the Commonwealth-funded 'TechNYou' programs of information delivery on nano and biotechnologies so that the public can make 'informed choices' about these products.

Governments spend a lot of taxpayer funds on programs to assuage public concern and raise awareness about new food technologies such as GM and nano-technology. The National Enabling Technologies Strategy (NETS) on nano and biotechnologies will cost us all at least \$38.2 million over the next four years.

One of its key functions is to inform the community about bio and nano-technologies. Yet current Food Standards do not require the labelling of food products made using these new and potentially hazardous technologies. Official indifference to labelling all new GM and nanofoods is inconsistent and insupportable. These foods have little

or no history of safe use in the human food supply and must all be labelled.

To be consistent and fair, governments must also 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.

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 and 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.

Governments must require comprehensive food labelling administered by an independent Food Labelling Authority, not allow the food industry to self-regulate. It is particularly important to label fully where new materials and processes such as Genetic Manipulation (GM) 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.

Q9. In what ways can disclosure of ingredients be improved?

Recommendation: The Review should acknowledge majority public support for the labelling of all foods including all foods made using GM processes.

Recommendation: Labelling should be broad enough to include all food produced using GM techniques, without exceptions.

What are the drivers for labelling GM foods?

The Panel's consultation paper says:

2.2 Food labelling interventions by governments are designed to:

- Protect the health and safety of consumers;
- Respond to consumer demand for food information;

The strongest drivers of demand for food labelling are public support and action for comprehensive labels on foods made using GM and nano-materials.

The International Social Science Survey first independently polled Australian public

attitudes to the labelling of GM foods in 1994. They found 89% of people wanted all foods made using GM techniques to be labelled. Since then, numerous surveys have asked similar questions and all have found more than 90% of Australians want all GM derived foods to be labelled.

When polled in more detail, people say they want GM foods labelled for a range of environmental, health and ethical reasons. Respondents claim the right to be fully informed so they can choose either GM or GM-free foods according to their personal preference. Health concerns are only one reason that the majority of people would like all GM foods to be labelled.

The Swinburne Technology and Society Monitor found that the majority of Australians remain uncomfortable with GM agriculture consistently from 2003 to 2008. ('Public Perceptions of GM Agriculture in Australia' Carol Whitfield, Everada G. Cunningham and Michael Gilding, Monash University, People and Place Vol.17)

All novel foods should be fully labelled

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 Panel's consultation paper says:

“1.4 The Review must be cognisant of and pay due respect to international labelling requirements, both current and pending, as outlined in Codex Alimentarius. This is an important external consideration as Australian produced and labelled food is increasingly exported, while domestic labelling requirements should not create unnecessary barriers to trade.”

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 to align ourselves 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.

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?

Recommendation: The Review should acknowledge in their report that the jury is still out on the safety of GM foods.

Recommendation: The Review should acknowledge that public demand for labelling of all GM foods includes health concerns, but that it also includes other concerns including a range of environmental and ethical reasons.

Recommendation: More independent research is needed to confirm GM foods are safe. Meanwhile, the public should be able to clearly identify those foods which are made using GM through comprehensive labelling of all GM foods.

Recommendation: All foods listed under Food Standard 1.5 should be clearly labelled, without exceptions.

Recommendation: Labelling should be broad enough to include all food produced using GM techniques.

The jury is still out on the safety of GM foods

The Panel's issues paper incorrectly implies that GM food labelling is not a health and safety issue. 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) agree. 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.

Lack of public confidence in FSANZ safety assessments

Public confidence in FSANZ safety assessments is not high and many experts dispute them. The issues paper falsely claims that GM labelling is not a health and safety issue. There is no international scientific consensus on the safety of foods produced using GM. The jury is still out on the safety of GM foods as recent editorials in Scientific American and Nature Biotechnology attest. 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.

Q14. What criteria should be used to determine the inclusion of specific types of information?

Q18. What criteria should be used to determine the legitimacy of such information claims for the food label?

Recommendation: FSANZ and Government need to win public trust by acknowledging the scientific uncertainties of GM foods and being responsive to meeting public demand for the full labelling of all foods produced using GM techniques.

Criteria used to determine the legitimacy of such informational claims for the food label should be developed on the basis of 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.

Q19 In what ways can information disclosure about the use of these technological developments in food production be improved given the available state of scientific knowledge, manufacturing processes involved and detection levels?

Recommendation: The FSANZ labelling guidelines on Standard A18/1.5.2 should be made more publicly available and promoted to businesses to make sure that they are complying with the requirements for monitoring, reporting and documenting on foods produced using GM. Labelling standards also need to be rigorously enforced and we recommend an independent Commonwealth Ombudspersons Office be established for that purpose.

Q27. What is the case for food label information to be provided on foods prepared and consumed in commercial (e.g., restaurants, take away shops) or institutional (schools, pre-schools, worksites) premises? If there is a case, what information would be considered essential?

Recommendation: We want bulk products which are GM, for instance, GM cottonseed oil, which are being used by restaurants and take away shops, to be labelled, so that at least the restaurant is aware that these are GM.

