

Submission to the Food Labelling Review

by



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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.

The Review

The comprehensive review of food labelling law and policy will consider options to:

- **reduce the regulatory burden in food labelling;**
- **without compromising public health and safety.**

Our Comment

This review should acknowledge that the protection of public health and safety is the top priority and that better labelling would serve that objective. 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.

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.

The review should also agree that citizens have an unqualified right to informative food labels that give notice of all relevant food product specifications - including origin, new processes of production, 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 promote their own health and safety. The absence of informative labels leaves people vulnerable to shopping and eating in ignorance. That is unacceptable.

Food Standards Australia New Zealand is among the supporters of the Commonwealth-funded Gene and Nano Technology Information Services' (GNITS) programs of information delivery on nano and bio-technologies so the public can make 'informed choices' about these products. The Commonwealth also funds a National Enabling Technologies Strategy (NETS) 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. Thus, official opposition to labelling all new GM and nano-foods is completely inconsistent and insupportable. They have little or no history of safe use in the human food supply and must all be labelled.

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, 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, in the long term. Our preferred option is to ban such foods but, failing that, they should all be 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 on nano and biotechnologies is an example, that 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.

We will comment on the review panel's six terms of reference.

1. Examine the policy drivers impacting on demands for food labelling.

Our Comment

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 at least 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 if they want to.

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, including vegetable oils, starches and sugars from GM soybean, corn, canola and cottonseed. These GM crops are engineered to make their own insect toxins, which may end up in food, or withstand being sprayed often and at high doses with Monsanto's potent herbicide Roundup. These products enter our food supply directly or in animal feed, unlabelled.

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 GM animal feed is required to be labelled so that farmers can choose what to feed their animals. Clear labelling of other novel foods such as nano-materials, food irradiation and new additives that have no history of safe use in the food supply give European shoppers the choice that we also deserve here.

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 materials 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 the same right to information as people living in the European Union. Artificial food colourings, flavours and other additives can have adverse effects on activity, attention and allergic reactions in children so they should be banned or, at least, be fully labelled so that families can make informed choices when shopping.

Another driver for the strengthening of Australian labelling requirements is the double standard adopted by some Australian food processors. More stringent rules are applied to some Australian production for export to Europe and Japan and to the export organic supply. But some producers use materials and practices banned abroad, when producing foods for domestic consumption. This double standard is not now illegal but it is unacceptable, for instance, that synthetic animal growth hormones can be used in beef production for the Australian food supply, and these products are unlabelled. Similarly, unlabelled products from the routine use of antibiotics in animal feedlots is a public health hazard that should be banned as it applies selection pressure to animal pathogens that also infect humans and they are becoming antibiotic resistant. Pending total bans, informative labels should give those who eat these products clear notice of their origin.

2. Consider what should be the role for government in the regulation of food labelling. What principles should guide decisions about government regulatory intervention?

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.

The establishment and maintenance of sustainable systems that serve the public interest should also be the goal of food laws, standards and regulations.

We agree with the inquiry 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 the 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 enforced.

3. Consider what policies and mechanisms are needed to ensure that government plays its optimum role.

Our Comment

Government should mandate that all food labels are factual, accurate and comprehensive, especially where a food is new in the human food supply and has little or no history of safe use. FSANZ's Novel Food Standard 1.5 - foods requiring pre-market assessment - includes novel, irradiated and GM foods.

We strongly urge that all foods, food packaging and production processes which entail the use of nano-materials also be included in Standard 1.5. As they also have no history of safe use in the human food supply, labels should be required on all foods and food packaging produced using nano-technology, or manufactured in nano-particle form. Proposed regulation by Standards Australia would be insufficiently rigorous, enforceable and monitored to ensure that such a new class of substances and processes will have minimal impacts on human health, safety and our environments.

