



# australian network of environmental defender's offices

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## **Review of Food Labelling Law and Policy**

To Whom it May Concern,

The Australian Network of Environmental Defender's Offices (ANEDO) welcomes the opportunity to provide comment on the Review of Food Labelling Laws and Policy ('the Review'). ANEDO is a network of 9 community legal centres in each state and territory, specialising in public interest environmental law and policy. ANEDO has commented regularly on issues associated with consumer policy in the environmental context.

We note that the terms of the Review of Food Labelling Law and Policy are broad, and we limit our comment to three issues:

1. Improvements to GM food labelling law and policy;
2. Environmental considerations in food labelling regulation; and
3. The need for a mandatory environmental labelling program.

### 1. GM food labelling law and policy

As a network of community legal centres specialising in public interest environmental law, ANEDO has also frequently commented on, and advised clients in relation to, the regulation of genetically modified organisms ('GMOs') in Australia. ANEDO's submission therefore focuses on recommendations for improving food labelling law and policy specifically in relation to genetically modified ('GM') food.

ANEDO has concerns about the adequacy of current regulation of GM food labelling, which is currently in Standard 1.5.2 of the Food Standards Code ('the Standard'). This is largely due to the raft of exemptions that apply to the labelling of GM foods. We note that foods that do not require labelling as GM food include:

- Highly refined foods, other than that with altered characteristics, where the effect of the refining process is to remove novel DNA and/or novel protein clause 1(c);
- A processing aid or food additive, except where novel DNA and/or novel protein remains from the aid or additive remains: clause 1(d);
- Flavours present in the relevant food in a concentration no more than 1g/kg: clause 1(e);
- A food, ingredient or processing aid in which genetically modified food is unintentionally present in a quantity of no more than 10g/kg per ingredient: clause 1(f);
- Food intended for immediate consumption which is prepared and sold from food premises and vending vehicles: clause 4(4); and
- Food derived from an animal or other organism which has been fed food produced using gene technology, unless the animal or organism itself is a product of gene technology: 'editorial note,' Division 1.

These exemptions mean that many oils, such as those derived from GM canola, as well as meat, eggs and dairy produced from animals that are fed GM feed, and products that 'unintentionally' contain less than 1% GM food present, do not require labelling.<sup>1</sup>

It is important to consider these exemptions in the context of the existing regulatory obligations imposed by the *Food Standards Australia New Zealand Act 1991* (Cth) ('the Act'). Food Standards Australia New Zealand (FSANZ), as the body responsible for regulating food in accordance with the Act, is bound by the object of the Act (s3) as well as the objectives of FSANZ (s18).

The object of the Act is to achieve a high standard of public health protection by establishing FSANZ, to achieve goals that include:

*(a) a high degree of consumer confidence in the quality and safety of food produced, processed, sold or exported from Australia and New Zealand*

....

*(c) the provision of adequate information relating to food to enable consumers to make informed choices.<sup>2</sup>*

The prioritised objectives of FSANZ in developing or reviewing food regulatory measures and variations of food regulatory measures are:

*(a) the protection of public health and safety; and*

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

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<sup>1</sup> For further detail and discussion, see Carmen J, 'How GM food is regulated in Australia and New Zealand: A story of standards, oil and sausages' *Impact*, Issue 86 (December 2008)

<sup>2</sup> Section 3, *Food Standards Australia New Zealand Act 1991* (Cth)

(c) *the prevention of misleading or deceptive conduct*<sup>3</sup>.

ANEDO submits that the exemptions contained within the Standard mean that the objects of the Act and the objectives of FSANZ are not met with respect to labelling of GM foods. Changes to the Standard are required to ensure these objectives are met.

Given that there is no certainty as to long term health or environmental impacts of GM foods, or products derived from GM crops, it is critical that the approach taken to the labelling of GM foods is in accordance with the precautionary principle<sup>4</sup>. Stringent and comprehensive labelling laws for GM foods are essential not only from the 'right to know' perspective of consumers, but to ensure 'traceability' of GMOs through the food chain and production processes. This enables the monitoring of any potential long term health or environmental impacts, and to enable the recall of products if circumstances arise where GM foods on the market are determined to be unsafe.<sup>5</sup>

We therefore recommend that in order to ensure that the object of the Act and the objectives of FSANZ are fulfilled, the exemptions in the Standard should be removed. This would more satisfactorily protect the rights of consumers to have sufficient information about food, enabling them to make informed choices based on that information, be confident about the adequacy of that information, and to ensure that public health and safety is protected.

