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Re: Blewett Food Labelling Review Response - Hierarchy Framework Issues

Dear Minister:

In response to the Blewett Label Review report recommendations and their implementation, we propose the following solutions to the questions posed in the Ministerial Council's discussion paper. As a member of the Ministerial Council, please favourably consider our comments and encourage other Ministers to also adopt them.

Gene Ethics made a substantial submission to the Blewett inquiry and attended panel hearings. We are disappointed that we did not officially receive the Ministerial Council's confidential papers and were excluded from secret discussions in Sydney and Melbourne on the proposed labeling hierarchy, front of pack and alcohol labels. The secrecy leads us to conclude that the review uncritically favours food industry interests. We advocate for the public interest, full participation and everyone's right to know how processed food ingredients are made and what they contain. Discussions of the Blewett labeling review should be an integral part of the National Food Plan and also open to public scrutiny and participation but that process is also for selected groups.

Please ensure that all further processes on Blewett report and National Food Plan are transparent and encourage full participation by the interested public and public interest advocates.

Hierarchy Document - Discussion Questions:

Recommendation 28 says: "That as a general principle all foods or ingredients that have been processed by new technologies {i.e. all technologies that trigger pre-market food safety assessments (under Food Standard 1.5)} be required to be labelled for 30 years from the time of their introduction into the human food chain; the application of this principle to be based on scientific evidence of direct impact on, or modification of, the food/ingredient to be consumed. At the expiry of that period the mandatory labelling should be reviewed.

1. To what extent is there support for Recommendation 28?

We do not support recommendation 28, for the following reasons.

2. What issues need to be explored when considering this recommendation?

We agree with the panel that: "there are likely to be increasing challenges to policy makers in coming years as a result of further technological innovations in food production." And we also agree that a: "distinctive labeling protocol with regard to new technologies" is needed.

However, we disagree with the panel that the requirement to label is: "because of the technological process", that requires them: "to have pre-approval safety assessments."

It is crucially important to acknowledge what the panel does not, that these pre-market assessment and labeling requirements are imposed because novel foods are genuinely new in the human food supply and have zero or very limited histories of safe use as food.

For this reason, all the products, ingredients and processing aids derived from new food production, processing and packaging technologies should without exception be fully labelled.

> **Thus, we also call on you, the panel and the Ministerial Council to work for rescission of labeling exemptions for foods, processing aids and additives registered under Food Standard 1.5.2 on genetic manipulation. All foods made using genetic manipulation (GM) techniques should be labelled, but on the basis of questionable and untested assumptions Food Standard 1.5.2 exempts most from any labelling at all.**

On July 8 2011 at the Codex Alimentarius Commission - comprising the world's food safety regulatory agencies - the US delegation dropped its long-standing, isolated and unsupported opposition to the GM labelling guidance document, thus allowing it to become an official Codex text. So any country now adopting full GM food labelling will no longer face the threat of a legal challenge in the World Trade Organization (WTO) because national measures based on Codex guidance or standards cannot be challenged as a barrier to trade.

Further reasons to oppose the blanket review and possible removal of mandatory labeling on novel foods and food products, registered under Standard 1.5, include:

- Since case-by-case assessments are made for each novel food product proposed for registration under Food Standard 1.5, there is no objective rationale or case for a blanket or general lifting of mandatory labeling requirements after 30 years, or after any other set period of time for that matter.
- Novel foods are assessed and registered for sale on a case-by-case basis, without any objective scientific criteria or requirements for the rigour, quality, scope, scale and duration of evidence being set in advance. FSANZ says of GM food assessments (but it also relates to other novel foods considered under Food Standard 1.5) that it:

  > "… carries out safety assessments on a case-by-case basis, which means each new genetic modification is assessed individually for its potential impact on the safety of the food. We compare the GM food with a similar, commonly eaten conventional food from a molecular, toxicological, nutritional and compositional point of view … to find out if there are any differences between the GM food and its conventional counterpart, which we already know to be safe to eat."

  Using this case-by-case 'substantial equivalence' methodology, FSANZ assesses very few parameters and has no objective scientific criteria set in advance that would be essential if the assessments were genuinely scientific, rather than 'science-based' as they claim.
- The range of values that FSANZ assessors consider acceptable when determining the 'substantial equivalence' of novel and traditional foods are also made on a case-by-case basis. Thus, there could be no objective justification for the blanket review of labeling requirements on novel food products, nor for blanket decisions to terminate mandatory labeling requirements.
- The proposed 30 year time frame is arbitrary and the panel gives no rationale for a general review of mandatory labeling after 30 years, rather than 25, 40 or 50 years from a technology's first commercial use. The Blewett panel's oblique observation that 30 years is a human generation has no objective basis. Yet many cancers may take at least 30 years to be induced and intergenerational harm may take multiple generations to become evident. For instance, intergenerational studies of experimental animals fed some varieties of GM crop feed have found adverse impacts on the mortality rates and fertility of the offspring of treated animals.

