Corrected transcript

GE-Free New Zealand

Regulations Review Committee

26 September 2013

Members

Hon Maryan Street (Chair)
Steffan Browning
Andrew Little
Ian McKelvie
Mike Sabin
Katrina Shanks

Witnesses

Claire Bleakley, President of GE-Free New Zealand
Dr Michael Antoniou, Head of Gene Expression and Therapy Group, King's College London, UK (by teleconference)
Professor Don Huber, Professor Emeritus, Purdue University, USA (by teleconference)
Deborah Roche, Deputy Director-General Policy of the Ministry for Primary Industries
Howard Staveley, Senior Policy Analyst, Ministry for Primary Industries
Dean Stockwell, General Manager, Food Standards Australia New Zealand
Lisa Kelly, Senior Scientist, Food Standards Australia and New Zealand
Andrew Pearson, New Zealand Food Safety Authority
Kiritapu Allan, Kahui Legal

Street — First of all, welcome to this huge gap between you and us. I am sorry about the distance, but I hope you'll be able to hear us. But, please, if you will speak up as well, even though there are microphones in front of you, that will help. My name is Maryan Street. I am the chair of the Regulations Review Committee, and we are here to hear a complaint lodged with us by GE-Free New Zealand. I'd like to introduce the members of the Regulations Review Committee: Mike Sabin, Ian McKelvie, and Katrina Shanks, who is the deputy chair, from the National Party; myself and Andrew Little from the Labour Party; and Steffan Browning from the Green Party, who is sitting in as an interested observer without voting rights, because he's not a standard member of this committee but he is welcome to sit here and join in the discussion.

So, the conversation that's going on over here at the moment is an effort to connect with two experts who GE-Free New Zealand wishes to engage in the conversation, Dr Michael Antoniou from King's College, London and Professor Don Huber from Purdue University in Idaho. So bear with us as we try to engage them.

But let's begin. Could you introduce your team in order so that we know who everybody is, and we will begin. We are looking to give each party, the complainants and the officials, about 20 minutes each. So the briefer you

are, the better, the more questions we can ask. But we will, of course, allow time for your expert witnesses to come in by telephone, as well. Thank you.

Bleakley Good morning, Madam Chair, and all the committee. Thank you very much for hearing us today. I do have some of what I am going to be—sort of the outlines. I realise that you have read substantially all our information, so thank you very much for that and it will be able to be made briefer. This is Susie Lees. She's on the board of GE-Free New Zealand. Jon Muller—he is our secretary. Kiritapu Allan—she is going to help us out on some of the procedural matters that I might get stuck on; an eminent lawyer at Kahui Legal.

Street And you are Claire Bleakley, of course?

Bleakley I'm Claire Bleakley, yes.

Street Can I just advise all people here that the evidence will be recorded and transcribed. Thank you.

Bleakley I'm Claire Bleakley, President of GE-Free New Zealand, and I hold a Bachelor of Science from Victoria University. GE-Free New Zealand in food and environment was duly incorporated under the Incorporated Societies Act 1908 in 2001. We are a community-based, not-for-profit, voluntary organisation, and we advocate for the precaution around genetically modified organisms. As you will be able to read, we have a wide membership and we have a regularly elected board.

The background to this: the Government of New Zealand and the Government of Australia entered into an Agreement Between the Government of Australia and the Government of New Zealand Concerning a Joint Food Standards System, or the food treaty, of which GMO food comes under standard 1.5.2 of this treaty. Food Standards Australia New Zealand is required to develop a joint food standard where food standard comes within the scope of the food treaty. On 18 April 2013 Food Standards Australia New Zealand made an amendment, which was amendment 140, to vary standard 1.5.2, of food produced using gene technology that included food derived from herbicide-tolerant soybean DAS-44406-06.

However, it did not come into law in New Zealand until the Hon Nikki Kaye, Minister for Food Safety, made an amendment, amendment No. 53, to give effect to amendment 140 in the Australian Act. Amendment 53 does not allow the genetically modified tolerant soybean to be sold as a wholefood in New Zealand until this amendment 53 is passed. On 13 July GE-Free applied to the Regulations Review Committee through Madam Chair to consider a review of amendment 53 on the grounds of Standing Orders 210 and 315(2)(a) to (h), as we believe the Minister had failed to take into consideration preconditions for issuing the food standard set out in section 11E of the Food Act.