This would also accord with other jurisdictions, including the European Union (EU), which adopted stricter labelling laws in 2004. The EU's GM labelling laws include requirements:

- that operators, at all stages of the production and distribution chain, ensure that labels affixed to pre-packaged products containing GMOs, are labelled accordingly;
- that industrial operators must transmit to operators receiving product an indication of the food ingredients, raw material or additives for feedstuffs produced from GMOs;
- that all products consisting of or containing GMOs are transmitted with an indication that the products contain/consist of GMOs together with an alphanumeric identifier (to enable surveillance of traceability).<sup>6</sup>

Therefore, ANEDO calls for removal of the existing exemptions in the Standard, and to include mechanism for ensuring traceability of GE products in food.

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<sup>3</sup> Section 18, *Food Standards Australia New Zealand Act 1991 (Cth)*

<sup>4</sup> The precautionary principle establishes that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

<sup>5</sup> Greenpeace 2008, 'Eating in the Dark – How Australia's food regulator is failing us on genetically engineered food', available at:

<http://www.greenpeace.org/raw/content/australia/resources/reports/GE/rep-eatindark-211008.pdf>

<sup>6</sup> European Union, 'Traceability and labelling of genetically modified organisms', available at: [http://europa.eu/legislation\\_summaries/consumers/product\\_labelling\\_and\\_packaging/l21170\\_en.htm#](http://europa.eu/legislation_summaries/consumers/product_labelling_and_packaging/l21170_en.htm#)

## 2. Environmental considerations in food labelling regulation

As highlighted by concerns with the labelling of GM food products, it is clear that environmental issues relating to food are of growing interest to the community. This is particularly the case in respect of new and emerging issues such as the production of GM food, and foods containing nanotechnology. As noted above in relation to GM food, these products will potentially have environmental impacts, in addition to impacts on human health.

ANEDO therefore submits that consideration should be given to broadening the powers of the FSANZ via an amendment to the Act, to explicitly allow the authority to take into account considerations relating to the environment. Currently, as noted above, the Act only requires the FSANZ to take into account matters relating to public health and safety, the provision of adequate information and the prevention of misleading and deceptive conduct when making new food standards or varying food standards. The FSANZ has interpreted that as meaning that other considerations, such as the impact of food production on the environment, are *ultra vires* their powers.

Broadening the scope of considerations of FSANZ is essential in order to comprehensively apply the precautionary principle (as discussed above), and ensure the regulatory regime is able to adequately address current and emerging issues, such as consideration of the potential health and environmental impacts of foods containing GMOs and nanotechnology.

This would require amendment to sections 3 and 18 of the Act.

## 3. Overarching Mandatory Environmental Labelling Program

More broadly, we also reiterate calls that ANEDO has previously made in relation to establishing an overarching, mandatory environmental labelling program. Australia currently has a limited number of ad hoc environmental labelling requirements, for example regarding organic produce, and water and energy efficiency for select appliances. As consumers become increasingly aware of the environmental implications of the food purchases they make, an overarching eco-labelling scheme would enable consumers to make choices based on the environmental credentials of food. This could include matters such as water and energy consumption, greenhouse gas emissions, chemicals, and recycling. It could utilise a lifecycle analysis of the whole product process, which is the common basis for international eco-labelling programs.

For further comment on these issues, we refer the Food Labelling Review Secretariat to ANEDO's submission to the Productivity Commission Inquiry into Australia's Consumer Policy Framework<sup>7</sup>.

For any questions about this submission, please contact Rachel Walmsley on (02) 9262 6989 or [rachel.walmsley@edo.org.au](mailto:rachel.walmsley@edo.org.au).

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<sup>7</sup> Available at: [http://www.edo.org.au/edonsw/site/pdf/subs07/consumer\\_submission070511.pdf](http://www.edo.org.au/edonsw/site/pdf/subs07/consumer_submission070511.pdf)

Yours sincerely

**Australian Network of Environmental Defender's Offices**

A handwritten signature in black ink, appearing to read 'R Walmsley', written in a cursive style.

**Rachel Walmsley**

Policy Director – EDO NSW (on behalf of ANEDO).