- Moreover, the suite of foods created by or treated with particular new food technologies will presumably expand as new uses are found, and they may be more controversial or potentially harmful. For instance, the early use of food irradiation was on herbs and spices but it is now extensively used on tropical fruit where it poses new hazards that should prompt a stronger, not weaker, case for further mandatory labelling.
- Without mandated, independent, scientific data collected among human populations during the commercial use of a novel food product, there would be no sound scientific basis for a review and lifting of mandatory labelling requirements. For instance, despite a lack of sound scientific evidence, since no data has been collected, evaluated or published, the Genetic Manipulation industry, CSIRO and FSANZ routinely claim that human health has not been harmed by the eating of trillions of meals containing the products of GM techniques. The absence of good evidence for this bald assertion is the result of industry and government failure to label or monitor novel GM products. Absence of the evidence of harm is not a substitute for evidence of the absence of harm, which industry should be required to collect on novel foods.
- The panel makes no recommendations on how the proposed 30 year general labeling reviews would be conducted or by whom. FSANZ would be an inappropriate body to conduct such reviews as it is unresponsive to public concern and offers no role for real public participation.

Recommendation 34 of the report also proposes: That the requirement for mandatory labelling of irradiated food be reviewed now.

- While the Codex Alimentarius mandates the labeling of any food product in international trade, labeling should also be required in Australia.
- For the foregoing general reasons, we strongly disagree with the proposal for a blanket review of the labeling of irradiated foods, which implies that their labeling may no longer be required.
- The irradiation of food has been allowed in Australia for less than a decade and originally applied only to tea and spices. The irradiation of fresh fruit poses different challenges to human health and blanket termination of the requirement to label would not be in the public interest.
- Before the Ministerial Council has finally considered or agreed to the Blewett panel's recommendation that the labeling of irradiated foods be generally reviewed, FSANZ made a secret application for a general review of Food Standard 1.5.3. Gene Ethics unreservedly opposes this application, which was secreted in proposal A1038, a Queensland government application to irradiate persimmons. The public was not notified of the FSANZ application in accordance with the provisions of the Act. FSANZ' application would preemptively weaken Standard 1.5.3, including the standard's labeling and reporting provisions.

3. Can you suggest an alternative solution to the issues that the recommendations seek to address?

- A proposal that we might find acceptable would be a case-by-case review of each registered novel food product (within the meaning of Standard 1.5) after it had been in the human food supply for 50 years.
- Each review would only be acceptable if it were based on independent epidemiological and other scientific evidence that the particular novel food product had been eaten by a significant number of people for fifty years and had done no harm to human health, safety and the environment during this period of registration.
- However, as long as the Codex Alimentarius continues to mandate the labeling of any novel food product in international trade, similar labeling should also continue to be required in Australia.

The labeling of all nanomaterials used anywhere in the food supply should, as the report proposes, be a matter of high priority. They should all be labeled without the sorts of exceptions that allow most of the products made using genetic manipulation techniques to be marketed without GM labels.

Recommendation 2: "proposes a Principles-based Framework, comprising a Food Labelling Issues Hierarchy Framework, to guide decisions about regulatory intervention."

The paper also claims that the proposed labelling hierarchy: "underpinning the Framework is risk-based and identifies food labelling issues in descending order from food safety, through preventative health, new technologies and consumer values."

But the panel does not enunciate the core principles that should underlie the hierarchy. The report merely says: "… the Panel further recommends a more precise set of principles and criteria to guide decisions about government intervention in food labelling."

1. As a broad concept, is a Principles-based Framework and hierarchy of food labelling issues a useful basis for guiding decisions on the appropriate regulatory approach for different food labelling issues?

- We cannot endorse any 'principles-based framework' until the detailed principles that will underpin the proposed hierarchy are widely and openly discussed and agreed to by everyone. The public and public interest advocates must be enabled to participate in formulating the detailed principles that will underpin the system before we can decide whether the framework is useful or not.
- As it stands, the only principle that appears to apply to the hierarchy is food safety, which appears to be very narrowly defined as phytosanitation. The hierarchy needs much further elaboration before we could seriously consider supporting it.
- In particular, the principles that determine the operational and compliance requirements of the scheme must be clear and unambiguous so that it can be monitored and enforced. We do ot support industry self-regulation at any level of the proposed hierarchy.
- All labelling must, most importantly, meet all shoppers' right to know how a novel food was made and what it contains. Labelling must fill its role of fully informing and empowering everyone to be able to select what is best for them according to economic, health, safety and personal preference criteria. All foods, even those that are refined, should be labeled without exception.
- Without full and honest labeling, markets are distorted and do not function optimally as the food industry possesses information denied to shoppers. If business and government are really committed to free markets rather than shallow rhetoric, all should welcome, support and encourage more food labeling. Labelling is a robust mechanism to encourage competition in marketplaces, for every-one's benefit. Shoppers are entitled to optimum value for their hard-earned dollars and better information enhances the quality of our purchasing decisions.

2. What are your views on the various elements of the Review Panel's proposed Framework, and in particular the distinct tiers for food safety, preventative health, new technologies and consumer values issues?

