



AUSTRALIAN FOOD SOVEREIGNTY ALLIANCE

Submission to the Inquiry into mechanisms for compensation for economic loss to farmers in Western Australia caused by contamination by genetically modified material

Date of Submission: 16 February 2018

ToR: 'Inquire into and report on mechanisms for compensation for economic loss to farmers in Western Australia caused by contamination by genetically modified material, including approaches taken in Western Australia and by other jurisdictions and any other relevant matter.'

Introduction

The Australian Food Sovereignty Alliance supports Farmer Protection Legislation to ensure fair compensation for West Australian farmers who suffer economic and ecological damage from contamination by genetically modified material.

About the Australian Food Sovereignty Alliance (AFSA)

The Australian Food Sovereignty Alliance (AFSA) is a collaboration of organisations and individuals working together towards a food system in which people can create, manage, and choose their food supply and distribution system. *Food sovereignty* is our right to collectively determine our own food and agriculture systems, and to access healthy and culturally appropriate food.

AFSA is an independent organisation and is not aligned with any political party. We have more than 700 individual, organisational, business, and farmer members.

In 2014 we established a producers' branch of AFSA, Fair Food Farmers United (FFFU) to provide a balanced voice to represent farmers and advocate for fair pricing for those selling to the domestic market, connect Australian farmers for farmer-to-farmer knowledge sharing, and to be a voice for farmer-friendly regulations and standards.

We are part of a robust global network of farmer-led organisations involved in food security and food sovereignty policy development and advocacy. We are members of the International Planning Committee for Food Sovereignty (IPC), Urgenci: the International Network for Community-Supported Agriculture, and La Via Campesina – the global movement of peasant farmers, and we have strong relationships with Slow Food International and its Australian chapters. We also provide support for the sole Australasian representative on the Civil Society Mechanism (CSM), which relates to the Committee on World Food Security (CFS).

We work extensively with primary food producers and consumers across every state and territory in Australia. Our committee has consisted of published academics and lecturers from the University of Melbourne, RMIT, Deakin University, University of Tasmania, University of Sydney, and QUT. We have also had representation from farmers from every state, and local advocates and campaigners such as Food Connect, Friends of the Earth, Regrarians, Fair Food Brisbane, MADGE, and the Permaculture Network.

Our vision is to enable regenerative farming businesses to thrive.

Australians increasingly care about the way their food is produced, including its social and environmental impacts. They seek out food that is grown locally and without damage to the environment.

GMOs

As more and more Genetically Modified (GM) crops are produced in Australia, an increasing number of consumers are demanding GM free food. Many farmers are choosing to produce Certified Organic or Biodynamic food to meet this demand, and many uncertified growers are also choosing not to grow GM food for various reasons. These farmers have a right to grow non-GM crops without the risk of contamination.

Agricultural crops containing genetically modified material that are then patented by multinational agricultural corporations pose a significant threat to food sovereignty in Australia. Food sovereignty is our right to collectively determine our own food and agriculture systems and to access healthy and culturally appropriate food.

Modifying crops through genetic engineering is purported to increase yields and improve nutrition. However, the scientific justification for these technologies is ambiguous and concludes that most yield gains in recent years are due to traditional breeding or improvement of other agricultural practices (Gurian-Sherman 2009). Some research suggests that farming GM crops is harmful to the environment due to its associated high chemical inputs (Food and Agriculture Organization of the United Nations 2005), and that the consumption of GM crops treated with the common herbicide glyphosate is a probable carcinogen (International Agency for Research on Cancer 2015).

On the issue of GMOs and their impact on people, animals and the environment more broadly, AFSA therefore advocates the precautionary principle.

AFSA supports thorough and transparent labelling of products containing or deriving from GMOs. We maintain that people have a right to choose (or grow) or not to consume (or grow) GM food or other products relying on a GM source.

AFSA asserts the need to protect non-GM farms from GM contamination. We defend the rights of farmers to manage their land without GM technologies and to feed their communities healthy, GM free food.

We welcome the opportunity to provide feedback to the inquiry into mechanisms for compensation for economic loss to farmers in Western Australia caused by contamination by genetically modified material

The current situation

At present, farmers can only rely on Common Law to seek compensation for contamination and economic losses due to GM contamination of their crops. The Marsh versus Baxter case, where an organic farmer unsuccessfully sued his neighbour for GM canola contamination, has shown us how that mechanism for seeking compensation is inadequate.

GM crops are inherently risky to grow and impossible to fully control; segregation from GM-free crops is impossible and contamination is inevitable (Price and Cotter 2014). At present, the burden for preventing contamination falls solely upon GM-free farmers to keep GMOs out of their fields, instead of GM farmers keeping their GM crops in their paddocks.

Many markets have zero tolerance of GM and contaminated crops are downgraded or rejected, at significant economic loss to the non-GM farmers.

We advise for stricter liability and for GM contamination risk to be shared.