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.

Q29. In what ways can consistency across Australia and New Zealand in the interpretation and administration of food labelling standards be improved?

Seek agreement on setting the highest standard in both countries.

Q30. In what ways can consistency, especially within Australia, in the enforcement of food labelling standards be improved?

We need a one stop shop approach to food labelling, to eliminate the inconsistencies and duplications that now exist with state and local governments unable to effectively enforce labelling policies decided by others.

Establish an independent national body (Ombudsperson) to develop policy, that would establish, apply, monitor and enforce labelling standards within the food standards code.

Establish the authority through a COAG agreement with funding from consolidated revenue, not cost recovery.

Q31. What are the strengths and weaknesses of placing the responsibility for the interpretation, administration and enforcement of labelling standards in Australia with a national authority applying Commonwealth law and with compatible arrangements for New Zealand?

Strengths: elimination of the inconsistencies and duplications inherent in the present system, a more rational and effective use of resources, and an independent and fearless authority, preferably answerable to the parliament, like The Auditor General. Shoppers know where to go when they want give or receive information or redress: 1800 labels. A COAG agreement is needed to

buttress and prevent dilution of the authority's powers.

Weaknesses: centralisation of power and control. Potential for loss of funding from consolidated revenue if government policies change or the authority is too effective.

Q32. If such an approach was adopted, what are the strengths and weaknesses of such a national authority being an existing agency; or a specific food labelling agency; or a specific unit within an existing agency?

Independence is essential to the authority's success but existing agencies are already compromised. We therefore favour a new body that is not tied to or subservient to existing agencies.

Q33. If such an approach was adopted, what are appropriate mechanisms to deal with the constitutional limits to the Commonwealth's powers?

The states would cede some of their relevant powers to the Commonwealth but to retain a partnership with the Commonwealth in fostering and funding the Ombudsperson's office.

The OGTR's arrangements may be a suitable model, where the states and local government have recognised advisory roles and some residual adjunct powers.

Recommendation: An independent Commonwealth Food Labelling Office staffed by a Commonwealth Ombudsperson should be created as a one-stop-shop for food labelling, policy development, registration, assessment, monitoring and enforcement.

Recommendation: A '1800-labels' hotline should be created, to provide a single contact point for information, advice and complaints concerning food labelling.

Commonwealth Ombudsperson

The Australian Food and Grocery Council in their submission to the Review argue: 'that the Review recognises that overlapping regulatory arrangements have the potential to, and do, conflict in some cases causing practical difficulties for industry.

We agree and consider that this also applies to creating obstacles for government and confusion for shoppers. 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.

A 1300-LABELS telephone number for shoppers and businesses alike would also help to provide a single contact agency for answering all labelling questions.

Q34. What are the advantages and disadvantages of retaining governments' primary responsibility for administering food labelling regulations?

Government should retain its primary responsibility for labelling but this responsibility is now misplaced and diffuse. Food labelling and other food regulatory functions are mismatched.

Q35. If a move to either: self regulation by industry of labelling requirements; or co-regulation involving industry, government and consumers were to be considered, how would such an arrangement work and what issues would need to be addressed?

An Ombudsperson is uniquely well-placed to apply the agreed principles for the full and honest labelling of all foods. However, the co-operation and support of other regulators and arms of government, the food industry and shoppers would be essential to the authority's success. The key is to ensure that the Ombudsperson cannot be unduly influenced by any sector to deviate from applying the agreed principles.

Recommendation: Government regulatory oversight and mandatory labelling regulations are essential for protecting public health and safety. Self regulation by industry provides no guarantee for protecting the public interest.

Governments must require comprehensive food labelling, not allow the food industry to self-regulate. It is particularly important to label where new materials and processes such as Genetic Manipulation (GM) 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, in the long term. Our preferred option is to ban such foods but, failing that, they should be all clearly labelled without exception.

Governments spend a lot of taxpayer funds on programs to assuage public concern and raise awareness about new food technologies such as GM and nano-technology. The National Enabling Technologies Strategy (NETS) on nano and biotechnologies will cost us all at least \$38.2 million over the next four years.

To be consistent and fair, governments must also 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.

Another key policy driver for improved food labelling in Australia is the USA's

minimal labelling and regulatory model largely adopted here. For instance, by applying the imprecise and misleading industry concept 'substantial equivalence', Australia has no labelling of most GM foods.

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 too. Australians should enjoy at least the same right to information as people living in the European Union.

Government should have a central role in mandating the labelling and assessment of foods, especially new foods and food production processes which have minimal history of safe use in the human food supply.

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.

We agree with the issues brief that governments' regulatory responsibilities should be discharged on the basis of good evidence and justified by social, economic and public safety goals. They should aim to achieve their policy purposes effectively. However, a community-wide consensus is needed to establish exactly what this means in practice.

Robust public participation processes are needed to reach a community consensus on all the requirements for labelling and assessment. Starting off with the assumption that labelling imposes a burden on the food industry will not engender the support of all interested citizens, whose backing is needed if food laws and policies are to be

effectively, appropriately and consistently enforce

Q36. In what ways does such split or shared responsibility strengthen or weaken the interpretation and enforcement of food labelling requirements?

