Draft Report on Regulation of Agriculture by Australian Productivity Commission

by Julie Newman, National Spokesperson for the Network of Concerned Farmers

I have been intensely involved in the GM debate and agricultural politics for over 15 years. I have a strong background in agriculture and associated industries. My political positions have included: National Spokesperson of the Network of Concerned Farmers; Vice President of WA Farmers Grains Council; WA representative on Grains Council of Australia Policy Council and Seeds Subcommittee; and, committee member of the Ministerial GMO Industry Reference Group. I have been involved in debating and given hundreds of lectures at local, state, national and international level. I have recently completed a degree in Politics and Legal Studies with a special interest in international agreements supporting multinational interests. My primary campaign has been to introduce risk management to prevent farmers being liable for economic loss caused by GM crops.

Summary

If the recommendations by the Productivity Commissions report are taken, and WA is the first to commercialise GM wheat as proposed, it is highly likely that this will result in an immediate $2-3billion/year loss to WA alone. Although the Productivity Commission report suggests GM crops are over-regulated, current legislation has failed to adequately manage the health, environmental, and economic risks associated with GM crops. As a consequence, risks to the public and to farmers are not being managed responsibly. Legislation is primarily based on self-regulation by the GM industry and anti-competitive conduct has been promoted, particularly unfair liability imposed on opposition clients. A Senate enquiry is required to explain unreasonable promotion of the technology by government agencies. Legislation must ensure risks associated with GM crops are managed fairly.

Contents of Submission:

1. Commercial Interests and Government Alliances

1.1 As identified in the Productivity Commission report, the Commission found evidence that some regulations failed to comply with assessing costs or benefits of regulations, and some processes were "disproportionally influenced by particular stakeholders". The report and proposed GM crop legislation amendments shows an example of this disproportionate influence.

1.2 Australia is significantly advanced in plant breeding technologies due to primary funding from compulsory GRDC levies paid by farmers as a proportion of every tonne of grain grown. The GRDC template of farmer levies is then submitted to government as a tax collected and redistributed by government. Treasury then records GRDC payments as a subsidy to farmers in the form of plant breeding research but it is not a government to farmer subsidy, it is paid by farmers for the research sector.

1.3 Although GRDC levies are primarily funded by farmers, farmers do not own the intellectual property they have paid for. The research entities form alliances with companies such as Monsanto to market products developed by research. The commercial investor then charges the farmer a significant fee for the commercialised product. As a result, the farmer funded research benefits are a major commercial benefit to investors, not the farmers that paid for the research. In reality, farmers are effectively being forced to subsidise the multinational industry. Although GM technology is strongly promoted to profit the government research sectors, it is unreasonable to continue to impose a compulsory levy on farmers to subsidise Monsanto's profit margins.

1.4 It is noted that previous government submissions from research sectors, including CSIRO, reveal earlier alliances with Monsanto to use their equipment and technologies in exchange for support for GM. Free Trade Agreements with America include pressure on Australia to promote biotechnology. When WA announced the lifting of the moratoria on Roundup Ready canola, Monsanto paid $10.5m for a significant share of Intergrain which incorporates most of WA plant breeding institutes and technologies that farmers paid for through GRDC. Due to this partnership with Monsanto, the WA Department of Agriculture reports regarding GM crops are influenced heavily by Monsanto (as revealed in the Marsh vs Baxter case documents).

1.5 Farm lobby groups also have unreasonable influence, and policies are driven by the GM industry. The key policy advisors have been Agrifood Awareness who represents the GM industry, and this has led to unconstitutional manipulation of minutes, policies, media and government representation.

1.6 Existing legislation is primarily based on industry self-management meaning Monsanto writes the rules, and these rules are inadequate to deal with the risks and impose unrealistic burdens on consumers and farmers. As a consequence of government commitments to the GM industry, existing legislation managing GM crops is inadequate to deal with risks and need to be strengthened, not removed.

2. Health Regulation is Inadequate

2.1 The Office of the Gene Technology Regulator (OGTR) approves GM crops based on information on health and environment that is provided by the applicant. The GM developer has the self-management responsibility to demonstrate to Food Standards Australia New Zealand (FSANZ) that their crops are safe to consume.

