COVER SHEET FOR SUBMISSIONS

REVIEW OF FOOD LABELLING LAW AND POLICY

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Frances Murrell
Address removed for web version

18 May 2010

Food Regulation Secretariat
PO Box 4
Woden ACT 2606

Attention: Food Regulation Secretariat

Re: Review of Food Labelling Law and Policy – Submission Round 2

MADGE thanks the Review Panel for the opportunity to contribute to this Review of Food Labelling Law and Policy.

MADGE Australia Inc is a network of consumers who are concerned about how our food is produced and the effects it has on our health and the environment.

The network currently has around 1500 members.

The MADGE network has a particular focus on **new technologies, such as genetic modification and nanotechnology**. We inform consumers about the issues surrounding these food technologies and advocate on their behalf to voice their views to stakeholders in government and the food industry.

One of the things that MADGE members are most concerned about is adequate food labelling to enable them to **make informed choices** about foods for themselves and their families.

MADGE has appreciated the chance to prepare submissions and to attend the Food Labelling Review hearings. However we have been contacted by people who are concerned about the following issues:

Issues Related to the Public Consultation Process

- Uncertainty over whether all initial submissions were received. We know of people who made submissions but did not receive this confirmation email received by others:

> Dear Stakeholder
>
> Thank you for making an initial submission to the Review of food labelling law and policy. We appreciate you taking the time to put forward your ideas in this initial round of public consultation.
>
> Information about all of the submissions received will be made available to the Review panel, as topics and information that they may have consideration to, within the scope of the Terms of Reference for this Review. This has only been the initial round of consultation, and there will be

further opportunities for public consultation as the Review progresses. We would also like to keep you informed of the Review's progress, and may email you from time to time with updates.

Information about the Review is also available on our website http://www.health.gov.au/internet/main/publishing.nsf/Content/review-food-labelling-law-&-policy

Regards
The Food Labelling Review Secretariat

We don't know how widespread this was, and wonder if it related to the crashing of the computer.

- We know of people who made submissions but did not receive any updates as suggested in the email above, or advice on making a second submission, see the email in the following section.

- Complexity required for second round submissions. Here is an email we received:

I sent an email, as suggested by you relating to the food labeling review and received the following reply.

Thank you for your email.

The Food Labelling Review Committee is currently undertaking its second round of public consultation. As part of this consulation process, members of the public are invited to make a submission via the website: www.foodlabellingreview.gov.au. If you would like the content of your email to be considered by the Review Panel, please go to the website and make a submission.

The closing date for online and written submissions is Friday 14 May 2010.

As part of the public consultation process, stakeholders are also invited to attend one of the public meetings that have been scheduled for each of the capital cities in Australia and New Zealand. Registration to attend a public meeting can be done through the website www.foodlabellingreview.gov.au. Details regarding session times and venue locations will be sent to registered stakeholders closer to the date.

Please see below for the consultation dates:

[Table]

Regards
Food Labelling Review Secretariat

So I went to the website and found that there is a list of requirements for a submission to count. A quick email won't do. Could you consider setting up a submission that meets the requirements so that those who wish to help can copy and paste or forward

> http://www.foodlabellingreview.gov.au/internet/foodlabelling/publishing.nsf/Content/sub-guide

Here is another

> I'm happy to sign for this to happen. But the process seems too involved
>
> R

We suggested they email FoodLabellingReview@health.gov.au and give their name and address. We said that we do not know if any submissions in this format would be accepted but we suggest that they should be as the more submissions the better able the Review Panel is able to gauge the food labelling needs of the public. We don't know how many people have been put off by this complexity.

- Lack of notice of the location of the Review panels hearings. Some people were only told of the locations after the meetings had taken place.

Conflict of interest on the Food Labelling Review Panel MADGE is extremely concerned that one of the five members of the review panel, Nick Goddard, is contracted Executive Director of the Australian Oilseeds Federation http://www.australianoilseeds.com/about_aof/contact .

This peak industry body has GM companies as members, i.e. http://www.australianoilseeds.com/about_aof/our_members

- Monsanto,
- Bayer Crop Science,
- Dow Agrosciences.

Monsanto is the owner of the GM canola variety grown in Australia, and in support of their application to have GM canola approved by ANZFA tendered a report commissioned by the Australian Oilseeds Federation [A363 Application July 1998.pdf pages 34-40].

The list of members also includes global agribusiness/food companies such as:

- ADM Australia Pty Ltd
- Bunge Agribusiness Australia Pty Ltd
- Cargill Japan Ltd
- Cargill Oilseeds Australia Ltd
- Louis Dreyfus Australia Pty Ltd
- Unilever Australasia

All these companies have involvements in GM crops; some are also involved in nanotechnology.

From its website http://www.australianoilseeds.com/about_aof
"The Australian Oilseeds Federation (AOF) was established in 1970 to represent the common interests of all Australian oilseed industry participants... "
The role of the AOF includes, as listed on its website "Industry issue lobbying and representation".

Not surprisingly, the AOF site is pro-GM and the The Strategic Plan 2010 http://www.australianoilseeds.com/__data/assets/pdf_file/0014/1517/AOFplan.pdf says "An important issue for the industry going forward is to continue to promote the positives of GM technologies to maintain access to this tool."

Listed under actions for the next two years in its Strategic Plan, is: "Continue to participate in working groups and other activities seeking to develop an appropriate policy framework for GM and other emerging technologies."

A review of food labelling should be concerned with what the general public needs to know about the food it is buying and eating. The food industry should only be consulted later on how to best implement the decisions made by others during the review. It is unethical and inappropriate to have a representative from the food industry on the panel.

We have responded not only to the questions, but to some of the paragraphs in the Issues Paper, where we felt further clarification was needed. If this presents an administrative problem, we suggest the responses to the paragraphs are included within the next following question.

We've used this sort of header **MADGE response** to separate our response from Issues Paper text.

Prepared by:

Frances Murrell
Madeleine Love
Assistance from Rachel Carey gratefully acknowledged

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PART 1: CONTEXT

1.1 The objectives[1] of food standards in Australia and New Zealand are: to provide a high degree of consumer confidence in the quality and safety of food produced, processed, sold or exported from Australia and New Zealand; to secure an effective, transparent and accountable regulatory framework, within which the food industry can work efficiently; and to ensure the provision of adequate information relating to food to enable consumers to make informed choices.

1 Section 3 Food Standards Australia New Zealand Act 1991

MADGE response to paragraph 1.1

Paragaph 1.1 lists the three of the goals of the Object of the Food Standards Australia New Zealand Act 1991. However the fourth goal (paragraph 3(d) of the Act) is not there, namely[1]:

" the establishment of common rules for both countries and the promotion of consistency between domestic and international food regulatory measures without reducing the safeguards applying to public health and consumer protection."

Is there a reason why this goal was missing from the Issues Paper?

MADGE would like to make the following comments in respect of this goal:

- The promotion of "consistency" is usually made in relation to world trade.
- MADGE rejects the 'promotion of consistency' in labelling. The danger is that consistent labelling will be of the lowest standard. If countries wish to import food into Australia they should label according to the requirements of the Australian public.
- MADGE rejects any implicit suggestions in this paragraph that the Australian public cannot determine its own labelling needs. This would inhibit action on immediate and future public health issues and limit the right to full information about the content of our food.

Despite the desire for full labeling of GM ingredients, consistently expressed by a majority of people around the world, there are inconsistent labeling regimes. Europe has the most extensive disclosure requirements. These are currently being challenged to also include products from animals fed on GM.[2] The USA has no labeling requirements for GM at all. Australia has a GM labelling standard, however exemptions mean that in practice almost no GM ingredient requires labelling.

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1 http://www.comlaw.gov.au/comlaw/Legislation/ActCompilation1.nsf/0/34FDA538E7B40ACFCA256F71004DA6FE/$file/FoodStandANZ91.pdf

2 http://www.gmofree-euregions.net:8080/docs/ajax/ogm/100211052849_Final%20Declaration_EN.pdf

1.2 Primary responsibility for determining and administering food standards in Australia and New Zealand lies with Food Standards Australia New Zealand (FSANZ).

1.3 Enforcement of food labelling in Australia is shared at the national level between the Australian Competition and Consumer Commission (ACCC), as part of its general responsibility for consumer protection, and by the Australian Quarantine Inspection Service (AQIS) in relation to foods imported into Australia. State authorities and local government bodies, supported by the Implementation Sub-committee (ISC) are responsible for enforcement of the food labelling standards at the regional and local level. In New Zealand, responsibility for enforcement lies with the New Zealand Food Safety Authority (NZFSA) supplemented by the New Zealand Commerce Commission.

MADGE response to paragraph 1.3

Paragraph 1.3 suggests GM labelling standards are enforced in Australia. This does not occur in practice. Please see response to Paragraph 5.1.

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.[2] 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.

2 Food Labelling (Codex Alimentarius)

MADGE response to paragraph 1.4

There are no Codex Alimentarius International labeling rules for GM:

> "The work on finding an international consensus on how to proceed with the labelling of GM Food has proven difficult because of quite opposed opinions in the world. As there has been no consensus for some time some countries suggested stopping this work but others would like to continue so the discussion continues. International consensus is not an easy thing! For further information please read reports of the Committee on Food Labelling." http://www.codexalimentarius.net/web/faq_rum.jsp

At the latest Codex Alimentarius meeting from 3-7th May 2010 "the U.S. fought for a guideline that Codex would not "suggest or imply that GM/GE foods are in any way different from other foods," and refused to agree to comprise language stating that Codex "recognizes that each country can adopt different approaches regarding labeling" of GM/GE foods.

Of the approximately 50 countries present at the meeting, only Mexico, Costa Rica, and Argentina, supported the U.S. position.

The US grows about 50% of the world's GM crops by trait acreage and they comprise roughly 57% of US acres. US based company Monsanto owns 90% of world GM seed. Since the majority of people worldwide express a wish to avoid buying GM food, it appears that Monsanto and the US have a strong financial incentive to restrict GM labelling. Argentina produces GM soy, much of it for export to the EU for stockfeed. If Europe begins to label produce from GM fed animals this would negatively affect Argentina. Mexico has started trialling GM maize[3], despite protests from many farmers[4] . Costa Rica grew GM soy for the first time in 2009.[5]

There are clear financial interests promoting the idea that there is no difference between them and non-GM food and should not be labeled. However there are demonstrable, measureable differences between GM and non-GM crops and food products, apart from the intended DNA and protein changes [in the case of insect-resistant GM plants, the novel proteins are insecticides].

Comparative research on GM crops has been restricted by the GM crop developers, and this was unexpectedly reported in biotech-friendly trade journal Nature Biotechnology[6] at the end of last year, indicating the seriousness of the restrictions. But information has trickled through. Proteome study to examine the range of proteins produced by the plants found 43 proteins were up or down-regulated in the GM as opposed to control seeds[7]. They also reported a newly-expressed known allergenic protein. Roundup resistant crops have been reported to higher residues of the herbicide Roundup[8] [9], lower levels of micro-nutrients, lower yields, changes in lignin content and amino acid production.[10] [11] [12] Differences in mycotoxin levels, both favourable and unfavourable,

[3] http://www.bangkokpost.com/breakingnews/158528/tests-on-treasured-maize-ignite-fears-in-mexico

[4] http://www.viacampesina.org/en/index.php?option=com_content&view=article&id=877:inauguration-of-qtransgenic-contamination-of-maize-crime-against-humanityq&catid=22:biodiversity-and-genetic-resources&Itemid=37

[5] http://www.gmo-compass.org/eng/agri_biotechnology/gmo_planting/257.global_gm_planting_2008.html

[6] Under wraps; Emily Waltz; nature biotechnology volume 27 number 10 october 2009; Article can be read in full here: http://www.emilywaltz.com/Biotech_crop_research_restrictions_Oct_2009.pdf

[7] Proteomics as a complementary tool for identifying unintended side effects occurring in transgenic maize seeds as a result of genetic modifications; Zolla, L.; Rinalducci, S.; Antonioli, P.; Righetti, P. G.. *J. Proteome Res*. **2008**, *7*, 1850–1861.