We can only speculate on what other food ingredients and food processing techniques may fall under Standard 1.5 in the future. The standard should be amended to require all new products requiring pre-market assessment to also be fully labelled. Only full labelling may enable shoppers to make well-informed choices, with the potential for tracking any adverse health or safety impacts that may occur.

Not labelling new ingredients and processes is poor policy and is unfair to a community put at risk. Scientific safety evidence is often provisional, limited and incomplete for food ingredients that are products of novel production processes and/or new materials which have no history of safe use in the human food supply. Evidence submitted in support of their registration is typically an ad hoc assortment of company-generated and un-peer reviewed data, often produced with minimal scientific rigour. The regulators use a so-called case-by-case approach which does not set any benchmarks, standards or quality assurance guidelines for what is acceptable data. The Food Standard should be amended to require the establishment of such standards.

Meanwhile, the registration of novel foods should be regarded as at best provisional, pending more complete and rigorous safety evidence becoming available. In light of the inherent risks, hazards and uncertainties, the novel aspects of all foods registered under Standard 1.5 should be required to be fully labelled. A strong precedent for requiring labelling of all such foods is provided by Food Standard 1.5.3 itself, as all foods that are treated with radiation must disclose its use on the label.

Likewise, all future novel foods and food production processes that have no history of safe use in the human food supply should be automatically labelled.

Only some of the foods and food ingredients registered in the novel food standard 1.5.1 are required to be labelled. The standard should be amended to require them all to be labelled!

Standard 1.5.2 covers foods produced using gene technology exempts most of them from labelling. Yet a recent Scientific American editorial says the jury is still out on the impacts of GM crops because independent researchers are denied access to GM material for experiments. The editorial refers principally to environmental research but the same critique applies to GM food safety research. So, until the proprietary GM material is supplied and the research is done, foods made using GM should be banned from food and feed supplies. Pending such bans, all foods produced using gene technology should be labelled, without exception.

We call for parity of approach to the labelling of GM and GM-free foods. To be genuinely truthful, fair and equitable to both GM and GM-free food processors, all foods produced using gene technology or containing its products should also be fully labelled GM, without any exceptions whatever. This is not

an onerous requirement as the FSANZ industry guidelines on GM require food processors to maintain a paper trail showing the GM status of their ingredients, whether they are required to be labelled or not.

Graeme Samuel, head of the Australian Consumer and Competition Commission recently reiterated their policy that zero tolerance applies to any use of 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 apply.

Standard 1.5.2 is entitled ‘Food Produced Using Gene Technology. The focus is clearly on the process of production and that is appropriate. But the standard betrays the spirit of its title when it comes to labelling, using the GM industry concept of ‘substantial equivalence’ to exempt most foods produced using gene technology from any labelling requirements. It denies full and fair information to shoppers by comparing just a few chemical analyses of a GM food with a conventional counterpart. The foods are not the same and the range of comparative values is not set in advance. If they are similar enough to satisfy the FSANZ assessors it is assumed that the GM food (like the conventional one) is safe and is then exempt from any labelling about its mode of production.

The intellectual and conceptual basis for labelling exemptions is flawed. GM food is narrowly defined in the standard to divorce it from its mode of production and then any requirement to label. GM food is defined as: ‘food that is, or contains as an ingredient, including a processing aid, a food produced using gene technology which: (a) contains novel DNA and/or novel protein; or (b) has altered characteristics;

But this definition is based on the false assumption that removing all DNA or protein renders a food safe. Refined GM food, where the refining process is assumed to remove all novel DNA and/or novel protein allows refined GM foods, such as vegetable oils, starches and sugars, to enter the food supply unlabelled without any testing or monitoring to verify the assumption.

But even if it were true that every vestige of DNA and protein were removed from a food that does not guarantee safety. For instance, refined peanut oil that contains no DNA or protein can still provoke severe allergic reactions in children allergic to peanuts. An experiment also found that people with Brazil nut allergies had allergic reactions to soybeans into which a Brazil nut gene had been inserted.