2.2 In the case of Roundup Ready canola, the only feeding trials involved feeding canola meal to rats for a few weeks. Adverse findings of a comparative 13% increase of liver weight of GM compared to non-GM indicated a toxic reaction. This was disregarded as canola meal is used for stock feed only and FSANZ has no authority over stock feed. FSANZ failed to request feeding trials on the oil which is used for human consumption. FSANZ assumed GM canola oil was safe to eat only because Monsanto claimed the oil from GM canola did not contain any DNA or protein derived from the transgene yet the safety concern was not only from DNA or protein. The self-regulation principal clearly fails to address health concerns, as there is disincentive for the applicant to find an issue with their product because it would adversely affect their profit margins.

3. GM Labelling is Inadequate

3.1 Due to an inability to counter adverse non-industry health reports, repeated surveys reveal the majority of Australian consumers wish to avoid GM foods. Oils, highly processed foods, cooked food and stock feed are currently exempt from labelling. Labelling is currently inadequate and should be strengthened, not removed. Removing labelling legislation to deceptively improve the marketability of GM crops by denying consumers a choice, does not adequately address the concerns of consumers.

4. Environmental Assessment is Inadequately Managed

4.1 The OGTR claims to investigate environmental risk and risk management, yet experience with Roundup Ready canola has shown this is poorly managed. The OGTR identified a serious environmental risk of increasing weed resistance to glyphosate with the use of Roundup Ready canola. In response, Monsanto submitted their management plans aimed at restricting farmers with existing resistance issues from growing GM canola, and for farmers to use an alternative knockdown herbicide to ensure glyphosate resistant weeds are controlled. As a consequence, a condition of license was imposed on Monsanto to ensure their proposed resistance management plans were implemented.

4.2 There is no enforcement to ensure license holders comply with imposed license conditions as enforcement is self-managed. Although farmers sign to state that they do not have an existing weed resistance management problem prior to picking up seed, media promotion and court transcript evidence at the Marsh vs Baxter case revealed that the main advantage farmers have with growing GM crops is to manage an existing weed resistance problem. Under the existing license conditions, farmers with a weed resistance problem should not be permitted to grow Roundup Ready canola. In addition, farmers are not using an alternative knockdown herbicide to ensure glyphosate resistant weeds are controlled. Relying on self-regulation has ensured license conditions are not followed for commercial reasons as very few farmers would be growing GM canola if license conditions were enforced and it is therefore not in Monsanto's interest to comply with license obligations.

4.3 There has already been an increase in weed resistance to glyphosate which will be a significant liability for all farmers. Industry self-management is not adequate to ensure compliance to license obligations and Monsanto's license for Roundup Ready canola should be revoked as they are clearly breeching their condition of license.

5. Economic Risk Assessment Must Not be Denied

5.1 The Productivity Commission report states the OGTR is sufficient regulation to manage GM crops. However, the mandate of the Office of the Gene Technology Regulator (OGTR) is only health and environment, not economics. The OGTR has proven there is no regard for industry issues. In February, 2003, the OGTR consultative advisory committees for ethics and community consultation, both recommended the OGTR delay commercial release as the community was not prepared to manage the industry risks. Yet these committees were ignored and commercial release was approved by the OGTR.

5.2 State legislation is based on economics as State governments have authority over land use and moratoria legislation was introduced in WA following intense investigation by a bipartisan committee which is outlined in the WA Legislative Council Report by the Standing Committee on Environment and Public Affairs in 2003. As a consequence, other States followed.

5.3 The recent tabling for repeal of WA's relevant Acts, and the reports recommendation to remove other States legislation, is putting the agricultural industry at serious risk as the implication is that economic risk can no longer be assessed or industry preparedness addressed.

6. Zero tolerance of GM Contamination is a Market Reality yet Can Not be Achieved

6.1 Prior to commercial release, a report by the Ministerial GMO Industry Reference Group, chaired by the Hon Kim Chance MLC was released in May 2009 and revealed serious inadequacies in industry preparedness and legal redress for unfair liability imposed on non-GM farmers (report enclosed). However this cross industry report was ignored by Minister Redman when he announced the repeal of the WA moratoria soon after he was elected.