[8] **Isoflavone, Glyphosate, and Aminomethylphosphonic Acid Levels in Seeds of Glyphosate-Treated, Glyphosate-Resistant Soybean;** Stephen O. Duke,*† Agnes M. Rimando,‡ Patrick F. Pace,‡ Krishna N. Reddy,‡ and Reid J. Smeda§; *J. Agric. Food Chem.*, 2003, *51* (1), pp 340–344; http://pubs.acs.org/doi/abs/10.1021/jf025908i

[9] **Monitoring glyphosate residues in transgenic glyphosate-resistant soybean;** Arregui M.C.[1]; Lenardón A.[2]; Sanchez D.[2]; Maitre M.I.[2]; Scotta R.[2]; Enrique S.; Pest Management Science, Volume 60, Number 2, February 2004 , pp. 163-166(4); http://www.ingentaconnect.com/content/jws/ps/2004/00000060/00000002/art00010

[10] **Glyphosate Affects Seed Composition in Glyphosate-Resistant Soybean;** Luiz H. S. Zobiole*†, Rubem S. Oliveira, Jr.†, Jesui V. Visentainer‡, Robert J. Kremer §, Nacer Bellaloui|| and Tsuioshi Yamada⊥ ; *J. Agric. Food Chem.*, 2010, 58 (7), pp 4517–4522; **http://pubs.acs.org/doi/abs/10.1021/jf904342t**

[11] **Glyphosate affects lignin content and amino acid production in glyphosate-resistant soybean;** Luiz Henrique Saes Zobiole[1] , Edicléia Aparecida Bonini[2], Rubem Silvério de Oliveira Jr.[1] , Robert John Kremer[3] and Osvaldo Ferrarese-Filho[2]; Acta Physiologiae Plantarum; 17 Feb 2010; DOI 10.1007/s11738-010-0467-0; **http://www.springerlink.com/content/gl0818l518893470/**

[12] **Effect of glyphosate on symbiotic N2 fixation and nickel concentration in glyphosate-resistant soybeans**; L.H.S. Zobiole a,*, R.S. Oliveira Jr.a, R.J. Kremer b, J. Constantin a, T. Yamada c, C. Castro d,

have been noted.[13] The GM crop developer's failure to fully report on residue studies says even more [Monsanto application data for crop GM Roundup Ready Canola GT73].

Most people view GM crops and food as different to non-GM, whether referring to the process of production or to physical characteristics. People demand they be labelled differently. There are growing calls for GM labelling within the US. More than eighty US groups are urging for a change in their government's policy.[14]

The US argument that a GM label would be "meaningless" and "misleading or deceptive" seems to come from the 1979 Codex Alimentarius General Guidelines on Claims. These rules existed before the introduction of GM derived crops and food.

Codex Alimentarius, Food Labelling, 5th Edition[15]

GENERAL GUIDELINES ON CLAIMS CAC/GL 1-1979

1. SCOPE AND GENERAL PRINCIPLES
1.2 The principle on which the guidelines are based is that no food should be described or presented in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character in any respect.

4. POTENTIALLY MISLEADING CLAIMS
4.1 Meaningless claims including incomplete comparatives and superlatives.

The Codex Committee on Food Labelling Chair decided that the guideline should be mediated in Brussels, with Ghana chairing the meeting, providing another opportunity to reach consensus.[16]

Members of the European Parliament call for more labeling

In Europe, Members of the European Parliament "(MEPs) have voted almost unanimously in favour of introducing compulsory labelling on food containing nanoparticles, meat from cloned animals and animals fed on genetically modified (GM) feed." [17]

F.A. Oliveira d, A. Oliveira Jr.d; Applied Soil Ecology 44 (2010) 176–180;
http://ddr.nal.usda.gov/dspace/bitstream/10113/39648/1/IND44313688.pdf

[13] Intestinal and Peripheral Immune Response to MON810 Maize Ingestion in Weaning and Old Mice. Finamore A, Roselli M, Britti S, Monastra G, Ambra R, Turrini A, Mengheri E; J Agric Food Chem. 2008 Nov 14. [Epub ahead of print] http://www.ncbi.nlm.nih.gov/pubmed/19007233?ordinalpos=1&itool=EntrezSystem2.PEntrez.Pubmed.Pubmed_ResultsPanel.Pubmed_DefaultReportPanel.Pubmed_RVDocSum

[14] http://www.consumersunion.org/pub/core_food_safety/016389.html

[15] http://www.fao.org/docrep/010/a1390e/a1390e00.HTM

[16] http://www.gmwatch.org/latest-listing/1-news-items/12206-us-urged-to-back-gm-labeling-agreement?utm_source=twitterfeed&utm_medium=twitter

[17] http://www.theecologist.org/News/news_round_up/478435/eu_votes_for_labels_on_nano_cloned_and_gm_food.html

The EU council will have to decide whether to follow the European Parliament's decision by July.

Therefore both globally and in Europe there is strong support for labelling of new technologies including GM, nanotechnology and cloning.

Free Trade agreements

The Australia-United States Free Trade Agreement, Chapter 8, allows the US entry to participate in the development of our standards and voluntary conformity assessment procedures, with a view to facilitating trade between the Parties.

It seems where one party does not accept a technical regulation of the other, the parties may be required to establish an ad hoc working group to determine settlement.[18]

Considering the absence of GM labelling in the US and its strong opposition to labelling, it is understandable that the Australian public has concerns about Australia's ability to establish and enforce GM labelling.

The Australian government is currently negotiating a free trade agreement with the Asia Pacific region.[19] The public needs assurance that food labelling laws will not be part of the negotiation or any other free trade agreement.

1.5. The focus of this review is not on food standards in general but on the labelling of food.[3] Food labels[4] are but one part of the responsibilities of FSANZ. The labelling standards have two distinctive characteristics that distinguish them from most of the other standards. First, they are mostly consequential on other standards and second, they are the major interface between consumers and governments and industry. Issues and determinants are also different for labelling than for other food standards. Labelling raises questions of freedom of choice and the right to know. It also raises questions of consumer awareness and how effectively messages can be conveyed.

3 Food labelling includes information, representation and claims about food that are, or could be regulated under the Australia New Zealand Food Standards Code or consumer protection laws.

4 A label, with respect to food, means: any tag, brand, mark or statement in writing or any representation or design or other descriptive matter on or attached to or used or displayed in connection with or accompanying any food or package (Model Food Act – Annex A).

MADGE response to paragraph 1.5

The fairest method of labeling for GM ingredients is to use a process-based labeling system. This means that if an ingredient is derived from a GM crop or process it should

[18] http://www.dfat.gov.au/trade/negotiations/us_fta/final-text/chapter_8.html
[19] http://www.trademinister.gov.au/releases/2010/sc_100315.html

be labeled. Improving detection methodology means that GM can be found in food products to check the accuracy of this labelling system.

Additionally it should be assumed that the main GM crops (soy, corn, canola, cotton, sugarbeet) contain GM related residues, intended or unintended. There is evidence of contamination of ingredients assumed to be GM free. National measuring papers suggest that low level contamination of soy and corn may run in the 20- 40% range - one estimate said 6% were beyond the labelling threshold.[20]

[20] "Surveying the RR soy content of commercially available food products in Hungary"; Gabriella Ujhelyi, Boldizsár Vajda, Emese Béki, Kálmán Neszlényi, Júlia Jakab, Anna Jánosi, Erzsébet Némedi and Éva Gelencsér Food Control Volume 19, Issue 10, October 2008, Pages 967-973 http://tinyurl.com.au/7ue

Detection of genetically modified soy in processed foods sold commercially in Malaysia by PCR-based method; *Food Chemistry*, *Volume 98, Issue 3*, 2006, Pages 575-579
Tosiah Abdullah, Son Radu, Zaiton Hassan, Jamal Khair Hashim; http://tinyurl.com.au/7uc

First detection of GMO in food products in Brazil: the INCQS experience; Paola Cardarelli, Maria Regina Branquinho, Renata T.B. Ferreira, Fernanda P. da Cruz and André L. Gemal; Food Control; Volume 16, Issue 10, December 2005, Pages 859-866; http://tinyurl.com.au/7ub

Monitoring of GMO in Brazilian processed meat and soy-based products from 2007 to 2008; Andréia Zilio Dinon, Diana Treml, Carla Souza de Mello[a] and Ana Carolina Maisonnave Arisi; Journal of Food Composition and Analysis Volume 23, Issue 3, May 2010, Pages 226-229; http://tinyurl.com.au/7ua

Survey of compliance with labeling legislation in food containing GMOs in Brazil; Maria Regina Branquinho , Renata T.B. Ferreira and Paola Cardarelli-Leite ; Journal of Food Composition and Analysis Volume 23, Issue 3, May 2010, Pages 220-225; http://tinyurl.com.au/7u9

Detection of genetically modified organisms in processed meat products on the Serbian food market; K. Taski-Ajdukovic, Z. Nikolic, M. Vujakovic, M. Milosevic, M. Ignjatov and D. Petrovic; Meat Science Volume 81, Issue 1, January 2009, Pages 230-232; http://tinyurl.com.au/7u8

Report of the Review of Labelling of Genetically Modified Foods; Food Standards Australia New Zealand; December 2003;
http://www.foodstandards.gov.au/_srcfiles/GM_label_REVIEW%20REPORT%20_Final%203_.pdf

PART 2: FOOD LABELLING - OVERVIEW

Why label food?

2.1 For food manufacturers, the food label is perhaps the most critical communication tool to convey relevant product attributes to a potential consumer. Its role is most significant at the point of sale. For many brands, it may be the only communication vehicle available to 'speak' to the consumer.

2.2 Food labelling interventions by governments are designed to:

- *Protect the health and safety of consumers;*
- *Respond to consumer demand for food information;*
- *Provide a fair playing field to competitors in the food industry; and*
- *Advance government objectives relevant to food.*

2.3 Consumers demand food labelling to provide them with accurate information across a wide field of needs and interests to make informed choices.

2.4 The crux of this Review will be to address the tensions between fair and competitive trade in the market, the minimisation of the regulatory burden for business, the securing of government objectives in food labelling and the needs of consumers in order to make informed choices.

MADGE response on changes in food

The Terms of Reference state: "Calls are regularly being made for new labelling requirements to address a range of issues of concern to diverse groups within the community. Increasingly these do not relate to the characteristics of the food itself, but are about food production systems or attributes."

This crucial insight is that our food is changing. Increasing numbers of people need to know not only what is in their food, but also how it was produced.

This is a reflection of the changes in the food industry. Food is being sourced from great distances, has ingredients unfamiliar to the home cook and is being produced using novel technologies. Therefore the necessity for new types of detailed and accurate labeling occurs.

Many people need to know what they are eating as it can:

- Cause a fatal allergic reaction
- cause an immediate adverse reaction,
- cause a reaction over a longer time,
- cause behaviour problems [21]

[21] http://www.thelancet.com/journals/lancet/article/PIIS0140673607613063/abstract

- exacerbate other underlying conditions ie ADHD or autism[22] [23]
- be produced in a way that concerns some consumers

It appears reasonable that food producers, manufacturers and retailers fully label what is in the food they are selling consumers. They should also label the processes used in production. This should not be seen as a "burden" to industry but the basis of trust and responsible behaviour.

What is the context of this change?

There is increasing disquiet over the changes to the food industry globally. The recent film "Food Inc" is very relevant. The opening lines of the trailer http://www.foodincmovie.com/ explain the issue:

"The way we eat has changed more in the last 50 years than in the previous 10,000."

"The industry doesn't want you to know the truth about what you are eating because if you knew you might not want to eat it."

"We've never had food companies this powerful in our history."