- We do not agree with the paper's claim that: "Food safety is relatively straightforward and requires little explanation." Food safety comprises much more than just short term phytosanitary safeguards so we do not agree that: "Labelling is required here to protect consumers from direct and immediate threats to their health." This paternalistic construction of labelling as a protective measure is narrow and disempowering. The casting of citizens as 'consumers' also subordinates our crucial role and subordinates us to other interests that are assumed to be more important and powerful. Serving the needs and interests of the families who eat food should be the primary goal of food production and supply chains. For instance, inferior fast and junk foods that are a long term hazard to good health, are made to maximize profit rather than feed people well, and should be marginalised or eliminated.

- The panel's construction of preventative health labeling is also vexed. We would agree with labels to assist preventative health strategies only if: "labelling directed at the overall health of populations, where label information is one element of a range of strategies that make healthy choices easier for the majority of a population," to always fully and fairly inform and empower us all to take responsibility for our own healthy food selections. An emphasis on balanced and diverse diets, primarily of fresh fruits and vegetables and minimally processed other foods, would be the core of such messages.

- Exercise and other components of a healthy lifestyle such as dental hygiene and minimizing salt, fat and sugar consumption are also essential to preventative health measures so advice on healthy foods should only be part of a much wider strategy.
- This approach will meet the needs of: “A population-wide approach (that) may focus on primary prevention (directed at maintaining the health of the whole population) or on secondary prevention (directed at population sub-groups with incipient or developed chronic diseases or conditions).” Those people suffering chronic diseases as a result of poor lifestyle choices, limited budgets and poor access need health education rather than more labeling of processed and refined foods. Measures other than labeling are needed to encourage and empower their transition toward more healthy fresh diets and away from highly processed foods that are only modified to qualify for a healthy tick.
- Junk and fast foods which are high in sugar, salt, fat and highly refined and processed ingredients should never qualify for any preventative health labeling, or promotion in a broader health context.
- Truthful, transparent and accurate information must be on all food labels. Food labels must not include promotional or advertising material, such as questionable high-level health claims, claims of enhanced functionality for specific diseases, or claims of nutrient enhancement to synthetically redress the negative impacts of processing on food quality and nutritional value.
- The limited space on food labels must be used to maximum effect and benefit for everyone along the supply chain, from seed to spoon.

3. In the case of consumer values issues, what are the practical implications associated with self-regulatory and co-regulatory measures where proposed by the Review Panel as the dominant modes of intervention?

- Labelling systems should be informational, not promotional in their intent and content. Standards, benchmarks and objective criteria should be required so that shoppers can understand what it really means if a product is allowed to claim ‘dolphin-friendly’, ‘free-range’ or ‘natural’. In the case of GM-free, for instance, the ACCC set a zero threshold for any GM contamination to prevent false or deceptive representations, which is an objective and checkable measure. Similar objective, monitored and enforceable criteria should be established for all other claims, in all the proposed categories of labelling.
- All foods made using GM techniques should be labeled without exception, on the same zero tolerance basis as for GM-free label claims. The exemptions in Standard 1.5.2 for refined GM vegetable oils, starches and sugars, for insance, are founded on the false assumption that processing removes all foreign DNA and protein. The assumption that foreign DNA and protein is all denatured in the alimentary tract, making whole GM foods safe to eat, is also refuted by evidence. Just one example is the recent peer reviewed paper by Canadian gynecologists Aris and Leblanc in Reproductive Toxicology which reports finding insect toxins from GM plants in pregnant women and their fetuses. Further research is needed, not FSANZ fatuous, unreferenced dismissal of these challenging research findings by credible scientists.
- The Panel reports that it has: “found it useful to distinguish between narrow consumer values issues linked explicitly to methods of food production, such as organic, free range, halal and kosher, and broader, more generic values, such as human rights, environmental sustainability and animal welfare.”
- They also claim that: “For most consumer values issues, the risks to human health are minimal or non-existent.” We strongly reject this narrow view, as reliable and secure supplies of healthy, nutritious foods can only come from clean environments and healthy animals, produced by people who are not exploited. Setting benchmarks and standards for the making of truthful and honest claims about food that reflects our society’s humane and secular values are appropriate and in the public interest.
- Whether individual suppliers choose to apply such labels to their products may be a matter of discretion but it should be open to them to do so on an approved and objective basis. For instance, in the USA Monsanto successfully sued to prohibit the labelling of milk products as rBGH-free where they were made without using synthetic bovine growth hormone. Similarly, our Therapeutic Goods Administration recently prohibited sunscreens not containing nanomaterials from being labelled nano-free. Such restrictions on fair, honest and informative labeling should not prevail.

The Blewett labelling review needs a lot more public discussion before its recommendations are adopted or rejected. This discussion should be out in the open and should welcome full public participation. Until and unless this process happens, we reject the Blewett reviews key recommendations.

We urge the Ministerial council to insist on this open discussion before final decisions are made, to restore trust and confidence in food labeling and the food regulatory process more generally.

Please favourably consider and respond to our comments.

Yours sincerely,

Bob Phelps
Director