This is where I would like to just go through an application to the committee. You will have appendices—all through d(a), d(b), and d(c) are all the letters that we had. It did show very much that there was no

jurisdiction whatsoever until the food was made law. The Regulations Review Committee may consider any matter relating to a regulation and report it to the House of Representatives in New Zealand. In Standing Order 315, we would like to point specifically to (2)(d), which states: "unduly makes the rights and liberties of persons dependent upon administrative decisions which are not subject to a review on their merits by a judicial or other independent tribunal:". After probably 4 years, we discovered that you were the place that we would come.

At this stage, I would like to bring in Kiritapu just to talk you through the whole areas of this. Is that OK?

Street Kia ora, Kiri. Can we just hold for a moment and see whether we have our other participants on the line? [*Inaudible*] OK. Thank you.

Allan Good morning, Madam Chair, and members of the committee. As my colleague Ms Bleakley has just outlined for you, the substantive merits of this application before the committee, as we understand, come within the purview of Standing Order 315(2)(d)—namely, that Ms Bleakley and the GE-Free coalition have sought to have a review on the substantive merits of the application that relate to amendment 53. However, there has been no independent tribunal and no avenue that the coalition could go through until this Regulations Review Committee right here.

Ms Bleakley alluded before to the Agreement Between the Government of Australia and the Government of New Zealand Concerning a Joint Food Standards System 1995—the food treaty—which is the precursory instrument to the food standard codes. The Food Standards Australia New Zealand Act—section 134 of that Act provides an avenue for Australian citizens to have—

Sabin Point of order. I am really struggling with two conversations going on here. I actually can't hear either one of them properly.

Allan I think I'm struggling with that also.

Street All right. Sorry about that, Kiri. We might just pause for a moment while we see if we can make these connections. [*Inaudible*] Well, we had received all the material. We did receive one large submission yesterday of some 144 pages of material, which I, at least, have to confess I have not read from cover to cover, but I have read your other submissions to date and so will the other members of the committee.

Bleakley If I may just say, Madam Chair—

Street All right. Who have we got? Right. Professor Huber, are you on the line?

Huber Hello?

Street Professor Huber, are you there?

Huber Yeah, I'm here.

Bleakley Madam Chair, can I just refer to the last statement—

Street Professor Huber, are you there?

Huber Yes. You're not coming through very loud.

Street All right. We will try to do something about that. Professor Huber, my name is Maryan Street. I am the chair of the Regulations Review Committee. We welcome you from a distance to this hearing, which is a complaint, as you're aware, from GE-Free New Zealand about regulations here. At the appropriate moment for the complainants, they will signal to us that they would like you to participate. Are you in a position to sit and listen for a moment to the things that are being said right now?

Huber Yes, I am.

Street Thank you very much. Well, we welcome you to this committee. There are six members of Parliament here, plus GE-Free New Zealand, plus Ministry for Primary Industries officials in this room. Congratulations on winning the America's Cup. We're all just gathering ourselves now. We were hearing from legal counsel to GE-Free New Zealand. Kiri, would you like to pick up where you left off?

Allan Yes, sure, sorry about that.

Street And you will need to use the microphone so Professor Huber can hear you.

Allan Good morning, Professor Huber, and congratulations—commiserations to ourselves. So, to pick up, I was drawing the committee's attention to Standing Order 315(2)(d), which sets out that the Regulations Review Committee can draw a particular regulation to the special attention of the House on the grounds that a regulation "unduly makes the rights and liberties of persons dependent upon administrative decisions which are not subject to review on their merits by a judicial or other independent tribunal:".

The Australia New Zealand Food Standards Code amendment No. 53 is a food standard that has been amended under the food standards 2002. The New Zealand food standards 2002 were incorporated into New Zealand to give effect to the agreement between the Government of New Zealand and the Government of Australia concerning the Joint Food Standards Treaty 1995. The Food Standards Australia New Zealand Act 1991 provides the Australian Food Standards Code. The 2002 New Zealand Food Standards Code is to give effect to the food standards Australia - New Zealand code.

In 2002 we included, effectively, a three-page food standard that brings across the 150-odd-page Australian food standard—incorporates it into New Zealand law. What it does say is that the entire of the food standards Australia - New Zealand code applies to New Zealand except for those parts that only apply to Australia. Notably, section 134 of the FSANZ Act provides the review or the regulatory review avenues available to those citizens in Australia that are concerned with any of the substantive merits of an application that falls within the ambit of the food standards. Section 134 only applies to Australian citizens. It is an Australian law. Those same reviews, or the right to review—the right to access any form of tribunal intervention on the substantive merits of an application—do not carry across to New Zealand.

So where does that leave a group like the applicants before you? They have made applications under the FSANZ Act to the Australian tribunal. For want of jurisdiction, that application was dismissed. The applicants can come through to New Zealand. They have been provided very helpfully, actually, by the public servants at the Ministry for Primary Industries with their remedial rights and avenues to investigate the substantive merits of amendment 53 in this circumstance or a food standard made under the Food Standards Code.