MADGE urges the members of the panel to see this film. It is in Australian cinemas from 20th May. Alternatively MADGE can send you the DVD of the film.

For a wider discussion see Appendix 2: **Are there risks to new food technologies?**

Government drivers impacting on Food Labelling

2.5 The body entrusted to determine and administer food standards is FSANZ whose objectives in descending priority order when developing or reviewing food standards are:

(a) the protection of public health and safety;

(b) the provision of adequate information relating to food to enable consumers to make informed choices; and

(c) the prevention of misleading or deceptive conduct.[5]

5 S18 Food Standards Australia New Zealand Act 1991

2.6 The sections that follow explore the primary issues of each of the objectives of the Food Standards Australia New Zealand Act 1991 (FSANZ Act) in relation to labelling.

[22] http://www.lymeneteurope.org/forum/viewtopic.php?f=13&t=1107
[23] http://people.emich.edu/jtodd/whiteley_et_al_1999.pdf

2.7 The term 'public health and safety' is not defined in the FSANZ Act. A narrow interpretation could mean the avoidance of illness and death resulting from the consumption of unsafe food. However, public health and safety can be interpreted more broadly. The National Public Health Partnership defined public health as 'the organized response by society to protect and promote health, and to prevent illness, injury and disability. The starting point for identifying public health issues, problems and priorities, and for designing and implementing interventions, is the population as a whole, or population sub-groups'.[6]

6 National Public Health Partnership (http://www.dhs.vic.gov.au/nphp/publications/broch/defin.htm)

2.8 The term public health will be used in this paper as the general term encompassing two distinct subsidiary elements: health safety and health promotion. In the context of food labelling, health safety refers to protection of the public from acute episodes of ill health resulting from contamination, decay or potentially serious reactions to food ingredients. Health promotion refers to activities designed to inhibit chronic disease by the promotion of healthy eating. This approach is consistent with the strategic direction endorsed by the Ministerial Council in May 2008.[7]

7 Overarching Strategic Statement for the Food Regulatory System, p3

Q1. To what extent should the food regulatory system be used to meet broader public health objectives?

MADGE response to Q1

In a democracy the public establishes its regulatory systems to meet important objectives. These regulatory systems can be used in whatever ways the public sees fit.

The un-asked question may be "Can we organize a food regulatory system that can better meet broader public health objectives?"

2.9 FSANZ is also responsible for ensuring the provision of adequate information relating to food to enable consumers to make informed choices. The available space on food labels is limited and priorities for consumer information need to be established.

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)?

MADGE response to Q2

The criteria "adequate information" is determined by the public. This Food Labelling Review has been collecting views from public on the sorts of information they'd like to see on labels. In the first round of submissions MADGE put forward the view that more research should be done to find out what consumers would like to see on labels. After the coming release of the documentary Food Inc. the public may become more ardent about the sorts of information they'd like to see.

All food labelling should be truthful, transparent, accurate, informative and not a promotion. We want the information on the product itself at the point of sale. Labelling is the only means for the public to exercise their right to choose what they eat.

- We need clear labelling. Using a supermarket "wand" to read a barcode or an "app" on an iphone to find out what is in a product is inadequate
- A website means the product has to be purchased first and this discriminates against people who either do not want to use the internet or have no access to it.
- A clear label can be designed to ensure that people with disabilities and the elderly are not discriminated against. Consideration should be given for those for whom English is not the first language.
- We need to know what is in our food at home. What if you have visitors with food allergies?
- If companies want to sell us food they must be able to tell us what is in it and how it was produced. Otherwise it is deceptive.

2.10 The third objective of FSANZ is the prevention of misleading and deceptive conduct. Without accurate and consistent labelling, a level playing field for manufacturing would be undermined. Equally, consumer expectation is that statements on food labels are true and accurate. The relevant consumer protection laws that are outside the food regulatory system (e.g., Trade Practices Act 1974 (TPA) in Australia and the Fair Trading Act 1986 in New Zealand) serve to strengthen this aspect of the FSANZ Act. The TPA is enforced by the ACCC which seeks to promote consumer protection. A key aspect of the consumer protection regime under the TPA is the prohibition on misleading and deceptive conduct.

Q3. How can accurate and consistent labelling be ensured?

MADGE response to Q3

There are three things required for accurate GM ingredient labelling:

1. Food producers need to know exactly what ingredients they are using.
2. They need to determine how the ingredients were produced
3. This information needs be stated on labels in a way that can be read.

Food producers need to completely identify their ingredients to consumers. They need to ask their suppliers to fully identify and verify the status of their products. Likewise the supplier's suppliers, all the way back to the farm gates, and thence to the GM crop developers.

The costs of labeling, monitoring and enforcement for GM and other novel technologies should be borne by the companies who are introducing them.

If this labeling format is followed the public will not be mislead or deceived, creating a level playing field for manufacturing.

2.11 The benefits of intervention in achieving these three objectives must be weighed against their costs. These are costs not just borne by business but are likely to be borne by the community as a whole. While the calculation is never easy, the current COAG regulatory agenda requires the benefits of such intervention be weighed against their costs. In this calculation, the importance of evidence-based assessment cannot be overstressed.

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

MADGE response to Q4

The principle to be followed should be that the consumer has a right to know exactly what they are buying and how it was produced.

2.12 In each case of intervention, there needs to be a careful assessment of the most appropriate tools to be used. The spectrum ranges from mandatory intervention to ensure a 'level playing fields', through to the encouragement of voluntary codes of practice, industry driven self regulatory approaches and programs of community education.

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

MADGE response to Q5

MADGE rejects any suggestion that intervention in relation to the full labelling of GM foods be voluntary or self-regulated by Industry.

PART 3: KEY ROLES OF FOOD LABELLING

3.1 All packaged foods (with a few exceptions) require labelling, though requirements are minimal for some simple packaged foods. The exceptions[8] 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.

8 Standard 1.2.1 - Application of Labelling and Other Information Requirements

Some unpackaged food – certain fruits, vegetables, seafood and pork products – require country of origin labelling;[9] food which has been genetically modified[10] or irradiated[11] must be labelled as such or have a label display; and certain mandatory declarations,[12] advisory and warning statements[13] that apply to unpackaged foods must be provided on, or in connection with, the display of the food.

9 Standard 1.2.11 - Country of Origin Requirements
10 Standard 1.5.2 - Food Produced Using Gene Technology
11 Standard 1.5.3 - Irradiation of Food
12 Standard 1.2.2 - Food Identification Requirements
13 Standard 1.2.3 - Mandatory Warning and Advisory Statements and Declarations

MADGE response to paragraph 3.1

Paragraph 3.1 seems to give the impression that the Food Labelling Review Expert Panel believes that genetically modified foods are fully labelled, but little could be further from the truth.

Although it has been estimated that 60-70% of products on our supermarket shelves contain ingredients derived from GM processes, most are escaping labelling through loopholes that we hope this review will repair.

- Oils, sugars, starches from GM crops are not labelled
- Milk, eggs, & meat from animals which have been fully or partly raised on GM feed are not labelled, and the GM feed is not labelled
- Honey fully or partly derived from bees foraging on GM plants is not labelled
- Additives and processing enzymes derived from GM processes are not labelled

After years of looking at ingredients listings in products on supermarket shelves we have found only a handful of products with a 'genetically modified' label.

- Ingredients in unpackaged, over-the-counter and takeaway foods derived from GM processes are also not labelled.

It is probably not an over-estimate to say that 99.99% of GM derived ingredients/products escape labelling.

Q6. Is this a satisfactory spectrum for labelling requirements?

MADGE response to Q6

The existing labelling system does not provide for satisfactory GM labelling, nor satisfactory labelling of food and packaging processed using nanotechnology or manufactured in nanoparticles form.

In line with consumer expectations highlighted in MADGE's first round submission to the Food Labelling Review, MADGE is calling for "process-based" labelling, where all ingredients fully or partly derived from GM crops or GM based processes are labelled as genetically modified. From MADGE's first round submission:

> **3. Labelling is the basis for informed consumer choice**
>
> The most important principle guiding decisions about government regulatory intervention on food labelling should be **the consumer's right to know** and **make informed decisions** about the food that they buy.
>
> A focus on **consumer choice is central to key areas of Australian food policy**, such as obesity prevention and the introduction of GM foods. Consumers are expected to *choose* to eat healthily, and are assumed to have the choice to eat non-GM rather than GM foods if they desire. However, **consumers cannot make those choices unless they are given adequate information**, and food labelling is an important part of that.
>
> **Concern about the regulatory burden** imposed on business is often cited as a reason for not providing information to consumers. While it may be appropriate to introduce efficiency measures to reduce the regulatory burden, such as reducing variation in labelling requirements between states, reducing the regulatory burden **should not be an acceptable justification for failing to provide adequate information to consumers,** particularly where the principle of consumer choice is central to an area of food policy.
>
> **4. Current GM labelling laws mislead consumers**
>
> MADGE asks the Panel to reconsider Australia's GM labelling laws and to introduce **full labelling of all food ingredients produced by a process of genetic modification,** including:
>
> - processed oils, refined sugars and starches
> - food from animals fed GM feed
> - enzymes and additives that have been genetically modified or have been
> - derived from a GM crop
>
> Under current Australian food labelling laws, only foods with 'detectable' levels of GM proteins or DNA need to be labelled. FSANZ's current position is that no GM proteins or DNA are detectable in highly refined products such as oils. However,

there is a growing body of evidence that proteins do persist in refined oils and may trigger allergic reactions in some individuals (1).

GM oils are not labeled in Australia and nor is food from animals fed GM feed or food containing GM enzymes and additives. Since most GM ingredients enter the Australian food chain in these forms, **most GM foods in Australia remain unlabelled**.

Several surveys have shown that **Australian consumers want all GM foods to be labeled,** and that **they want labelling to be based on the process of genetic modification** (as it is in the EU), not on the presence of GM DNA or protein in the final food.

FSANZ carried out a review of GM labelling in 20032, and concluded that: “It is obvious from the consumer submissions to this review that there is a measure of support in Australia for labelling that is process based which means labelling all foods and ingredients derived from an organism produced using gene technology irrespective of whether novel DNA and/or novel protein is present in the final food”

CHOICE carried out a consumer survey of GM labelling in 2003 (3). They found that 94% of people thought there should be comprehensive labelling of GM foods and that 75% disagreed with current laws exempting GM canola oil from carrying GM labelling.

CHOICE also found that **44% of respondents thought that the absence of a GM label on food meant that the product had not been genetically modified**. As the terms of reference for this review note, “a stated objective of food laws is to prevent misleading or deceptive conduct in relation to food”, but the results of the CHOICE survey indicate that **our current system of GM labelling misleads consumers**, who seem to think in terms of process labelling rather than in terms of the presence of GM DNA or protein.

Consumer research commissioned by Biotechnology Australia in 2007 also confirmed that consumers feel misled by current GM labelling (4):

“There is a widespread belief that Australians are currently unknowingly eating GM foods, because such foods are not labeled properly. As a result, some people felt they were being misled into eating GM foods that they didn’t want to”

A consumer survey by Swinburne University in 2007 showed that consumers are still very concerned about GM foods and that they have not become more comfortable with GM foods over time, as has been claimed elsewhere (5).

It is unacceptable that current GM labelling laws in Australia mislead consumers. MADGE urges the Panel to consider process-based GM labelling as exists in Europe.

5. Mandatory nanotechnology labeling

There is currently no requirement for either nano-ingredients or nanotechnology packaging to be labelled in Australia.

The health impacts of nanotechnology food ingredients and packaging are as yet unknown, and full labelling is important for public health reasons, to allow possible adverse impacts to be traced, as well as to enable informed choice (6).

References can be read in the original submission

MADGE rejects suggestions that GM food becomes 'normal unlabelled food', with our usual food being labelled instead as "GM free".