Supporting the Principles developed by GM- Free Australia Alliance in conversation with farmers, we sign onto developing the following mechanism for compensation for economic loss to farmers in Western Australia caused by contamination by genetically modified material.

Principles for Farmer Protection Legislation

Objectives:

A Bill to establish a publicly managed fund, paid into by genetically modified (GM) seed and plant merchants, in order to compensate non-GM land holders for contamination by GM seed or other GM material.

To strengthen the protection of non-genetically modified landholders (both organic and conventional, and including public land) from all forms of contamination by genetically modified organisms (GMOs).

To strengthen monitoring and detection mechanisms in order to detect contamination early and reduce compensation costs. This includes, but is not limited to, making the existing guidelines mandatory.

Rationale:

The Farmer Protection Legislation will replace sole reliance on Common Law remedies by:

- Establishing a Fund to allow simple and efficient compensation for losses suffered by non-GM landholders whose land is contaminated by GM crops, seed, or other GM material;
- Making GM seed and plant merchants responsible to compensate landholders when GM contamination occurs, by requiring GM merchants to pay a levy on seed sales into the Fund;
- Entitling farmers and other affected parties to rapidly and efficiently recover for any losses, extra costs, or harm they suffer, without having to resort to the Common Law.

The Farmer Protection Fund

- The Government will establish a Fund to provide speedy, no-fault compensation in cases of GM contamination for purposes of cleaning up such contamination and compensating for economic loss or other harm;
- The Minister will appoint an independent Administrator to administer the fund;
- The Administrator will have broad investigative powers, including auditing financial records, inspecting properties and recommending enforcement action;
- The Administrator to make recommendations as needed to the Minister regarding any measures he or she believes would reduce the levels of contamination and therefore reduce the amount of the levy;
- The Fund will protect the right of all non-GM landholders to be free of GM contamination, at the limit of detection;
- Non-GM landholders must be able to recover costs and losses related to all manner of contamination by GM materials, (pollen, seeds and crops) quickly and easily by lodging an application with the Administrator;

- Applicants for compensation funds would have to prove the presence of a GM event on their land or in their seeds or crops, and provide a declaration that they did not plant or authorise the planting of the GM seed or crop;
- Funding for the compensation Fund will be annually levied on the GM seed and plant merchants;
- The levy will be assessed per kilo of seed sold or by area of land planted per kilo;
- All GM merchants must submit to the Administrator declarations on the amount of GM seed sold in a financial year, no later than the end of September following;
- The amount of the initial levy will be set in the regulations;
- The Administrator may from time to time recommend changes to the amount of the levy, to the Minister, taking into account the costs of previous GM contamination cases;
- If compensation claims exceed the value of the Fund, the Administrator will request from the Minister that the levy in the subsequent year be raised in order to cover the cost of the shortfall;
- The Administrator may seek submissions from third parties regarding compensation and interested parties may appeal decisions under the Judicial Review Act.

Factors to use in determining compensation payments for contamination incidents:

The Administrator will pay non-GM landholders compensation for actual economic loss or extra costs which must include:

- costs for detection and identification of GM seeds or plants;
- all GM contamination clean-up costs;
- lost profits;
- lost premiums on non-GM produce;
- reduced property values;
- compensation for time spent dealing with the contamination;
- harm, where harm includes unwanted GM contamination, for the full duration of its impacts.

Note: The Administrator will determine an annual calculation for payable losses, extra costs and harm where continuing GM crop contamination occurs.

Definitions

GM merchants - businesses licensed by the GM patent holders for the sale of GM seed or other material, their agents, licensees, subsidiaries or contractors and any other legal entity that deals with the sale or other distribution of GM organisms ('dealing' is defined in the Gene Technology Act 2000).

Non-GM landholders - any party occupying, owning or caring for land (including local or state government) where no-one intended that GM plants would be grown.

Non-GM land - any land on which the landholder did not intend to grow GM plants.



16th Of February 2018

Tammi Jonas, AFSA President
president@afsa.org.au



References

- Food and Agriculture Organization of the United Nations. 2005. "GMOs and the environment." FAO, accessed 16 February 2018.
<http://www.fao.org/docrep/003/x9602e/x9602e07.htm>.
- Gurian-Sherman, Doug. 2009. *Failure to Yield. Evaluating the Performance of Genetically Engineered Crops.* edited by Union of Concerned Scientists. Cambridge, MA: UCS Publications.
- International Agency for Research on Cancer. 2015. Glyphosate. In *IARC MONOGRAPHS ON THE EVALUATION OF CARCINOGENIC RISKS TO HUMANS*, edited by International Agency for Research on Cancer. Lyon: World Health Organization.
- Price, Becky, and Janet Cotter. 2014. "The GM Contamination Register: a review of recorded contamination incidents associated with genetically modified organisms (GMOs), 1997–2013." *International Journal of Food Contamination* 1 (5).