They have two avenues: a, come before the regulatory review committee, or, b, seek a judicial review on the substantive merits of the decision in the High Court. Both of those avenues do not actually provide any forum for an inquiry into the substantive merits of the application. This forum, as you are well aware, is to investigate the regulatory review component—how a regulation comes into effect, whether or not that regulation stands up to scratch, whether or not the Minister has complied with their duties and whatnot to bring that regulation into effect.

So, notably, in the information that was provided to the committee—of course, the inquiry was focused around section 11E of the Food Act, which considers the pre-considerations that the Minister must go through. We will turn our mind to those at a later point, particularly section 11E(1)(a), "the need to protect public health", and section 11E(1)(c), "the desirability of maintaining consistency between New Zealand's food standards and those applying internationally". Helpfully, we have our international witnesses that will give evidence on those two points.

But before we go down into the substantive merits of the inquiry, we are almost kind of roadblocked at point a. At what juncture does any New Zealand citizen have a right to inquire into the substantive merits of an application that would substantively change our food standards in New Zealand? So I highlight that point on behalf of the applicants, because GE-Free New Zealand, for in excess of 4 years, have exhausted all of their rights remedies. They are a voluntary organisation with very little resource, but they have been down all of the avenues that are possibly available to you, to have a substantive inquiry into the merits of the food standards that have been proposed to be—well, they haven't been proposed; rather, they have been incorporated into domestic law by way of regulation.

Unlike a standard, ordinary piece of legislation that is subject to the rigour of parliamentary inquiry through several phases and public consultation, etc., etc., here we have pro forma consultative duties that the Minister—and we don't contest. We don't contest that the Minister has conducted a consultation on amendment 53. We don't go down that track, at all. We do query whether or not she has adequately taken into consideration, as I just stated, the preconditions that she is required to give effect to. But the actual roadblock for the applicant here is at what juncture do you come through the gate? At what juncture can the merits, as a New Zealand citizen, of the food standards actually be checked by our own scientists, through our own processes?

Street Thank you. We understand that point exactly. I am keen to bring your overseas expert in. While we cannot in this committee cure all systemic ills, we are aware that you have lodged a complaint on the basis that the approval for this amendment is not in accordance with the general objectives and intentions of the Food Act to protect public health, and I presume that is where Professor Huber comes in. May I ask him to join the conversation now, otherwise we are going to run out of time and he would have spent some time hanging on the end of the phone. Professor Huber, are you able to speak and make your contribution briefly to the committee now?

Huber Yes, I can do that. The first comment I would have is that in reading over the application from the company, I would have to ask you why they are requesting approval if they are not going to provide the safety data for evaluation. As I look through trying to find evidence as far as safety of the product, I was unable to find anything that would give me any assurance that this was a safe product, in light of the information which we have in our country of very serious safety concerns.

The consideration of this product as a multiple herbicide-resistant product should not ever be considered separately from also considering the chemicals that will be applied to it. I didn't find anything in the application or in the testing that evaluated the chemical residues in the product, and feel that in evaluating these, you have to recognise that you're not evaluating tolerance of a chemical; you're evaluating chemical residues in your food products. It was interesting that they indicated that they had no intention of growing the product in New Zealand or of evaluating providing safety evaluation for animals. It was only for humans. This is strange because the primary use of this product, in our country at least, would be for animal feed, although there would be some human food products also which would be produced from it.

I found that in evaluating the document again, I could find no assurance of safety because they didn't evaluate the plant proteins that were produced; they evaluated the microbial proteins, and again without any consideration of the residue limits that are going to be there, of the actual chemicals that are used.

Now, several of these chemicals we know are not acute toxins, but they've been demonstrated recently to be very serious chronic toxins, and all of this scientific research indicates that that chronic toxicity is creating major disturbances in the health and safety of our animal production system, as well as our human health, which is deteriorating in a rather significant manner, as documented by Samsel and Seneff in their paper just a few months ago from Massachusetts Institute of Technology, where they connect the dots between glyphosate in the food and also the deteriorating health of our population.

Dr Monika Krüger, a veterinary pathologist, and the group at Leipzig University have done the same thing in showing the antibiotic activity of two of the products that will be involved in this regulation that's being considered, having an intense and very serious problem on animal production and animal health. We see the tremendous impact on birth defects, so that in considering the chemicals as well as in considering the genetic disruption that is caused by the inserts of our tolerance, we see a major impact on the chronic health relationships of both animals and humans when we look at the compounds that are being applied, the herbicides that are being applied.