The Existing Faulty-logic Detection-Based System is Inadequate

It had been originally intended that Australia have full processed-based GM labelling. However this was changed to a faulty-logic detection-based system. It had been argued that we couldn't have a labelling system that couldn't be monitored and enforced. It was determined that we would only label ingredients which could be effectively monitored. It was assumed that many highly refined ingredients, animal products, honey and additives did not contain GM residues such as GM DNA and proteins, and they were therefore deemed to escape labelling.

The assumption that these products did not contain GM DNA and protein was wrong. Indeed it can be determined and logically argued that GM residues are present in all foods fully or partly derived from GM processes. Further, detection techniques and technology have improved to the point where science and labs report the detection of GM in all GM products.

Please refer to submission of the Institute of Environmental Health Section 5.2 "Highly Refined Foods from GM Crops" pp14ff , and the work of Prof Jack Heinemann PhD "Report on animals exposed to GM ingredients in animal feed" which report on detection of GM in a range of foods previously assumed to be beyond detection. [Thank you to both Dr Judy Carman and Prof Jack Heinemann for making these compilations available to MADGE.]

The argument that we could only have a labelling system that could be monitored by the use of technology was faulty in other ways, not least by the observation that there has been no monitoring since its inception, apart from one pilot study by FSANZ. A full process-based labelling system could have been as effectively 'monitored' as the existing scheme, while saving consumers exposure to GM derived ingredients. Technology is not the only means of monitoring. Products can also be traced back to GM crop developer through investigation of product supply lines.

All ingredients fully or partly derived from GM must be labelled.

Ordinary food should not be forced to be labelled "GM free", leaving GM or GM contaminated food as the default unlabelled products. This would be highly misleading to consumers, who believe that the absence of GM labels means that the product has not been genetically modified. It would also make it exceptionally difficult for consumers to choose to avoid GM foods, in the case where they are aware that unlabelled food may contain genetically modified ingredients.

In Europe, foods produced from GM crops are labelled, irrespective of whether there is GM DNA or protein in the final product.

Labs all over the world including Serbia, Brazil, Hungary and China can quantify GM in food. Australian labs are able to do the same but need certification.

Contamination or 'Adventitious Presence'

The current labelling standards allow for the 'adventitious presence' of up to 1% GM contamination, by ingredient, without requiring the ingredient to be labelled as genetically modified. It is misleading not to label potentially contaminated ingredients, which based on findings in a number of other countries, may run at 20-40% of soy or corn based ingredients. MADGE suggests the labelling of these ingredients as "GM<1%" so that consumers can become fully aware about the status of their food. This means that most loaves of bread would contain a label in the ingredient listing saying "soy flour (GM<1%)", unless the baker feels confident that the soy flour is GM free. Consumers will become more fully informed about the nature of food they are eating, and can make effective choices as to the risk of eating GM food.

As we learn more about the incredibly complex operation of DNA at cell level, the understanding of risk potential likewise expands. A small amount of minute but damaging genetic material (short interfering double stranded RNA for example) can pose a risk of widespread damage throughout an organism. Monsanto has already published on their studies in these GM technologies[24], and existing crops are not assessed for novel unintended genetic materials such RNAi that may arise from the GM transformation event and development.

Food Labelling Standard 1.5.2 is adequate for current and future GM technologies

A number of existing GM crops and new GM crops are not based on GM DNA or GM protein technology, but rather RNA technology, and provision needs to be made in the Standard for food produced via these GM processes, where GM is as defined as in the Cartagena Biosafety Protocol[25]

[24] Baum
[25]

Health Safety

3.2 The most obvious driver of food labelling is the necessity to provide health safety, that is, to protect the public from direct and immediate threats to their health as a result of contamination, decay or potentially serious reactions to food ingredients.

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

3.4 Consensus also appears to exist over the general appropriateness of the other health safety labelling requirements – use by dates, identification of allergens, directions for use and storage and possibly preparation. However, there is some misunderstanding and / or disagreement over the adequacy, presentation and interpretation of these requirements.

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

MADGE response to Q7

The issue for ingredients derived from novel technologies such as GM, nanotechnology or effected by irradiation is that we don't know their long term effects on the human body. Additionally, where they haven't been labelled, we can't know if they have played a role in the sudden death or ill-health of an individual.

Allergists (both independent and GM industry funded) assessing the risks of GM crops say they are unable to determine with certainty whether a novel protein will be allergenic or sensitise individuals to other more widely present allergens. They can cross off various aspects of risk where aspects of allergenic proteins and human response have become known, but they can't declare a certainty of safety.[26]

Consumers must have the right to decide whether they want to carry the risks that even GM Industry funded allergists acknowledge that they can't assess. Unintended GM residues such as siRNA could barely be measured, though very early work says they could have a profound effect. Consumers need to be fully informed about the entirely unassessed risks of these novel technologies.

Health Promotion

[26] Allergenicity assessment of genetically modified crops – what makes sense? Richard E Goodman, Stefan Vieths, Hugh A Sampson, David Hill, Motohiro Ebisawa, Steve L Taylor & Ronald van Ree; Nature Biotechnology volume 26 Number 1 January 2008

Suggestions for the Assessment of the Allergenic Potential of Genetically Modified Organisms, Int Arch Allergy Immunol 2005;137:167-180.
http://www.ncbi.nlm.nih.gov/pubmed/15947472?ordinalpos=3&itool=EntrezSystem2.PEntrez.Pubmed.Pubmed_ResultsPanel.Pubmed_RVDocSum

3.5 Health promotion can be a driver for food labelling, but here the health benefits are usually indirect, long-term and may be disputed. Key nutrition messages may be reflected on labels in a voluntary manner by actions of interested manufacturers, but this option may not provide consistent messages to the public if the information is presented in inconsistent ways. Governments may also mandate certain information or disclosures on labels to complement wider health promotion initiatives. Both the National Health and Hospitals

Reform Commission and the National Preventative Health Strategy, in their recent reports, recommended a 'drive for change within the food supply' to provide access to evidence based, consumer friendly information to support healthier food choices.[14]

14 The Strategy: Obesity, September 2009; and A Healthier Future For All Australians, Final Report, June 2009 p18

3.6 On-pack sources of information used by consumers to facilitate healthy food choices include both the mandatory (nutrition information panels (NIP) and the listing of ingredients) and voluntary indicators (percentage daily intake guides and other product claims). However, the amount and complexity of the information can be daunting to consumers.

Q8. In what ways can food labelling be used to support health promotion initiatives?

MADGE response to Q8

The MADGE view, broadly expressed, is that optimum human food health comes from consuming natural plant based foods grown in healthy nutritious soils and, where desired or required, products from animals that have been raised on their natural diet in their natural environment. We understand that the word 'natural' is contentious, but most of us have a common feel for what this word means. In the current food environment we acknowledge that it can be very difficult for people to source this sort of diet.

We also recognise that the body is able to process a large range of contaminants (pesticides, additives/chemicals, hormones, antibiotics), but take the view that the short and long term, combined and cumulative effects of these contaminants are not able to be assessed. MADGE questions the extent to which processed foods can be described as more or less universally 'healthy' across a population of individuals.

It may benefit the population to be immediately aware in the supermarket of the sorts of foods that shouldn't be consumed too frequently, but express a sense of caution. Eggs, for example, have been in and out of favour more times than we can count. We may be able to generalize and advise against the too frequent consumption of high sugar foods and foods high in unnaturally processed fats (without the presence of other inherent nutritional elements), or foods containing a large range or quantity of additives or contaminants. Red traffic light dots on everything in the confectionary and soft drink aisles may be beneficial.

3.7 Concerns were raised in a number of submissions relating to the adequate disclosure of ingredients (eg colourings and flavourings, processing aids, allergens, trans fats, palm oil) and the way they are represented (eg code numbers, scientific versus generic names).

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

MADGE response to Q9

Along the lines same expressed in Question 6, disclosure of ingredients can be improved by the full process-based labelling of all ingredients derived fully or partly from GM crops or processes, labelling of food and packaging processed using nanotechnology or manufactured in nanoparticles form, and labelling of all irradiated food products.

3.8 At present, producers are severely restricted in the health claims they can make about their products. They are restricted in relation to the general health claims they can make and cannot make a claim that links a food to reducing the risk of a particular disease. It could be argued that provided there is objective evidence for the claim, such claims could improve the health of the community and that a less restrictive approach could be adopted. Such permitted health claims can also augment broader public health messages (e.g., 'high in calcium for healthy bones').

Q10. To what extent should health claims that can be objectively supported by evidence be permitted?

MADGE response to Q10

MADGE does not think that health claims should be permitted. Individuals report highly varying response to food, and 'expert' opinion on the relative benefits of food changes daily. If anything health claims should be debated in public with the evidence, funding sources and interests cited. Otherwise it is just deceptive advertising.

Should a breakfast cereal that has been degraded of nutrients through processing, but has 'vitamins and minerals' to make up for it, be making a health claim about the added 'vitamins and minerals'?. Is it better to direct people towards the consumption of natural foods from which they can derive a more balanced diet, rather than allow health claims on otherwise deficient food?

3.9 If further health claims were to be permitted on food labels, this may cause inequities for the complementary medicine industry which is restricted currently under the TPA in the labelling claims it can make.

Q11. What are the practical implications and consequences of aligning the regulations relating to health claims on foods and complementary medicine products?

3.10 Statements regarding potentially negative effects of a product may need to be included to balance the information being provided – for example should a low fat claim be allowed if the product has substantial amounts of sugar and/or salt to provide flavour without a corresponding warning?

Q12. Should specific health warnings (e.g., high level of sodium or saturated fat per serve) and related health consequences be required?

Consumer Information

3.11 The second objective of FSANZ in the development of food standards supports the provision of adequate information for consumers to make informed choices. This objective requires FSANZ to respond to consumers' concerns, including those that extend beyond public health. However, the extent and the form of such labelling is a matter of much debate. The main issues that were raised in submissions were country of origin labelling (CoOL), environmental sustainability, animal welfare, methods of production (eg genetic modification, irradiation and nano-technology) and definitions of commonly used terms on food labels.

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?

MADGE response to Q13

Consumers are very concerned about the public health effects of methods of production technologies (eg genetic modification, irradiation and nano-technology). The public health concerns related to GM foods have been well expressed over years. In the case of nanotech in food and packaging no applications have been received, nor assessed.

Most of the public outcry concerning these foods relates to concerns about their public health impact. The Panel should be familiar with the basis of the public outcry - these concerns were put forward in a large number of first round submissions to this Review.

There have been too few independent studies to feel confident in the safety of GM foods. In fact, Doctors specialising in environmental medicine say there is a link between GM foods and illness.[27] They state "several animal studies indicate serious health risks associated with GM food consumption". They include: allergy; gastrointestinal, liver and kidney changes; immune dysregulation; dysregulation of insulin and cholesterol response; accelerated ageing and reduced fertility. There have been no studies anywhere in the world to say whether GM food has been safe to eat or not. GM food is not the same as non-GM food.

This review is not an investigation into FSANZ or its GM food approvals. However, the Panel should not make the critical error of assuming that since FSANZ has approved the

[27] http://www.aaemonline.org/gmopost.html

foods they are by consequence 'safe' and beyond serious public health consideration when it comes to food labelling. This is rather the reason that they ***must*** be labelled.

DNA and cells are exceedingly complex. Although GM crops and food have been around for years the understanding of the exact effect of the GM "events" produced is very limited. The Codex Guidelines were not written to determine precautionary safety. Even allergists funded by and working with the GM crop developers acknowledge that they can't determine with certainty whether a novel protein will be allergenic or not.[26] And there has been no post-market assessment of their safety.

In such a situation people have clear reasons for avoiding food derived from these crops, and they need to be given the information to make this choice with full, transparent GM labelling.