An editorial note in the standard also explains that the meat, milk, cheese and eggs (and honey too?) from animals fed GM feed are also exempt from labelling. This reflects the assumption (not a fact) that foreign genes or their influence cannot be transmitted from GM feed to humans through incorporation into the animal’s biological systems.

In contrast to standards 1.5.1 and 1.5.2, the Irradiated Food Standard 1.5.3 requires all foods or food ingredients processed using radiation to be labelled.

This sets a clear precedent for the labelling of other novel processes of production, including GM, nano-materials and all novel foods. Other precedents for process labelling include industry's promotion of valued production processes such as 'dolphin-friendly' tuna and 'fair trade' coffee on labels.

The government’s recent trade-related decision to allow beef imports from countries where Bovine Spongiform Encephalopathy (BSE) exists in cattle and other animals demands a labelling response, at the very least. Agriculture Minister Burke claims the risk of BSE reaching Australia is tiny. However, the economic and public health consequences of BSE here would be so enormous and costly that a precautionary response is needed.

Australians must be enabled to choose whether or not to run the known risks of eating beef products imported from countries where BSE exists. Well-founded causes for legitimate concern exist. For instance, public health authorities like the Red Cross blood bank prohibit blood donations from people if they may have been exposed in Europe to beef contaminated with BSE and may be infected with the communicable human form of BSE, Kreutzfeld Jacob Syndrome.

4. Consider principles and approaches to achieve compliance with labelling requirements, and appropriate and consistent enforcement.

Our Comment

All relevant and key information about foods must be truthfully, accurately and clearly presented on comprehensive labels attached to every product. The people who buy and eat food - not the food industry or FSANZ - should be empowered to decide what label information is relevant. We all have the right to be fully informed on food labels about what we eat.

Advertising or marketing on food labels should be prohibited. Labels are for the provision of clear, concise and factual information.

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 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 no history of safe use in the food supply.

The Commonwealth, with its scientific and commercial partners, also funded the Gene Technology Information Service (GTIS) for almost a decade, until June 30 2008. It is still funded and now operates as The Gene and NanoTechnology Information Service (GNTIS). 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 GNTIS website says it: 'was established to meet a growing community need for balanced and factual information on gene and nano-technology.' and: "The GNTIS 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 GNTIS'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.

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

Our Comment

FSANZ relies on the concept of "substantial equivalence" which does not deliver full information to shoppers or robust science-based assessments of foods. The concept was created by the food industry to minimise labelling and assessment requirements. The new food is not the same as its tried and true conventional counterpart so assumptions of safety that allow novel foods to go unlabelled are unjustified.

Such assessments of new foods ignore the production processes, and focus on the chemical composition of processed food products. Safety experiments on substances made using genetically engineered organisms - such as GM food processing aids and additives - would be more easily done than for whole foods, but even these are not required.

FSANZ and other regulators evaluate mostly data which is: food industry-generated trial data; not from properly designed experiments; generally unpublished; not independently peer or public reviewed. This lack of independence is unacceptable and dangerous.

6. Make recommendations to improve food labelling law and policy.

Our Comment

We will offer the review panel our advice on this in further submissions and during face-to-face consultations. Please keep us fully informed of how we can best participate and also facilitate our constituents to do the same.

References:

- Scientific American, editorial opinion, A Seedy Practice, August 2009, P22.
- The National Enabling Technologies Strategy Fact Sheet is available at: <http://www.innovation.gov.au/Section/AboutDIISR/FactSheets/Pages/NationalEnablingTechnologiesStrategyFactSheet.aspx>
- The Gene and NanoTechnology Information Service <http://gntis.edu.au/about/>
- FSANZ fact sheet on genetic manipulation and nano technologies and their products: <http://www.foodstandards.gov.au/foodmatters/gmfoods/geneandnanotechnolog1271.cfm>
- The Food Standards Code: <http://www.foodstandards.gov.au/thecode/foodstandardscode/>