We also see a deterioration in our soil health and our crop health. It's interesting that they're relying on historical information as far as safety, but I couldn't find anywhere where that historical information is available. Monsanto itself has signed a cease and desist order claiming safety on glyphosate, and also on degradation of the product. So I again find the documents submitted for deregulation or for use of the material wanting in any kind of safety evaluation.

I would hope that New Zealand would utilise some of the resources at hand that you have. You have a very excellent internationally recognised toxicology lab in New Zealand that the Indian Supreme Court called upon to resolve the safety issue on genetically engineered eggplant. I would hope that you would use some of those resources to assist in the evaluation for your committee, because that isn't available to outsiders or for objective evaluation. It's all listed as unpublished. But when they indicate that these products are substantially equivalent, I can find no justification for that because, if you can insert, as they state, three base pairs of nucleic information—genetic information—and obtain tolerance to three very distinct herbicides, and at the same time delete 4,385 base pairs that are lost in that genetic code, and then assume that there's no impact from the loss of that very large genetic section, it kind of boggles my mind to think that you can have three base pairs having such a tremendous impact to change the product, that 4,385 having no impact on a safety or use standpoint.

Again, there's no previous or historical safety testing of this combination. It's a unique genetic product, and without actual animal testing that essentially results in human product or the human experience being the experiment to determine its safety, this isn't the proper scientific approach to safety. It doesn't honour the precautionary principle. Their speculation on toxicity is not supported by peer-reviewed scientific studies that are

readily available now in the scientific literature, and that should be referred to and seriously considered, because of the long-term impact that we're seeing from the genetically engineered products that are already available that includes one of the major components of this product.

Street Thank you very much indeed. Sorry—thank you very much indeed, Professor Huber. I appreciate your contribution. You are most welcome to stay on the line and listen to some of the discussion, but we understand the concerns you have raised with us about scientific evaluation in particular. We are beginning to run out of time. I think some of the committee members may wish to ask questions, but, Claire, or others in your team, are there any final comments you'd like to make for us about your complaint?

Bleakley Basically, yes, certainly. We would like to reiterate that there is an insufficient process for the affected persons to review the substantive food standard before the Minister incorporates it into regulation, specifically food using gene technology.

Our second primary concern is that amendment 53 represents a significant risk to public health, and the matter should be subject to review prior to incorporation into domestic legislation. And we seek that amendment 53—food derived from herbicide-tolerant soybean DAS-44406-06—is revoked on grounds that there has been insufficient evidence of data supporting the protection of health safety. Also, is Professor Antoniou on the line?

Street It appears that we don't have a conference call line available, so we've got Professor Huber or Dr Antoniou, is that right?

Bleakley OK.

Street Is he available? Dr Antoniou? [*Inaudible*] No, that's all right.

Bleakley Yes, could we hear? Because he will really address the consistency of the—how regulations internationally on the EFSA are looking in comparison with food standards. Thank you so much.

Street Professor Huber, can I just say thank you very much for your willingness to participate in this process. We are going to have to cut you off, in order to bring in somebody else from overseas. So I apologise for that, but thank you very much for your expert testimony.

Bleakley Thank you, Professor Huber.

Huber Thank you for the opportunity to comment. It's a very serious issue. I hope you will give it proper consideration and require the proper scientific evaluation. Thank you.

Street Thank you very much. Do any members have questions? Can I ask a very quick and simple one while we are trying to connect Dr Antoniou? One of the grounds for the complaint is that this trespasses unduly on the rights and liberties on the choice and health of the public. Trespassing unduly on the rights and liberties of people is one of the grounds in which we may consider such a complaint. How does that work when nobody's being compelled to buy these products?

Bleakley Today? There is no way to be able to know if this food is in the system. There is no labelling, but there is also no monitoring to look at the levels. Also, the Royal Commission did ask for post-monitoring to look at the effects, if there were any. There has been no ability for post-monitoring nor for specialists who are working in the area of health if, after running every diagnostic test possible, they may suspect something in the diet. There are no diagnostic tests and no rules to check out where the GMOs have a part.

We are most concerned about the three herbicides, because 2,4-D is highly toxic, which is why we've come to you here. I think that Dr Antoniou will be able to talk about how he would, as a professional doctor in the field of genetics at King's College, suggest regulators should look into what kind of assessments should be done, and also relate it to how FSANZ should implement international law.

Street Thank you very much for that, Claire. Dr Antoniou, are you on the line right now?

Antoniou Yes, I'm finally with you.