This is not a review of the GM safety assessment process, but at the Panel's request we will provided detailed material on why the assessments conducted by FSANZ do not reassure us about the safety of the crops they approve. We ask the Expert Panel to take on board the valid, justifiable, deeply expressed views on GM food that have been persistently held over a long period. We ask the Panel to finally recommend that Australians be afforded the right to choose the food they want to eat, by full labelling of all products fully or partly derived from GM crops and processes, nanotech presence and processes, and irradiation, as stated in answer to question 6.

Food is fundamental to life and the public should be able to protect and shape their world by their purchasing choices. Full and accurate food labeling allows them to do this.

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

MADGE response to Q14

Public Demand.
The public have consistently stated their desire to know if a food was derived from a GM crop or process. The Codex testing Guidelines are quite open in saying that they don't guarantee safety, and offers information on post-market surveillance. There can't be surveillance without labelling to tracking population epidemiological changes and individual response.

It is likely that the public will have the same desire to know if they are consuming nanotechnology.

They also want to know if their food has been irradiated. At the Food Labelling Review hearing in Melbourne no one could describe the symbol for irradiation.

3.12 CoOL of food was introduced to enable consumers to make informed choices. However, CoOL applies only in Australia and not in New Zealand. It applies to certain products, namely

packaged and a limited range of unpackaged foods - pork, seafood (not chicken or beef), fresh fruit and vegetables.

Q15. What criteria should determine which, if any, foods are required to have country of origin labelling?

MADGE response to Q15

Where it has been voluntarily offered, Country of Origin or "Product of" labels have been a lifeline for people trying to avoid GM foods, yet still maintain the same variation in diet.

For example, one could feel confident about consuming soy products from Asian countries where GM soy is banned and contamination levels are low. But someone wanting to avoid GM soy would not consume soy from the USA where 92% grown is GM.

Likewise 'product of Australia' soy or corn is a signal that says the product is unlikely to be GM.

These 'techniques' cannot and should not replace full labelling but they help.

Investigations into the food system means people form opinions about the likelihood of food safety and adulteration from various Countries of Origin. US factory-farmed and industrial processed beef products do not have a good reputation at the moment, and consumers may wish to avoid them – CoO labels would help.

Organic products coming from the USA are more likely to suffer contamination and fail to keep up with the GM free standards ordinarily expected from organic products – we might choose to avoid them, and CoO labels would help.

3.13 A related issue is the terminology used to describe food manufactured, at least in part, in Australia. There is consumer desire for clarification of the terms used such as 'Australian made/Made in Australia', or 'Australian produced/Product of Australia'.[15]

15 Editorial note in sub-clause 2(1) of Standard 1.2.11 - Country of Origin Requirements

Q16. How can confusion over this terminology in relation to food be resolved?

3.14 Concerns were also raised in a number of submissions relating to claims like 'natural' or 'lite' and that other terms like 'virgin' olive oil and 'organic' are not defined in the Food Standards Code.

Q17. Is there a need to establish agreed definitions of terms such as 'natural', 'lite', 'organic', 'free range', 'virgin' (as regards olive oil), 'kosher' or 'halal'? If so, should these definitions be included or referenced in the Food Standards Code?

MADGE response to Q17

It is important and beneficial to define these terms.

3.15 Animal welfare and environmental concerns drive many of the demands for labelling in relation to methods of production.

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

MADGE response to Q18

Environmental welfare claims can be highly contentious. Currently the Roundtable on Responsible Soy[28] suggests that large scale monocultures of GM soy can provide economic, social and environmental sustainability. Its members are extremely powerful and include agribusiness[29] and also some organisations like the World Wildlife Fund.[30]

Groups like "La Soja Mata - Soy kills"[31] have compiled evidence that soy plantations are causing deforestation, illness and community destruction.

Therefore the clearest way to label this soy, for example, would be to label if it is GM and the country of origin. Then people who are interested in soy and its effects in South America can decide for themselves whether to purchase or not.

3.16 Certain technological developments in food production – genetic modification (GM), irradiation and nano-technology – have raised consumer concerns relating to these technologies that have led to calls for disclosure on food labelling. However, caution needs to be exercised in order that the development and application of these and other innovative technologies are not unduly inhibited.

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?

[28] http://www.responsiblesoy.org/

[29] http://www.responsiblesoy.org/index.php?option=com_content&view=article&id=55&Itemid=51&lang=en

[30] http://www.responsiblesoy.org/index.php?option=com_content&view=article&id=56&Itemid=52&lang=en

[31] http://lasojamata.iskra.net/en

MADGE response to Q19

Please see the MADGE media release: http://www.madge.org.au/Docs/MR-050310-food-labelling-review.pdf

We want full GM process-based food labelling irrespective of how this may "inhibit" the development of new technologies. If new technologies such as GM, nanotechnology and irradiation can only be successful if they are hidden, unlabelled in our food, we should be very suspicious.

Nanotechnology has already been developed in the form of:

- nano-linings to bottles[32]
- nano-coatings to fridges[33]
- chopping boards and knives[34]
- wax-like nano-coatings to fruit and vegetables[35] and
- nano formulations of agricultural chemicals

However as none of these require labelling and there is no register of the nanoparticles in use or imported into Australia the public has no idea if they are using them or not.

Given the available state of scientific knowledge, manufacturing processes involved and detection levels of these products arising from new technologies, full processed based labelling should be immediately recommended and adopted, until the products can be determined to be safe, or removed from the shelves.

There is a disparity of risk and benefit between the promoters and if unlabelled, the unwitting purchasers of new technology.

The "Scientific American Magazine" recognised in its August 2009 editorial that big GM corporations such as Monsanto, Pioneer and Syngenta have effectively prevented independent scientific assessment of their GM products, meaning that few safety studies have been published and peer-reviewed. [36]

The United Kingdom's Royal Society and Royal Academy of Engineering recommended that given the emerging evidence of serious toxicity risks, nano-ingredients should be subject to new safety assessments and face mandatory product labelling [37]

The European Union's Food Safety Authority recognises that some nanomaterials can pose serious risks. [38]

[32] http://www.understandingnano.com/column-food.html
[33] http://www.samsung.com/au/silvernano/site.html
[34] http://nano.foe.org.au/node/332
[35] http://www.sott.net/articles/show/205640-Regulated-or-Not-Nano-Foods-Coming-to-a-Store-Near-You
[36] http://www.scientificamerican.com/article.cfm?id=do-seed-companies-control-gm-crop-research
[37] http://ec.europa.eu/health/ph_risk/committees/04_sccp/docs/sccp_nano_en.pdf

GM and nano-ingredient labelling must include all foods, additives and processing aids (including refined oils and sugars), food packaging, animal products and foods prepared at the point of sale. All irradiated foods need clear labelling.

Alcohol

3.17 Alcohol labelling, which is also governed by the Food Standards Code, presents a further issue. The majority of those referring to alcohol in their submissions, tended to treat it as a food product of 'a very special nature… [having] many unique characteristics'. Some argued that alcoholic beverages should not be treated as food at all and dealt with through regulatory arrangements other than FSANZ. Indeed, alcohol is only partially covered by the labelling requirements as it is exempted from the mandatory nutrition information panels and the requirement to list ingredients. A further issue for consideration is the recommendation by the National Preventative Health Strategy 'to require health advisory information labelling on containers and packaging of all alcohol products to promote safer drinking'.[16]

16 National Preventative Health Strategy – Conclusion: Action on alcohol

Q20. Should alcohol products be regulated as a food? If so, should alcohol products have the same labelling requirements as other foods (i.e., nutrition panels and list of ingredients)? If not, how should alcohol products be regulated?

MADGE response to Q20

The ingredients of alcohol beverage products should be labelled as a food. Alcohol beverages can contain a range of ingredients, the non-disclosure of which could be potentially misleading.

Wine typically thought to be free of animal products may contain or have used in processing a fish-based clarifier, an important item for vegetarians to know. It may contain a range of preservatives and additives which should be disclosed.

GM grapes are being developed, and if they should come into production, their presence should be identified.

It would be beneficial for the alcohol content of the wine to be declared.

[38] http://www.efsa.europa.eu/en/sctopics/topic/nanotechnology.htm

PART 4: FOOD LABELLING PRESENTATION

Readability:

4.1 The Food Standards Code states that prescribed information on packages should be legible. While minimum font sizes are specified for warning statements (1.5mm or 3mm depending on package size), the relevant Standard merely references the general concept of legibility for other information. It is not stated whether this means legible for a wide range of consumers or the 'average' consumer.

Q21. Should minimum font sizes be specified for all wording?

4.2 Colour contrast is also important for readability, especially for the nearly one million Australians who are colour blind. Other print-related factors such as font style, reproduction quality, line spacing, multi-lingual labels, use of unfamiliar terms, and text organisation (e.g., placing text at right angles to other text and using blocks of text rather than points) can also reduce consumers' ability to read and use information contained on product labels. With the ageing of the population and the deterioration in vision that comes with age, issues relating to legibility will become more pronounced.

Q22. Are there ways of objectively testing legibility and readability? To what extent should objective testing be required?

MADGE response to Q22

It is very rare to find ingredients labelled as "genetically modified". We have found a GM label written in narrow type block capitals printed in black on dark purple. This was extremely hard to see.

MADGE hopes that labels will be designed so that the overwhelming majority of people can both read and understand them. Labelling information should take precedence over product advertising information.

Comprehensibility:

4.3 The rights of consumers to information on which to base informed food purchase decisions needs to be balanced against the quantity and complexity of information that can be assimilated. This again raises the question of whether the aim is to meet the needs of the average consumer or extend across a wide range of consumers. In terms of the quantity of information, too much text can deter reading while too little information can result in an 'optimism bias' whereby consumers assume that unmentioned factors are favourable.

In terms of complexity, consumers can experience confusion over the meaning of information provided. This is especially the case for numerical data, and even the use of percentages is problematic for a sizeable segment of consumers. The definition of a serving size can also cause confusion.

Q23. How best can the information on food labels be arranged to balance the presentation of a range of information while minimising information overload?

MADGE response to Q23

Promoters of the GM industry have repeatedly denied consumers the right to know if they are eating genetically modified food. They have argued that consumers will be overloaded if the words 'genetically modified' are added to the package.

It would be interesting to read credible references that demonstrate a case for information overload. In our first round submission, we presented the UK Food Standards Agency research findings that consumers prefer more information on packaging than less, if it is presented in an understandable way. MADGE also represented the case that research be conducted in Australia into what consumers want and need from food labels (Point 7, MADGE first round submission).

> **7. What do Australian consumers want from food labels?**
>
> Little research has been conducted in Australia into what consumers want and need from food labels and MADGE believes that such research should be done.
>
> MADGE refers the Panel to research conducted by the Food Standards Agency in the UK into consumer needs of food labels.(12) This research indicates that:
>
> - Consumers prefer more information on packaging than less if it is presented in an understandable way
> - Labelling can be hard for consumers to use - icons are better for communicating information 'at a glance' than text
> - Standardised labelling (industry wide) is easier for consumers to understand than labelling that varies between retailers and manufacturers
>
> MADGE believes that consumer representatives can and should be involved in the development of new food labelling schemes to ensure that such schemes meet consumer needs.
>
> Research conducted by the UK Food Standards Agency provides a possible model for involving consumers in the development of new labelling schemes in Australia (13) (References in original document attached)

There is always the option for minimizing confusion on packaging by restricting the amount of space dedicated to product promotion and advertising.

Q24. In what ways can consumers be best informed to maximise their understanding of the terms and figures used on food labels?

MADGE response to Q24

A new attitude and approach to food is called for considering the increase in obesity and diet related health issues. This Food Labelling Review is the chance for the Government to promote positive changes in food labeling. This could expand to focus on community education and help bring much needed change.

4.4 The use of pictorial icons that are well-defined, consistently used, and well-publicised is generally accepted as an effective means of conveying information that would otherwise require lengthy explanations. However, as more use is made of icons by different groups with varying credentials, their usefulness in conveying meaningful information to consumers may diminish.