Recommendation: 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.

ACCC says non GM means zero tolerance

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.

FSANZ own legislated primary objectives include:

- the protection of public health and safety; and
- the provision of adequate information relating to food to enable consumers to make informed choices; and
- the prevention of misleading or deceptive conduct.

Voluntary negative labelling GM free or Non GM requires zero tolerance. However, FSANZ guidelines imply that if no novel DNA/novel protein were present it may be possible to market this oil under a GM free or Non GM label. If ACCC finds that the oil cannot be claimed to be Non GM or GM free, surely FSANZ cannot exempt it from labelling.

ed.

Q38. What are the strengths and weaknesses of having different approaches to the enforcement of food labelling standards for imported versus domestically produced foods?

Q39. Should food imported through New Zealand be subject to the same AQIS inspection requirements?

Recommendation: The Imported Food Control Act 1992 needs to be enforced and we should harmonize with New Zealand in this respect by signing the Cartagena Protocol on Biosafety.

Recommendation: Importers should be required to notify AQIS if their imports contain GM to prevent unapproved GM foods entering Australia.

AQIS and border controls

The Panel's issue paper says:

“5.10 In addition to the general domestic inspection regime, imported foods are also subject to inspection by AQIS at the border. The Imported Food Control Act 1992 requires foods to comply with the Food Standards Code, including labelling, before they can be sold in Australia. AQIS undertakes the inspections using a “risk based” approach. Consignments of certain “risk foods” (declared on advice from FSANZ) and foods that have previously not complied with the regulations have 100% inspection rates. This rate of inspection reduces once a pattern of consistent compliance is demonstrated. The total number of identified regulatory breaches of imported foods is small, but food labelling compliance constitutes the majority of such breaches. Only risk foods imported from New Zealand are subject to the Imported Food Control Act. Thus, all other food from overseas which is imported initially into New Zealand and then into Australia is not inspected.”

The provisions of the Imported Food Control Act 1992 mean that GM foods that have not been granted exemption under the Food Standards Code by FSANZ cannot lawfully be sold in Australia. GM foods which have not been approved by FSANZ under the Standards have not been assessed for safety. GM foods which have not been approved by FSANZ are therefore “risk foods” and these foods should have 100% inspection rates to prohibit their importation. AQIS should therefore be empowered to know and monitor if unapproved GM foods are coming into Australia and AQIS should be notified by FSANZ about these potential “risk foods”. We have no assurances that AQIS and FSANZ are requiring importers to notify if their imports contain unapproved GM foods, or that AQIS has been sufficiently empowered to monitor for unapproved GM foods. One example internationally is Starlink, where GM food approved only for animal feed found its way into the human food supply. There are other examples of GM contamination requiring traceability and monitoring mechanisms for product recall. The Cartagena Protocol, to which New Zealand is a signatory, requires importers to notify if their shipments 'may contain GMOs' however, Australia is not a signatory to the Protocol. Since we do not require this information from importers and they are not monitored, unapproved GM foods may

be imported and sold in Australia illegally.

Conclusion

The Commonwealth Government must be consistent in its policy approach to new technologies and their products. For instance, the Commonwealth makes a priority of giving information about gene technology and nano-technology to the Australian community, by funding several programs. If such information is a public good worth supporting and promoting, then it logically follows that government should also require such information to be made directly available to citizens on food labels, to inform and not frighten shoppers.

For instance, the Commonwealth has committed \$38.2 million over the four years from 1 July 2009 to 30 June 2013 to the National Enabling Technologies Strategy (NETS). Among several other aspects, the 'Strategy will provide balanced and factual information to support evidence-based policy and regulatory practice, and increase community awareness and understanding of nano-technology and biotechnology.' Labels on the products of these new production processes and materials must surely be an integral aspect of this community information program, if the government is to be consistent.

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. They have limited history of safe 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.

To reiterate some of our recommendations:

- Public opinion is the highest driver for labelling of all GM foods. Over 90% of Australians consistently have said for the past 18 years that they want all GM foods labelled.
- They say they want GM foods labelled for a variety of environmental, health, social and ethical reasons.
- Shoppers claim the right to be fully informed by labels so they can choose either GM or GM-free foods if they want.
- Truthful, transparent and accurate information must be on all food labels, with promotion, advertising and high level health claims banned from this limited space.
- Food labels should be informative and give people the right to make informed choices, without being negative or positive.
- Labelling should satisfy 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 is required to optimise the functioning of free markets. So misleading or deficient labelling is a restraint of free trade. Free markets require full, transparent and truthful labelling.
- 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 a 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 GM ingredients in processed foods.
- FSANZ current guidelines require businesses to maintain a documented paper trail showing whether GM foods are being used and if they are approved GM varieties. These guidelines should be promoted and rigorously applied.
- Consistency must be established between ACCC and FSANZ policies on labelling of GM foods. 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 food 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.