Street Thank you very much indeed. My name is Maryan Street. I chair the parliamentary Regulations Review Committee. You are being heard by half a dozen members of Parliament, GE-Free New Zealand, officials from the Ministry for Primary Industries, and some media representatives. That is just to give you some idea of who is in the room. I wonder if we could ask you, seeing that Claire has introduced you suitably in the way that she has, to contribute briefly from your experience. I welcome you from King's College and would ask you just to take 5 minutes of our time to contribute to this discussion, the parameters of which I'm sure you're familiar with.

Antoniou Yes, thank you very much for the invitation to contribute to this very important gathering and discussion. For me as a health scientist with routine use of GM technology—

Street Could you speak up a little bit please, Dr Antoniou? We've got you up at high volume, but we're having trouble hearing.

Antoniou OK. Is this any better?

Street That's better. Thank you.

Antoniou As I was saying, for somebody who's reasonably familiar with GM technology, because I use it as part of my own research programme, I'm aware of the good side and the bad side and the unpredictability that can arise from applications of GM in crop development. Basically, there are three sources of potential health risks that arise from GM crops. One is the product of the GM gene that is in the crop. Secondly, and this is very important in the context of tonight's discussion, the pesticides, particularly herbicide formulations that are used in association with the GM crops, because, naturally, the public, consumers, will be exposed to high residue levels from these pesticides. And, lastly, which particularly interests me, are disturbances to the plant biochemistry that can arise from two sources. One is new biochemistry that can take place from the GM gene, but also from the new combinations of genes that the GM process brings about. And,

lastly, the fact that the GM process is highly mutagenic_____ ,it's highly damaging on gene function generally. Some of these effects, individually or a combination, can give rise to, potentially, novel toxins, novel allergies, nutritional disturbances, and knock-on effects on anyone or anything that consumes them. I would say that because these are unknown—well, firstly I should say that over the years there has been an increase in solid evidence _____ that show at least signs that negative health outcomes can arise from these three possibilities or combinations thereof. And since the outcomes are unquantifiable from a prediction in advance, there's only one sure way of evaluating the safety of a GM food and that is generically. You have to conduct generic compositional analysis of a comprehensive nature, and this, I believe, is the only thing that's actually happened with the GM crop in question tonight, and highly statistically significant differences in composition were found between a GM and a non-GM genetically equivalent plant. But over and above that, already that's a sign—hello?

Street Yes, you're still with us.

Antoniou Already that's a sign that the GM process has disturbed the biochemistry of this crop when you have these significant compositional differences. But far more important than that, there needs to be—and this is what I find very shocking, actually, that there has been no—not just a lack of short-term toxicity evaluation in an established rat model system, but the obligatory long-term 2-year toxicological studies in a rat model system are totally absent. Therefore, the way I see it is that there are many ways that you can say that this crop is safe to consume. It may be safe but at the same time it may be unsafe. It's just that at the moment there is a total lack of data that can allow you to come to a conclusion of either safety or harm. And until that is done, I feel that it does not meet the minimum requirements for approval for commercialisation, either for importation or cultivation. Just to ___ mention the importance of conducting long-term 2-year toxicology studies for GM food has been underlined by recent decisions within the European Union, firstly by an individual member state in France, who has put up €2.5 million for research into toxicity of a variety of GM corn maize and _____. And, also, at the European Commission level, €3 million have been made available for calls for proposals to conduct a long-term 3-year carcinogenicity evaluation of this one variety of GM corn, because there have been studies published that show that this variety of corn may have toxic effects—documented toxic effects and carcinogenic effects in a rat model system___.

So this is the position I would like to put forward to your _____.

Street Thank you very much indeed, Dr Antoniou. Thank you very much. We appreciate that. You're most welcome to stay on the line and listen to the remainder of the discussion.

If there are any final comments, Claire—and I can see you're poised for final comments—you realise that my time management has gone completely out the window now, and we are compressing other business of

the committee. But I do want to give you a fair hearing. I would also like to give the Ministry for Primary Industries officials a fair hearing as well.

So if you can sum up anything in 60 seconds, the last take-home message for us, that would be fine.

Bleakley Yes, thank you. I would just like to say that the USDA has deferred the approval of the commercial planting of the soy bean. It was till 2014, but the latest studies say that the safety tests on the human environment are not meeting that, so it may go out further. But also the Australian Pesticides and Veterinary Medicines Authority have banned the use of 2,4-D in Australia due to dioxin contaminants and impurities. Now, this food is going to be sprayed with 2,4-D, which is a banned chemical, and I think we need to realise this is the kind of import that we are going to be eating. It has been removed, and yet we are eating it. Food is the only thing that actually is nutritionally sustainable for our bodies. We must have food to support it. And if our food is dangerous, then our health will be not supported.