Q25. What is an appropriate role for government in relation to use of pictorial icons on food labels?

MADGE response to Q25

In Q23 MADGE referred to UK Food Standards Agency research finding that icons are better for communicating information 'at a glance' than text.

In line with this research, and as a solution for address the increasingly complex information demands of consumers, MADGE put forward a suggested Standardised 'multi-criteria' pictorial icon:

6. Standardised 'multi-criteria' labels

The **issues around food production are becoming more complex**, both health issues such as obesity prevention and sustainability issues such as water use and greenhouse gas emissions.

Overseas surveys show that **consumers increasingly want information about nutrition, sustainability** and other aspects of food production to help them make informed choices (7).

Some overseas retailers are trialing labelling schemes for carbon emissions from food products (8), and labelling schemes for water footprinting are also being discussed (9).

Sustainability issues in food production are **likely to become increasingly important to Australian consumers**, and Australian retailers will almost certainly follow the lead of overseas companies in exploring sustainability labelling.

Sustain argues that the proliferation of sustainability labelling schemes for food products in the UK is leading to confusion for consumers, and that **a single 'at a glance' labelling scheme is needed that incorporates multiple sustainability criteria**. Sustain has developed a possible version of such a scheme in the shape of a flower, in which each 'petal' represents a different sustainability factor (10).

Tim Lang has also argued that there is a need for a 'universal' labelling scheme in the UK that incorporates nutritional and sustainability information (11).

A standardised, multi-criteria labelling scheme that presents information 'at a glance' (as icons rather than text) could enable a range of complex information about food to be conveyed to consumers in a simple way. MADGE requests that the Panel consider the option of implementing a framework for such a labelling scheme. The scheme could incorporate relevant aspects of information about nutrition, sustainability and other aspects of food production.

References available in the MADGE first round submission document.

Information format:

4.5 There is continuing debate about the most appropriate information presentation format for food labels. In the case of front-of-pack nutrient content information, this discussion has tended to polarise around the traffic light and percentage daily intake models. Regardless of which presentation format is selected, consistent use by food manufacturers and investment in broadly-based public awareness campaigns will be needed to ensure consumers can effectively comprehend and utilise the information provided.

Q26. What objectives should inform decisions relevant to the format of front-of pack labelling?

MADGE response to Q26

Front of pack labeling should be used to quickly inform shoppers of the ingredients in a food and how it was produced. People have told MADGE they expected to see a "GM" on the front of the pack, should the food be genetically modified. They are dismayed to learn that this is not the case and that most GM food escapes labeling.

Unfortunately the front of the pack is often used for promotional images and statements. These can mislead and confuse ie an image of a pig rolling on grass outside a 'typical country barn' if the pig had in fact spent most of its life in a pen inside.

MADGE is opposed to the use of health promotion claims for reasons stated earlier.

4.6 While foods eaten on the premises have been excluded from food labelling regulations in the past, there is increasing interest in the availability of ingredient and nutrient information in these contexts. Such interest has been fuelled by the increasing incidence of debilitating food allergies, increased consumption of food away from home and a growing awareness of the contribution of fast food meals to excessive energy intake and its attendant health consequences. The professional desire of chefs to preserve the identity of their products and to retain flexibility in food preparation (i.e. not be restricted to a 'recipe') needs to be balanced against consumers' desire for information on which to make choices.

Q27. What is the case for food label information to be provided on foods

MADGE response to Q27

The exclusion of 'across the counter' food from food labelling requirements assumed that product was being made in front of the consumer who could readily learn about the ingredients.

But how little of the 'across the counter' food is actually made on the premises? In many fast food outlets the most that can be said is that the food is 'combined' on the premises. In many others such as 'bakeries' cakes and slices made in bulk production are simply unwrapped and placed on a tray in front of the consumer, before being put in a bag.

In the MADGE experience of asking about the presence of GM ingredients in across-the-counter foods, the serving staff has no idea of the ingredients, and don't know how to find out.

Any food or part thereof that is not composed directly from raw ingredients on the premises should come with full labelling. And food outlets should be required to retain ingredients listings that came on the packages. Trays of eg vanilla slices or pies in large scale packaging should come with ingredients listings.

At the Melbourne Food Labelling consultation MADGE raised the issue of a woman who died in a WA restaurant after unknowingly consuming pistachio nuts.[39] No one welcomes this outcome, and we implore this issue be seriously addressed in this Food Labelling Review.

Chefs wishing to hide ingredients lists should be in a position of being able to confirm ingredients that are NOT in particular menu items.

4.7 Another related issue is food advertising. The Food Standards Code states that "Advertisements for food must not contain any statement, designs or representations which are prohibited by the Food Standards Code from being included in a label for that food."[17] The sufficiency and enforceability of this provision has been questioned.

17 Food Standard 1.1.1 Preliminary Provisions – Application, Interpretation and General Prohibitions

Q28. To what degree should the Food Standards Code address food advertising?

MADGE response to Q28

Food labelling should be truthful, transparent, accurate, informative and not a promotion.

[39] http://au.news.yahoo.com/thewest/a/-/mp/7061412/cafe-owner-sorry-over-nut-allergy-death/

PART 5: ADMINISTERING AND ENFORCING FOOD LABELLING STANDARDS

5.1 FSANZ has no direct role in the enforcement of food labelling. In Australia the enforcement of food labelling is shared by AQIS, responsible for enforcement for imported foods and the States and Territories. In addition; all traders must comply with the consumer protection provisions set out in the TPA and relevant state and territory fair trading legislation. Thus, nine separate jurisdictions are responsible for enforcement of the labelling requirements. In New Zealand, responsibility for enforcement lies with the NZFSA supported by the New Zealand Commerce Commission.

MADGE response to paragraph 5.1

With respect to GM labelling Paragraph 5.1 is misleading in the sense that it seems to convey the impression that there is a certain degree of enforcement of GM labelling standards in Australia.

Our understanding is that there has been no monitoring or enforcement of the GM food labelling standard 1.5.2. This is the standard setting out the conditions under which GM ingredients are required to be labelled as "genetically modified".

FSANZ has reported conducting a pilot survey into the GM food labelling of corn and soy food products, published June 2003[40]. In the FSANZ report, the working group concluded that 22% of tested samples were contaminated with GM crop products. FSANZ reported that all of these foods were contaminated at levels that did not require labelling under the present standards.

On the other hand the claim "GM free" is monitored under the Trade Practices Act 1974 Section 52. This quote was attributed to ACCC Acting Chairman, Mr Rod Shogren, in January 2002[41]:

"The ACCC will closely monitor the voluntary claims that businesses make over and above their obligations in relation to the Standard.

There is no room for ambiguity with a 'GM Free' claim. Businesses must be able to verify any labelling claim. The ACCC will be looking for documented verification systems underpinned by an effective Trade Practices compliance program."

This means that the smallest trace of detectable residues that are attributable to GM processes would lead to a transgression of the Act. Companies wanting to tell us that we

[40] AUSTRALIAN PILOT SURVEY OF GM FOOD LABELLING OF CORN AND SOY FOOD PRODUCTS; The TAG Working Group on GM Food Labelling; June 2003; http://www.foodstandards.gov.au/_srcfiles/GM_Survey_Report_Final_for_website.pdf Accessed 15/5/10

[41] "ACCC to monitor GM Labels"; FoodNavigator.com; http://www.foodnavigator.com/Legislation/ACCC-to-monitor-GM-labels Accessed 15/5/10

are eating our 'usual GM free food' when we eat their product are now required to have documented verification systems. Not surprisingly, in February this year Choice Online reported that very few foods actually claim to be "GM-free"[42]

Chicken producers in Australia, knowingly feeding GM feed to their chickens but labelling them GM free were asked to remove their GM free labels[43]. By contrast, a NZ producer of soy sausages, making every effort to avoid soy with any trace of GM, faced prosecution by the Commerce Commission for labelling its sausage "non-GM" due to a presence of 0.0088% of GM soy. The company pleaded guilty rather than face a legal bill of $63,000.[44]

This has created a lopsided labelling and enforcement regime. Our "usual GM-free food" may now be contaminated by GM. Instead of penalties falling on manufacturers producing GM contaminated food they fall on manufacturers who are trying to maintain GM free food.

Consumers did not consent to this change. Most consumers do not know this change took place, and are being deceived about the nature of their food.

The costs of the introduction of GM food have been designed to fall on farmers, manufacturers, retailers and consumers who try and preserve GM free status. The equity of this has yet to be seriously debated.

FSANZ deemed that many refined GM products did not contain detectable GM residues. This allowed them to escape enforcement, if enforcement had actually taken place. In fact GM residues can be detected; FSANZ's initial assumptions were scientifically incorrect. [Please refer to submission of the Institute of Environmental Health Section 5.2 "Highly Refined Foods from GM Crops" pp14ff, and "Report on animals exposed to GM ingredients in animal feed" Prof Jack Heinemann PhD. These last two works report on detection of GM DNA and/or proteins in a range of foods previously assumed to be beyond detection.]

The global failure to manage GM contamination means that the capacity to protect our food sources is rapidly diminishing.

5.2 Enforcement responsibilities within jurisdictions are undertaken by a range of agencies (including but not limited to health departments, food authorities and primary production

[42] "Genetically modified food risks"; Choice Online; http://www.choice.com.au/Reviews-and-Tests/Food-and-Health/Food-and-drink/Safety/GM-food/page/How%20can%20you%20avoid%20GM%20foods.aspx Accessed 15/5/10

[43] Responsibly Informing Consumers – Experience from the Trade Practices Act; Louise Sylvan, ACCC Deputy Chair, May 2005; http://www.accc.gov.au/content/item.phtml?itemId=682577&nodeId=565ec687002c64bfd258af27036c5398&fn=20050506%20AFGC.pdf Accessed 15/5/10

[44] "0.0088 % contamination in Non-GM product resulted in prosecution"; http://www.non-gm-farmers.com/news_details.asp?ID=1873; "Genetically Engineered Ingredients"; Bean Supreme NZ; http://www.beansupreme.co.nz/default,38.sm Accessed 15/5/10

regulators) which administer the laws at a regional level in Australia and nationally in New Zealand. In some cases local councils can be involved but their primary role in food regulation tends to be hygiene issues. Where a complaint is made in a jurisdiction different from that of the manufacturer it is often considered the responsibility of the regulatory authority in the manufacturer's jurisdiction and thus the complaint is referred on to that jurisdiction. Consumer protection authorities such as the ACCC and the offices of fair trading can deal with labelling if they breach consumer affairs laws (typically where they amount to misleading or deceptive conduct).

MADGE response to paragraph 5.2

Paragraph 5.2 may need more clarification in light of the information below:

Council level: At the Melbourne Food Labelling Review Public Consultation on 29 April 2010 a member of the audience from food testing laboratory DTS said that the enforcement of GM food labelling standards takes place at local Council level, driven by members of the public. We learnt that if we suspect that a product may contain detectable GM residues but is unlabelled, we can take it to our Council and ask for it to be tested, at the Councils' expense. We suspect this will be news to both Councils and Ratepayers.

State level: MADGE spoke with the Victorian Health Department's Food Safety and Regulation Unit on 13 May 2010, and understood that there was no corporate memory of having conducted any monitoring or enforcement in relation to GM foods. The role of this Unit in respect of GM food labelling enforcement is unclear.

We've had 14 years of GM food consumption. For the first five years there was no labelling standard. Apart from a pilot study conducted by FSANZ there has been no monitoring or compliance of this standard.

There is one lab in Australia that has been accredited by NATA (National Association of Testing Authorities, Australia) to do qualitative testing of GM residues. We understand that testing at a NATA facility is important for legal determinations. This qualitative accreditation is sufficient to test for the presence of GM residues, and allows enforcement bodies to challenge "GM free" claims.

