IHER Inc.
Institute of Health and Environmental Research Inc

PO Box 155,
Kensington Park, SA, 5068
Australia

Submission to the Review of Food Labelling Law and Policy

November 2009

1 Introduction

The Institute of Health and Environmental Research Inc. (IHER) is a not-for-profit research institute with an interest in genetically modified (GM) organisms, particularly those destined for food. Its directors hold the following degrees: ordinary degrees in Medicine, Science and Agriculture, Honours Degrees in Agricultural Science and Organic Chemistry, a Master of Public Health, and PhDs in Plant Genetics and Medicine. The Directors have training and expertise in plant science, agriculture, medicine, chemistry, biochemistry, nutrition, epidemiology and biostatistics.

2 Submission

We are heartened to note that the terms of reference for the Review emphasize the importance of an evidence-based approach. In our view, some food labelling decisions taken in recent years have been based on assumptions for which there is insufficient evidence, or have been overtaken by recent scientific evidence.

As the Review's Terms of Reference note, there are tensions between the varying objectives sought to be achieved by different stakeholders from food labelling laws.

Highest-level principles

The Review is required to consider principles that should guide government regulatory intervention.

The highest-level principle at stake is recognised within the very reasons for the establishment of the review. The protection of public health and safety clearly should be considered the highest principle. Enabling consumers to make informed choices is a secondary, but still vitally important principle. These are supposed to be the two top objectives of FSANZ.

Other policy drivers, in particular the commercial demands of industry, are recognised. However, it is clearly the proper role of government to ensure that these other policy drivers are not permitted to displace or relegate the two highest-level principles. Unfortunately, there is a well-recognised risk in governments all over the world, that public policy regulators may become, to some extent, captive to the economic demands of industry. In our view, some food labelling decisions made in Australia in recent years have reflected the reality of that risk and compromised government focus on the two highest-level principles.

It is clear that this has occurred, at least in part, by the process of drafting the definition of genetically modified food in Food Standard 1.5.2, and some specific decisions made by FSANZ over the past decade. In support of this view, we refer you to the attached published

article by one of our Directors, Dr Judy Carman BSc (Hons) PhD MPH MPHAA:

> *How GM food is regulated in Australia and New Zealand: A story of standards, oil and sausages.* (2008) 86 Impact! 22

In particular, we refer you to following points on page 23 of this document:

- The definition (in Standard 1.5.2) of genetically modified food assumes by omission and despite a lack of evidence that the only potential problems from GM organisms would necessarily be related to the *intended* effects of genetic engineering.
- FSANZ interprets Standard 1.5.2 to state that the effect of refining foods such as vegetable oil, has removed novel DNA and novel protein. This interpretation has been relied upon to eschew any enforcement of the Standard in respect of these highly refined foods, despite evidence (cited in the attached article) that undermines the FSANZ interpretation.
- FSANZ has inserted an editorial note in the Standard which excludes from the definition of genetically modified food, any meat, milk, cheese and eggs from animals that have been fed GM feed. This exclusion must be revisited, based on evidence that these products can contain GM DNA.

In our view, these policy positions have been taken, at least in part, because FSANZ has been captured by, or is at least unduly influenced by, the commercial food industry and has not given sufficient weight to the two highest-level principles to which we have referred above. Evidence for the undue influence comes from the composition of the Board of FSANZ. Most members of the Board are employed by, or have been employed by, the food industry rather than being employed in medicine, public health, nutrition, food safety or other areas relevant to being primarily concerned with public health and safety.

Recommendations

Based on the above, and consistent with evidence, our recommendations are:

1. FSANZ be re-structured so that the membership of its Board reflects a public commitment to the two highest-level principles. In our view, this would require a Board on which the majority of members are experts in medicine, public health, nutrition or food-borne disease and are independent of commercial food companies.
2. FSANZ's interpretation of Standard 1.5.2 be repudiated, with the effect that refined foods (particularly oils) derived from GM crops be labelled as such.
3. The editorial note be removed from Standard 1.5.2 so that, consistent with the evidence, meat, milk, cheese and eggs from animals that have been fed GM feed are labelled as such.

Compliance regime

The Review's Terms of Reference require it to consider principles and approaches to achieve compliance with labelling requirements, and appropriate and consistent enforcement.

Any effective compliance regime must require some schedule of independent testing, to check the veracity of any list of ingredients or other product claims. Independent tests are critical to underpin public confidence in the regime.

However, ascertaining the risks posed by various foodstuff ingredients requires a body of scientific evidence about the effect on human health from each particular ingredient. Some foodstuffs have been had their effects monitored for generations. Some adverse health effects, such as peanut allergies, are well documented. However, other more recent innovations such as GM crops have entered our food supply with little, if any, evidence of their long-term effects.

Not one of the 55 or so genetically modified crops permitted in the Australian food supply has undergone a long-term animal feeding study to compare the health effects of the GM food to its non-GM equivalent. None have undergone human health testing. The long-term effects on human health are therefore unknown.

Although some might take the view that the risk is insignificant or slight, there is insufficient evidence on which a body charged with protecting public health could come to that conclusion about any particular genetically modified food, let alone every GM variety currently available.

It is beyond the scope of this submission to discuss the potential long-term health effects of genetically-modified food. It is sufficient for present purposes to highlight the lack of evidence that would support any strong conclusions, either positive or negative.

Given this lack of data, it is our submission that a compliance regime should reflect the high-level principle that consumers should be enabled to make their own, informed choices about whether to eat these foods or not.

The lack of data on potential long-term health effects means that choosing any genetically-modified food represents some level of risk. Consumers should be free to knowingly either take or reject the risks, as they perceive them to be, but they cannot make even this decision if they cannot rely on the veracity of labels.

We draw your attention to page 24 of the attached article which describes a FSANZ pilot survey in 2003, in which 51 foodstuffs were tested for the presence of GM ingredients, of which 22 percent had GM content. In the intervening six years, the proportion of GM material in the food supply has increased considerably, yet to our knowledge, this is the only attempt undertaken to monitor compliance with Standard 1.5.2.

Given the as-yet unknown and unquantifiable risks of genetically modified foods, our submission is that the almost complete neglect of labelling compliance monitoring and enforcement over the past decade cannot give consumers any confidence in the compliance

regime.

Furthermore, if animal studies later show adverse health effects from eating a particular GM crop, or anecdotal evidence emerges of harm to people from eating these crops, the public would likely demand a proper investigation into the matter. An epidemiological study investigating the effects of the GM food on human health would be one of the most likely consequences as it utilizes one of the most powerful investigative tools available. However, such an investigation will be profoundly difficult without comprehensive labelling of GM crops that is coupled with a compliance regime, as it will otherwise be profoundly difficult to determine who has been eating a given GM crop and who has not. If you don't know who has been eating GM crops, you cannot determine if their illnesses are due to eating GM crops or something else entirely.

Recommendations:

To reflect the current lack of evidence, and the possibility of future epidemiological investigations, our recommendations are:

1. All commercially-available manufactured foodstuffs be tested, *at least biennially* for the presence or absence of genetically-modified ingredients, and the results compared against the labelling of the product. Where labels are found to be inaccurate, there should be similar treatment, for enforcement purposes, of both positive and negative claims of GM status.
2. The schedule of testing be revised on a regular basis to reflect risks that may be identified from specific GM ingredients, including that based upon any evidence which may emerge in scientific and medical journals.