There is evidence, as I would like to just point you to what amendment 53 fails—5A, B, C, D, E, and F. You've got it in front of you. The attachments are there as well.

Street We have those.

Bleakley OK. Thank you very, very much for listening. We ask that you really do seek to review this.

Street We do read things very conscientiously, so thank you very much indeed.

Bleakley And thank you for that timing.

Street You're welcome. Could I have the officials from the Ministry for Primary Industries come to the table, please. Let's proceed, and we'll see if we have time for questions. Good morning, and welcome to this hearing. Could you introduce your team, and we will proceed to hear from you. We do have your submission in front of us on our screens, and we are familiar with it. But we will give you as much time as we can.

Roche Thank you, chair. The Ministry for Primary Industries and Food Standards—

Street Sorry, could you just introduce your team, so we know who's here? Thank you.

Roche Sorry. I'm Deborah Roche, Deputy Director-General of the Ministry for Primary Industries in policy. I have Howard Staveley, who's in our policy team. Andrew Pearson, who's the senior adviser of toxicology, Carolyn Guy, our manager of international standards organisations, and Lin Da Teoh, our senior solicitor. From Food Standards Australia New Zealand, we have Dr Lisa Kelly present. Lisa is a principal scientist at FSANZ who has primary oversight for all GM safety assessments. Dr Kelly is internationally recognised as an expert in GM food safety assessment, having chaired the OECD task force for the safety of novel foods and feeds from 2004 to 2008 and also served by invitation on two Food and Agricultural Organisation/WHO expert consultations on GM food safety

assessment. Dr Kelly also led the Australian delegation to the Codex ad hoc intergovernmental task force on foods derived from biotechnology, and was the primary author of the Codex guideline for the safety assessment of foods derived from GM animals.

Dr Leigh Henderson is the section manager for product safety standards and is based in the New Zealand office. Her section is involved in risk management issues relating to GM foods.

Dean Stockwell is general manager of Food Standards in Wellington. He has responsibility for labelling, product safety standards, and public health nutrition standards within FSANZ, and he is the senior FSANZ representative in New Zealand

From Environmental Science and Research we have Dr Rob Lake. Dr Lake has long experience independently reviewing GM food safety assessments for MPI and, previously, for the Ministry of Health. He has participated in the Codex task force on biotechnology, specifically to address issues of GM food detection, and he is a recognised international expert on the technical assessment of laboratory detection of GM foods.

Street Thank you very much. I'm sorry if I interrupted you beforehand, and that's what you were going to do.

Roche That's fine. Madam Chair, I have a statement that I would like to make on the overview of how our joint system operates. We do have other presentations, but in the interests of time we would be quite happy to move to questions and answers, if that would suit the committee, after that.

Street That would be very helpful, after the presentation you wish to make.

Roche Thank you. FSANZ would like to table five further documents. I will just outline their titles: the FSANZ response to clarify issues raised by GE-Free New Zealand at a meeting on 29 November 2012; a peer review of the FSANZ process, which was in 2009; FSANZ's response to the peer review in the same year; the FSANZ workshop report on the role of animal feeding studies in the safety assessment of genetically modified foods, which was in 2007; and application A1073SD1, the risk assessment.

Street Thank you.

Roche So I will move now to an overview of the joint system, including highlighting the protections for New Zealand's sovereignty and how it operates. New Zealand and Australia share a joint food standards system, underpinned by international treaty. The joint system is implemented through the Australia New Zealand Food Standards Code. The code is a set of Australian legislative instruments given legal effect in New Zealand by standards made under Part 2A of the Food Act 1981. The purposes of standards made under Part 2A are, among other things, and, in particular, to give effect to the Australia - New Zealand Joint Food Standards Agreement, section 11B(b).

The regulation of the safety of genetically modified foods is managed as part of this joint system. The approval of a new GM food is not an

approval to grow food in New Zealand. Commercial release of GM crops is regulated by the Environmental Protection Authority, and to date this authority has not received any applications for the release of commercial GM crops in New Zealand.

Food Standards Australia New Zealand has responsibility for assessing the safety of new foods that are genetically modified. MPI has responsibility for ensuring that the New Zealand context is considered as part of the FSANZ safety assessment and for legal process to give effect to the joint system in New Zealand, including advice on whether the FSANZ process meets the preconditions for making a standard to recognise the approval under section 11E of the Food Act. Food regulation Ministers from the Australian states, territories, and commonwealth and New Zealand have responsibility for considering and, if appropriate, agreeing to FSANZ approvals of new genetically modified foods.