However *quantification* of GM residues is necessary for the enforcement of labelling Standard 1.5.2. The Victorian Food Safety and Regulation Unit suggested that the National Measurement Institute might be NATA accredited for GM quantification. However MADGE had received contrary advice that Australia doesn't have a registered NATA accredited lab to do this form of food testing. The absence of a NATA accredited body would indicate that adherence to Standard 1.5.2 can't be challenged, unless products are sent overseas for testing.

This is another example of the lopsided development of regulation that would allow GM contamination of our food to flourish, unchecked.

We doubt there is an enforcement mechanism for the testing of nanoparticles presence in food.

5.3 The Food Regulation Standing Committee (FRSC) through its sub-committee the ISC, seeks to develop and oversee a consistent approach across jurisdictions to the implementation and enforcement of food regulations and standards from all sources (domestic producers, export-registered establishments or from imports). The ISC developed a 'Strategy for Consistent Implementation and Enforcement' of food regulation in 2005.[18] More recently is has developed the Australia and New Zealand Enforcement Guideline. [19]

18 The Strategy for consistent implementation and enforcement of food regulation in Australia was endorsed by the Ministerial Council on 28 October 2005.

19 Australian & New Zealand Food Regulation Enforcement, November 2009

MADGE response to paragraph 5.3

Food from GM crops was first introduced in 1996, GM additives came earlier, yet a Guideline for enforcement of GM food labelling was only signed in November 2009.

This pattern of the commercialization of new discoveries before adequate provisions for testing, regulation, labelling and enforcement have been developed is being repeated in nanotechnology and the impending dsRNA technology.

The right of companies to commercialize discoveries in unexplored fields of risk needs to be challenged. Companies appear to be encroaching on the common inheritance of us all, namely our genes and the processes of life. Scientific caution, ethics, community understanding and un-coerced acceptance is trailing far behind company profits and rights.

5.4 Nevertheless, and despite uniformity in wording, inconsistent interpretation and erratic enforcement of the labelling requirements of the standards across (and within) the jurisdictions was raised by a number of the submissions. Ensuring a common understanding of what they mean and how they should be applied in particular cases is critical to underpin an effective regulatory system.

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

MADGE response to Q29

There is no data on the interpretation and administration of GM food labelling standards by which to determine or discuss “consistency” between States/Australia/New Zealand.

There are no nanotechnology labelling standards as yet.

5.5 Uniform enforcement of outcomes in respect of a breach (i.e., the decision how to respond to it; whether by warning, remediation notice, expiation or prosecution) may be even more difficult to achieve. The subjective elements in each case may be considered differently across jurisdictions and different ways of assessing penalty may apply.

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

MADGE response to Q30

There is no data on the enforcement of GM food labelling standards by which to determine or discuss “consistency” between States/Australia/New Zealand.

There are no nanotechnology labelling standards as yet.

5.6 It has been suggested that one way of achieving uniformity in the interpretation, administration and enforcement of labelling standards in Australia would be to vest responsibility in a national agency or unit. This could be an existing entity such as FSANZ or the ACCC, a new specialist food labelling agency or a separate unit within an agency. The agency or unit would be mindful of on-going links with New Zealand to ensure trans-Tasman consistency.

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?

MADGE response to Q31

Any commencement of practical monitoring and enforcement of GM food labelling standards will be an improvement on the current status.

MADGE does not consider that the FSANZ Act is an appropriate instrument for activities associated with promoting public health and safety, given its conflicting responsibilities for promoting trade.

We have no confidence in the capacity for the FSANZ body to regulate GM and nanotech foods in the public interest, nor regulate for other food adulterants such as pesticide residues, additives and hormones with the goal of public health and safety.

We have no confidence in the capacity of the FSANZ body to regulate for sustainable practices for future food (eg overfishing) where these practices would conflict with interests related to trade.

Preliminary thoughts on food labelling and monitoring agency:

- The development of GM food labelling standards needs to be taken out of the hands of the FSANZ instrument. This body has failed to represent the wishes and needs of the general public on labelling standards on a wide range of issues. For example:GM, transfats, nanotechnology, animal welfare and traffic light labelling [Background Briefing, ABC Radio National, 18/4/2010

- A national body should be charged with the responsibility of routine monitoring and compliance, and keeping up to date with ever-evolving methodologies for detection, measurement and testing of regulated and unregulated materials. Its efforts to keep up to date should be reviewed.

Evolving GM detection worldwide:

Global evolution of world's best practice in GM detection is probably hindered by the US government's push against GM food labelling. However continual and rapid development in GM detection is taking place in Europe, China and many other countries concerned about GM contaminants. The US would seem to have an interest in GM detection, if only for the overt reason of detecting bio-terrorism.

Looking at an example of what Australia could organize: The Portuguese Institute REQUIMTE[45] , was the first to report the development of the methodology to detect GM DNA in refined oil…

REQUIMTE is a combined research unit with 374 researchers, 208 holding a PhD degree. It produced over 300 papers in 2008.[46] The statements about its activities are as follows:

> "The need of practicing a sustainable development in order to reach the social, economic and environmental objectives of the modern society is well accepted by governments, industrial sector and general public. Within this scope, Chemistry which is commonly associated with harmful products and not with materials absolutely essential for everyday life, must have a decisive role in the maintenance and improvement of living and environmental conditions.
>
> The awareness of contemporary society for the inevitability of the use of chemicals and chemical processes and the understanding of the concept of sustainability lead to a new way of thinking Chemistry. Having in mind the implementation of clean practices and clean industrial processes, in which the

[45] http://www.requimte.pt/index.php?section=13.
[46] http://www.requimte.pt/index.php?section=418

amount of raw materials, energy, costs and risks are reduced a scientific movement, known as Green Chemistry, has emerged in the last quarter of the 20th century.

Green Chemistry aims to redevelop laboratory and industrial processes in order to make them cleaner and economically viable. For that purpose, scientists have to design new reactions and processes in which principles such as an economy of atoms, use of renewable materials, use of non-toxic solvents and use of clean energy sources must be followed.

The objectives [..] are:

a) To encourage the use of clean products and technologies

b) To assist industry in the design and implementation of non-aggressive chemical processes

c) To train young researchers in interdisciplinary areas related with the practice of sustainable chemistry

d) To make public the principles of Green Chemistry and to alert society for the necessity of a sustainable practice in everyday life.

Research is presently focused in the following thematic areas of:

i) natural products,

(ii) food quality and safety,

(iii) clean production technologies and processes,

(iv) environmental control and remediation and

(v) catalysts, solvents and non-toxic compounds."

The GM DNA detections were made by the Food Quality and Safety unit.

Looking for capable bodies in Australia, the National Measurement Institute has the expertise to detect GM. We understand that it is not set up or funded for any form of on-going routine measurement. It is overseen by the Department of Innovation, Industry, Science and Research. This department's enthusiasm for commercial development of technology would conflict with precautionary aims for the detection and enforcement of non-complying producers.

It may be better to have a number of laboratories around Australia which are NATA registered for measurement work. It has been observed that different methodologies are advantageous in different circumstances and that labs can produce very different GM detection results, depending on the food matrix and methods employed.

- MADGE isn't familiar with details of the Trans Tasman Mutual Recognition Agreement. However to have an Arrangement

> *"… to give effect to a scheme implementing mutual recognition principles between the Parties relating to the sale of Goods and the Registration of Occupations, consistent with the protection of public health and safety and the environment."*
>
> Section A: Purpose, Arrangement relating to Trans-Tasman Mutual Recognition[47]

administered under the Department of Innovation, Industry, Science and Research is incompatible with the stated purpose of both the Agreement and the Department. The Department takes a focus of promotion of new technologies, and leaves precautionary regulation to other government bodies, and is not an appropriate auspice for this Agreement.

- The responsibilities relating to enforcement within Australia should go to a separate body. We are not sufficiently familiar with the public's experience of the ACCC to determine if this would be considered as the appropriate enforcement body for the GM food labelling standards. They are unique in Australian enforcement bodies however in that they have actually spoken of the GM issue, and enacted the power of their legislation. New Zealanders are best to determine their ideal body for enforcement of food labelling standards.

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?

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

5.7 Current food labelling regulation is primarily administered through government agencies. There could be other ways of achieving effective labelling, including self regulation, with policing either by the industry or an independent body, or for a co-regulatory arrangement that involves government, industry and community representatives. Models for this exist in related fields such as advertising and some therapeutic goods.

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

MADGE response to Q34

[47] Trans Tasman Mutual Recognition Agreement http://www.coag.gov.au/mutual_recognition/tt_mutual_recog_agreement.cfm; Arrangement pdf http://www.coag.gov.au/mutual_recognition/docs/ttmra.pdf

In practice, the responsibility for administering GM food labelling standards has been entirely self-regulated. *There has been a complete failure in enforcement*.

MADGE rejects any suggestion that industry be involved anywhere in administration of food labelling regulations. There is a role for industry in attending "foresighting" bodies. This means where they explain to the public, government or other industry bodies intended technological developments

The job of Industry is to sell as much of their product as they can. The regulatory objectives which they must conform to should be wholly determined by the public and administered by a body representing the public interest.

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?

MADGE response to Q35

MADGE does not see any place for self-regulation of food labelling. Industry has a long record of resisting all sorts of food labelling including GM. Co-regulation involving consumers, industry and government puts consumers in a weak position. The fairest method to regulate labelling is to have consumers determine their labelling requirements. Government can then mandate these for industry.

When Choice said in February this year

"*Our lax labelling laws make it almost impossible to avoid GM foods*"[48]

the Australian Food and Grocery Council (AFGC) replied with disinformation that implied that all GM food was labelled[49]. Monsanto, the owner of 90% of GM crops, is an associate member of the AFGC.

Consumers are told that their choices will be addressed in the market. In the absence of full labelling of all genetically modified ingredients there is no market and therefore no choice. [MADGE media release: When is a market not a market? http://www.madge.org.au/Docs/MR-23-02-2010-Let-the-market-decide.pdf]

As previously discussed, the GM free standard is already difficult to achieve for producers using ingredients from crops which have GM varieties (soy, corn, canola, cotton, sugarbeet, papaya, a few v minor crops). Creeping contamination will erode this

[48] "Genetically modified food risks"; Choice Online; http://www.choice.com.au/Reviews-and-Tests/Food-and-Health/Food-and-drink/Safety/GM-food/page/How%20can%20you%20avoid%20GM%20foods.aspx Accessed 15/5/10

[49] AFGC angry over GM "scare campaign"; http://www.ausfoodnews.com.au/2010/02/19/afgc-angry-over-gm-scare-campaign.html Accessed 16 May 2010

avenue of choice, bringing us to a serious impasse: Unless we are able to manage GM contamination it will overcome any future choice to avoid GM (see Q36). We have heard that the Industry may lobby to remove labelling standard 1.5.2 altogether. If this occurs, consumers will continue to be deceived into believing that they are eating their usual GM free food.

There is no register detailing what forms of nanotechnology are currently in use. Therefore there is not only no regulation but also no way of discovering if nanotechnology could be causing negative reactions. Industry appears oblivious to or unconcerned by any responsibility to ensure that what they are selling is safe and that consumers know what they are buying.

The idea of any self-regulation or co-regulation involving Industry in unconscionable. MADGE rejects the idea of industry involvement in this matter.

5.8 There are also 'boundary' or 'demarcation' issues between food units and other agencies in interpreting, administering and enforcing labelling requirements. Specifically, consumer affairs agencies (in Australia mainly the ACCC and in New Zealand the Commerce Commission) can regulate misleading or deceptive food labelling while Standards Australia and Standards New Zealand can define specific terms, eg organic.

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

MADGE response to Q36

There is a general misunderstanding as to GM and the enforcement of food labelling requirements. GM is a living technology. It spreads out of the paddock to roadsides, neighbouring fields, along transport routes and will outcross with related plants. It cannot be controlled except by eradicating all GM plants. GM contamination increases over time. Therefore the idea that there can be free and on-going "choice" about whether to grow and eat GM is illusory. Growing GM crops anywhere contaminates GM free seed, crops, soil and therefore our food.

MADGE attended a conference on GM co-existence last year. A speaker explained how customers wanted GM free corn. Contamination issues meant that over a few years it was unable to be sourced. It became not only too expensive but also too difficult to prevent contamination.

In this context the ACCC's aim to ensure the GM free claim is zero percent is admirable but likely to mean that almost nothing can be labelled, especially over time. Few Australian food producers can use the GM free claim unless they are highly motivated and exceptionally confident about their sources if ingredients come from established GM

crops (soy, corn, canola, cotton, sugar beets, papayas and a few others), or unless they are prepared to pay for prior testing. This is an added cost burden to our ordinary food.

On the other hand the GM food labelling standards 1.5.2 don't require the labelling of any GM ingredient until detectable GM contaminants indicate a contamination level of 1%. So there is implicit permission for the contamination levels in our food to roll up to thresholds.

Inevitably contamination will increase as already noted in countries that are monitoring contamination in food. There is a general expectation that this will lead to the erosion of non-GM food standards.

Dale Adolphe, President of the Canadian Seed Growers Association and previous president of the Canola Council of Canada said **"The total acreage devoted to GM crops around the world is expanding. That may be what eventually brings the debate to an end. It's a hell of a thing to say that the way we win is don't give the consumer a choice, but that might be it."** (Western Producer, 4/4/02) http://www.grain.org/research/contamination.cfm?id=63 [NB: Acres are not actually expanding that much, but the traces are spreading through global trade systems]

Why the spread of GM food is concerning:

- GM crops involve altering genes to make new proteins. It only takes one exposure to sensitise a young child to a life threatening allergic response for life. Minute amounts of novel double-stranded DNA could be particularly dangerous and this risk is newly discovered and barely understood. The presence of novel double stranded RNA in GM crops has not been assessed, but Monsanto is already producing studies reporting they have used these materials as new insecticides.

- ***No body in Australia is monitoring for increasing GM contamination levels***. No body is working to limit this increase, nor protect the integrity of our food from GM contamination.

- No body in Australia is evaluating food related risks of unregistered (and unknown) products of nanotechnology that are already in use.

There needs to be a taskforce immediately established to work on these problems and MADGE would like to be involved.

5.9 One boundary or 'demarcation' issue relates to substances that could be regarded either as a food or a complementary medicine. If the latter, the substances are regulated in Australia under the Commonwealth Therapeutic Goods Act 1989. If it is a food, the Food Standards Code applies.[20] Also, different legislation applies in New Zealand, resulting in different approaches to the importation of certain products.

20 The requirements in the Food Standards Code as opposed to Therapeutic Goods Order 69, General Requirements in the General Requirements for Labels for Medicines

Q37. What are the strengths and limitations of the current processes that define a product as a food or a complementary medicine?

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.[21] 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.

21 "[o]nce five consecutive consignments have passed inspection, the inspection rate is reduced to 25 per cent; after a further 20 consecutive passes, the inspection rate is reduced to 5 per cent."

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

MADGE response to Q38

MADGE has no confidence either in FSANZ or AQIS to protect Australians from the importation of illegal GM foods or to monitor for GM labelling compliance. The protection of public health and safety with respect to food needs to be removed from FSANZ. AQIS has had several well publicised failures over the last few years. One example that MADGE was involved in was Triffid Flax:

An illegal, unapproved GM flax (linseed) that originated from Canada was found as a contaminant in food in Europe in the second half of last year. This devastated Canadian trade and farmers. It has been detected as a contaminant in 35 countries, but Australia is not one of them. MADGE made multiple efforts to try to encourage FSANZ to notify AQIS to test for the presence of this illegal GM flax. MADGE also contacted AQIS but did not receive a useful response. To date, as far as we are aware, neither FSANZ nor AQIS has taken any action.

This comes on the back of the Greenpeace "Eating in the Dark" report which lists numerous similar examples where FSANZ has failed to act to protect Australians from illegal GM contamination.

> *"**Eating in the Dark** paints a picture of a regulator – Food Standards Australia New Zealand (FSANZ) – gambling with the health of consumers in order to please agrochemical corporations and Australia's trading partners. It asks that Australia adopt more stringent labelling laws so Australian consumers can effectively exercise their right to choose."*[50]
>
> Eating in the Dark: Greenpeace Australia Pacific 21/10/08

FSANZ's failure to respond in line with public expectations was shown in the October 2008 Senate Estimates when Senator Rachel Siewert interviewed FSANZ Chief Scientist Dr Paul Brent.[51]

> **Senator SIEWERT**—Okay. Thank you. Can I go on to the Greenpeace report that was released yesterday and their comments around some of the approvals of some of the products that have been signalled in the report as being of concern. They are products, as I understand it, or components of products that FSANZ has approved. One of the ones they talk about is MON863 maize, which has been found to produce evidence of liver and kidney toxicity. Have you looked at the new information that has come out on that?
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> **Dr Brent**—The issues around MON863 have been looked at extensively over many, many years by many, many people. We have looked at that data very comprehensively, like other regulators around the world have, and we simply do not believe that there is good evidence that there is liver toxicity from MON863, and that is the view also of other regulators. That particular maize is approved in Canada, the US and Japan. I am not sure, but I think it has also been approved in the EU now. It has certainly been looked at by the European Food Safety Authority and they came up with the same view as all the other regulators around the world. So the evidence or the information that has been put out by some of those groups is not very well presented. It probably misinterprets what the data actually says.
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> **Senator SIEWERT**—I am not going to have time to go through all the products that they list—and I will put some on notice, because I appreciate the time—but another one they talk about is Bt63 GE rice. I understand there is contamination of Chinese rice products with this particular product and that both the EU and New Zealand have been implementing testing regimes to test for this particular brand. Is Australia?
>
> **Dr Brent**—I think Bt63 rice was one of the issues, one of the others, that they quote in that report. That report, by the way, we only received on Monday, so we have only had a quick look at it. Those are issues where there were accidental contaminations of unapproved events that happened in the US, for example. What we have done there is we have had a look at the available data from the

[50] Eating in the Dark: Greenpeace Australia Pacific 21/10/08
http://www.greenpeace.org/australia/resources/reports/GE/rep-eatindark-211008

[51] Senate Estimates: 22/10/08: Standing Committee on Community Affairs
http://www.aph.gov.au/hansard/senate/commttee/S11355.pdf From the bottom of pdf page 111 Senator Siewert begins to ask questions related to Greenpeace's "Eating in the Dark" report.

companies and also from our regulatory colleagues, because we have MOUs with those colleagues and we can swap data and information on a daily basis. Those products are still illegal to be sold in Australia. They are not approved. Bt10, for example, and Bt63 are not approved. They are illegal to be sold. But on the basis of the data that we received, we did a risk assessment and our opinion was that if those products were coming into Australia, they would be coming in, if at all, in very, very small quantities and the risk to public health and safety was very, very small. So it is a case where they are safe but still illegal and out of compliance.

Senator SIEWERT—You have not asked AQIS to test for the presence of that particular rice in products coming in?

Dr Brent—Again, I would have to take that on notice, but I am pretty sure at the time we asked AQIS to put these products on their risk list to be looked at for imported foods.

Senator SIEWERT—So you did put it on their list?

Dr Brent—I would have to take that on notice, but I am pretty sure. That is normally what we would do—we would tell AQIS that something could be coming in and that they should be looking at it on their risk list.

Senator SIEWERT—If you could take that on notice, that would be appreciated because as I understand it they do not test for it unless you ask them to. Thank you.

Dr Brent—Senator, just as a clarification, when we give AQIS advice about what goes on the risk list, it is only when we consider it to be a human health and safety concern. In those cases, our advice was that there was no human health and safety concern so they may not have been put on the risk list, but we can take that on notice.

Senator SIEWERT—If you could, that would be appreciated because I understand in fact that New Zealand, for example, did and withdrew the product's availability in New Zealand.

Dr Brent—Again, I cannot comment on what New Zealand did at that time. We could use our networks to find that out for you.

Senator SIEWERT—If you could, that would be appreciated. Is the risk analysis that you did a publicly available document or is it a document that you could table?

Dr Brent—The risk analysis on Bt63 or Bt10?

Senator SIEWERT—The Bt63.

Dr Brent—Certainly when we did those risk assessments we put some information up on our website about our risk assessment opinion.

Senator SIEWERT—Again, I will go there. You do not need to table it. If it is there on the public record, I will go and find it. Thank you. There are a series of products that the report talks about so I will put those questions on notice. […]

This experience suggests that there are comparable weaknesses in the enforcement of domestic and imported food labeling. MADGE has no confidence in the ability of current Australian mechanisms to ensure is food labeled in the way the Australian public both assumes and expects.

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

MADGE response to Q39

AQIS has serious issues – see Q38. Certainly with respect to GM food labelling compliance New Zealand products should be subject to import inspection, and Australian products should be likewise monitored. New Zealand has had several reported GM trial outbreaks, and our own crops could become contaminated with GM products that are illegal in the food supply, simply because of the open field testing of experimental crops.

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Appendix: Are there risks to new food technologies?

Due to our evolutionary history our genes have links to genes in all sorts of other organisms including "mice, yeast and nematode worms". Researchers have found "five genes known to help build blood vessels were closely related to five genes that yeast cells use to fix their cell walls."[52]

Also bacteria and microbial cells far outnumber human cells in our body.[53] "The human body contains 10 times more bacteria than human cells, with 50 trillion microbes living in the average digestive tract alone." "We have about 100 times more microbial genes than human genes in the body." The microbes in our gut are being called our 'second genome'.[54]

"When we eat when we look in the bloodstream of individuals after a meal, we find around 500 chemicals circulating in the blood. About 60% of those are of those 2,400 human metabolites, 30% are just all the bizarre species you just consumed in your meal, but 10% or 50 different chemicals in your bloodstream right now are metabolites from your bacteria.

For the most part we have no idea what role these play in human physiology.[55]"

There is a huge and continuing increase in understanding how complex and “inhuman” our digestive system is. This knowledge is very recent. There are suggestions that 70% of our immune system is in our guts. It appears unlikely that scientists have devised tests adequate to show the real consequences of the changes to our food that have occurred over the past few years.

Perhaps this is why the American Academy of Environmental Medicine is calling for a moratorium on GM food.[56] Saying "several animal studies indicate serious health risks associated with GM food consumption including infertility, immune dysregulation, accelerated aging, dysregulation of genes associated with cholesterol synthesis, insulin regulation, cell signaling, and protein formation, and changes in the liver, kidney, spleen and gastrointestinal system."

Therefore the idea that food can be adulterated with

- GM
- nanoparticles and packaging
- artificially applied hormones
- routinely administered antibiotics
- pesticides

and go through our digestive tracts without any unpredictable effects appears very unlikely.

Food has been processed for centuries with various:

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52 http://www.nytimes.com/2010/04/27/science/27gene.html?pagewanted=1&src=un&feedurl=http://json8.nytimes.com/pages/health/index.jsonp

53 http://www.wired.com/wiredscience/2009/02/bacteriablood/

54 http://news.bbc.co.uk/2/hi/science/nature/8547454.stm

55 http://www.abc.net.au/rn/scienceshow/stories/2010/2857393.htm

56 http://www.aaemonline.org/gmopost.html

- additives
- preservatives
- flavourings
- colourings
- processing aids

Not all of the traditional methods have been safe but since they have a history of use there is understanding of how they affect people. There has been a huge increase in these recently and they are often produced using GM methods. That they are a concern to many people can be seen by groups such as “Additive Alert”. There appears to be a continual refusal of the food industry and regulators to take these concerns seriously.[57]

Members of the public who are sensitive to these changes are becoming more numerous and active and that is why there seems to be an epidemic of concern about food.

[57] http://www.additivealert.com.au/