New Zealand's sovereignty is protected by the following key aspects of the joint system. Parliamentary oversight is provided by the manner in which joint food standards are given effect in New Zealand—that is, by standards made under the Food Act that are disallowable instruments for the purposes of the Legislation Act 2012, and so subject to consideration by this committee. The requirements in the New Zealand Food Act are that the Minister take into account a number of matters, including the need to protect public health. The ability for New Zealand to opt out of standards under exceptional circumstances relating to health, safety, environmental, cultural, or third-country trade grounds. This is not available to Australian jurisdictions. Three positions on the Food Standards Australia New Zealand board are reserved for New Zealanders, out of a total of 12 members. The location of a FSANZ office in Wellington and the ability for New Zealanders to work in FSANZ. And requirements for both parties to consult each other on new food legislation, and that any changes to the joint food standards system maintain New Zealand's effective level of influence.

The joint system process for considering newly genetically modified foods was considered by the Royal Commission on Genetic Modification in 2001. This reported that "the Commission is confident that the Authority's,"—being FSANZ—"assessment is independent and that by international standards its methodology is sound." Since this time, FSANZ is undertaking continual improvement of its assessment procedures, including international peer review and assessments of emerging evidence. Thank you.

Street Thank you very much indeed—pertinent points. Thank you. Were there any other additional comments that members of the team wanted to make before we go to questions?

Staveley Potentially, just to clarify in relation to two of the Standing Order grounds that GE-Free New Zealand raised. The first, 315(2)(d), the opportunity for substantive review. So there is an extensive consultation process that FSANZ undertakes.

Street Could you speak into the microphone. Thank you very much.

Staveley Sorry. FSANZ undertakes an extensive consultation process, which is very similar to any consultation process MPI or similar Government departments would undertake for standards or regulations. There are real efforts to get New Zealanders involved in that process. GE-Free New Zealand has made a submission. They have met with FSANZ on this particular issue. They have also met with us to look at their options for review. They have met with the Minister for Food Safety and there have been several exchanges of correspondence on this issue.

They raised a point in their submission about provisions under the FSANZ Act that only apply for Australian citizens. That is incorrect. Those provisions in the FSANZ Act are for any party from any place. The issue is that it only relates to review of standards that have been rejected. So it's an Australian body that does the reviewing, the Administrative Appeals Tribunal, but they can only review standards that have been rejected. So if a standard has been approved, they don't have jurisdiction. So, following that, GE-Free New Zealand did take a case to the Administrative Appeals Tribunal in Canberra. The appeals tribunal didn't have jurisdiction, so they came and saw us, and we suggested the options available to them were this committee or a judicial review.

Street Thank you very much. Questions.

McKelvie I've got two questions. The first one—I just want to clarify—earlier in your discussion you talked about the fact that there was something that wasn't available to Australian jurisdictions. I didn't quite get it.

Staveley So, the joint food standards system is not just New Zealand and Australia. In Australia the states and territories have constitutional responsibility for food regulation. So it's really a 10-jurisdiction system that we joined, but we joined it with provisions that protect our sovereignty, one of which is being able to opt out of a standard if there are exceptional circumstances that make that necessary. Australian jurisdictions have all bought in fully, so they don't have—say, New South Wales wouldn't have an opportunity to opt out of a standard that is agreed by all 10 jurisdictions.

? They have to accept it.

McKelvie And the second question I've got—I'm not sure whether any of you can answer this, because I'm confused myself. It seems to me that this isn't about the safety of the food; it is about the things that are applied to the food or potentially applied to the food.

Kelly It's both. The issues that GE-Free New Zealand raise relate both to the safety of the food and the chemicals that are applied to it. The chemical issues are not actually dealt with in the scope of the GM food safety assessment by FSANZ, and, in fact, those chemical issues are outside the scope of the treaty. Perhaps, Andrew, would you like to talk about the chemical issues?

Pearson So, New Zealand has its own process for setting and regulating residues of agricultural chemicals in food. This is the maximum residue limit standard

and it is set under the Food Act. This applies to both conventional and GM crops with no distinction made, and the processing of an application through the FSANZ system doesn't negate complying with this legislation.

Street OK, so it's dealt with differently, but in conjunction with each other.

Little The object of the primary legislation is the safety of the food, and the regulations are promulgated pursuant to that objective. So whether it's the safety of the food product or the risk of toxic residues being on the food product is immaterial, isn't it, to whether or not the regulation meets the object of the primary legislation?

Staveley So, this particular amendment doesn't relate to maximum residue limits for, say, herbicides and pesticides in food. That's set in a different instrument and that instrument covers those herbicides and pesticides that might be used on this GM food and establishes the limits for that.

Little But if the regulation approves a food that is tolerant to toxic chemicals, and that food, having been exposed to those chemicals, will make its way into the food chain, then it's immaterial, really. So food is approved under a regulation that requires before it's promulgated for food safety to be having been ascertained. That's how I understand the argument.

Staveley That's right. So FSANZ, in their assessment, and maybe we should talk to this, look at whether in the GM food the result of using that herbicide and pesticide results in any changes in chemical composition that would be different from the use of those on a conventional variety. So you couldn't use more and have a higher residue in the GM food higher than the New Zealand standard that's set. So, yeah, it is dealt with in that.

Shanks OK, thank you for that. I've got a question. I'd like you to respond to the labelling comments which were made by GE.

Stockwell Yes, certainly. Dean Stockwell for FSANZ. The standard 1.5.2 requires labelling of genetically modified foods where there is novel DNA or novel protein present in the final food. So, if indeed those components are present, then labelling is required on the foods.

Shanks So GE were incorrect in their statement that there wasn't labelling required.

Stockwell For certain foods which might be highly refined such as oil products, which have no protein in them, then labelling is not required, because there is no presence of any GM component in there.

Browning A couple of things. On the labelling, of course, it's correct isn't it, that there's been no enforcement since 2003 of the New Zealand? I can tell you that is a fact.

Street Do you have a question?

Browning So that's just for my colleague here. With the chemicals separate to the modified aspect or the event, being separate, we did hear before from the experts, of course, that they expected that something should be looked at in its totality, and, in fact, should be tested for something like 2 years. That's not the case with this product that we're looking at here today, is it?

Kelly What we do with the safety assessment we certainly don't consider the residues, because that is dealt with as a separate consideration.

Browning But the food has got everything in it.

Kelly The food that has got—well, there's residues on the food and then there are the actual constituents of the food itself, and that is what we look at. And those studies are usually done through field trials of the crops and extensive compositional analyses are done of the food.

Browning But that's separate constituents—nothing in combination.

Kelly Those analyses are done in the presence—under the spraying of herbicides. So we only accept the analyses that are done when the herbicide is actually being applied to the crop.

Browning But that's analysis of the genetic modification, not of the food for food safety.

Kelly The compositional analysis is one of the key considerations in the safety assessment.

Browning One other question I've got, and you've just given Dr William Yan's paper here and you mention the FSANZ fellows—you've access to them, and, of course, recently they were pushed out through Science Media, I think, in response to the double-stranded RNA concerns. We also just heard that the royal commission was confident that FSANZ was independent. But those fellows are not independent, and Langridge from Adelaide University would be a prime example because he gets his funding, or substantial funding, from DuPont, and his manager's funding from Monsanto, and yet he's coming in. Is this not a revolving door situation?

Stockwell The fellows in FSANZ are not part of the assessment process. Occasionally, we call upon them for peer review or we call upon people that they can advise as peer review. They're not part of the FSANZ process that is undertaken by Dr Kelly and her colleagues.

Browning They were certainly used, but, yeah. Thank you.

Street Thank you very much. Are there any final comments from officials? Can I just say thank you very much for the—I'll give you a chance for final comments in a moment—but I want to say thank you for the additional material that's just arrived.

Shanks Can we have—because we didn't get a written response from you on 315(2)(d), because you were unaware that was one of the Standing Orders that was going to be talked about. Is it possible to get a written response from them on that Standing Order, please? And I just want to talk quickly—just really touch on the consultation process. Do you believe that GE had the ability to be consulted enough during this process?

Roche Yes, we do.

Stockwell Perhaps I can comment on that. GE-Free New Zealand have approached us on two occasions. They met in my office in Wellington. I met with them on one occasion and there was a meeting established with video link to

Canberra with FSANZ, my FSANZ colleagues, on 29 November of last year. That meeting discussed a number of and travelled a number of issues and matters, and FSANZ provided a written response back to GE on those substantive matters. Just to mention also that when FSANZ prepares its final approval report, it is required to identify the issues that have been raised by submitters or the concerns and respond to them in that report. In the approval report there are a number of pages—in fact, there are nine pages—of response to those submitters' concerns. So it would be our view that there has been a considerable amount of opportunity to have dialogue with submitters and to respond to their concerns.

Street Thank you very much indeed all of you—the team from MPI and FSANZ. We appreciate your evidence and the supplementary material you've given us today. It is our practice to table and release this material, so it will be available to anybody who wishes to access it through the parliamentary website.

conclusion of evidence