6.2 The parliamentary advisory committee report clearly outlined the zero tolerance of GM contamination and the inability to achieve it.

- "In 2001 the ACCC made it clear that a GM-free claim left no room for ambiguity under the Trade Practices Act." "Confirmation from the Australian Competition and Consumer Commission has been received stating clearly that no contamination would be acceptable in product using GM free or non-GM labels." (pg 32)
- "FSANZ has successfully prosecuted a NZ company for misleading labelling. The Auckland company Bean Supreme was fined when 0.0088% of GM soy content was found in vegetarian sausages labelled as either "GM-free" or "Non-GM"." (pg 76)
- "Germany and Austria are two of a small number of European Union Member States that have legislation in place that strictly regulate positive claims for non-GM products and no detectable GM content is allowed." (Pg 32)
- CBH delivery terms and conditions 4.1.10: "None of the Grain in a delivery is a

genetically modified organism (unless declared in writing to, and approved in writing by, CBH before the Delivery enters the site).” (pg 31)

- “Due to these contractual obligations and liabilities involved, it is essential for farmers to know the GM content of their seed prior to delivery to avoid costs and liabilities. Unfortunately, there are no quantitive tests available at the delivery sites.” (pg 31)

6.3 It is claimed segregation is successful yet farmers are signing CBH delivery dockets to guarantee their non-GM crops have no GM contamination and they accept liability for any economic loss that may be caused by unwanted contamination (copy supplied). Zero tolerance of GM is a reality, yet industry is well aware that GM contamination is inevitable if commercially released.

6.4 As the crop management plans were permitted to be self-managed by the GM industry, a threshold of 0.9% was established. The reason for this threshold has no market basis but puts unfair liability on to non-GM farmers. “The rationale for establishing thresholds is because inadvertent presence is considered unavoidable.” (pg 33). The only reason for promoting a tolerance level was to claim coexistence was possible when it was not and Government institutes promote this deliberate misleading conclusion.

6.5 It is unreasonable to expect non-GM farmers to be liable for market loss caused by contamination that is unavoidable. Leaving coexistence plans to self-management by the GM industry has clearly been inadequate at addressing industry management issues.

7. GM Canola Market Penalty

7.1 Although industry and government supporting GM canola prior to release claimed there was no commercial advantage associated with non-GM, the commercial release of GM canola has proven a market penalty associated with GM canola of approx. $50/tonne. Your report mistakenly denies this. Contamination has led to additional costs to farmers and industry. The Marsh vs Baxter case has identified the Government misconception that Common Law would compensate for losses to organic and non-GM farmers.

8. Major Future Economic Risk - GM Wheat

8.1 The reason there is no GM wheat grown commercially anywhere in the world, is because market research has shown no market in the world will purchase GM wheat. GM wheat fails to escape compulsory labelling as the transgene is in the food that is eaten and, unlike soy, corn, cotton and canola, is primarily a food for human consumption rather than stock.

8.2 AWB research showed markets would refuse to purchase wheat from an area that commercially grows GM wheat as the process of segregation and testing is too expensive and too difficult to achieve to the zero tolerance required by markets. It is unreasonable for WA researchers to push the commercial release of GM under the misunderstanding they will profit from the commercial release of GM wheat. In effect, if GM wheat were commercially released in WA as proposed by the research sector, WA risks losing all wheat markets.

8.3 The risk to our wheat market should not be underestimated. Even GM wheat trials are a risk as the OGTR intention is to ensure contamination from trial sites is minimised, not prevented. The most recent cases of contamination reported from GM wheat trials are:
In July 2016, South Korea rejected feed wheat from Argentina as unapproved GM wheat was detected. It needs to be answered why the ship holding wheat from Australian competitors was turned back to Gladstone, Australia.
http://reuters.com/article/idUSKCN1060HD
In August 2016: Japan & South Korea suspending import of some US wheat products after GM wheat was found on a Washington State farm:
http://www.stockandland.com.au/story/4071025/gm-wheat-detection-puts-partial-freeze-on-us-exports/?cs=4598

8.4 According to the WA Department of Agriculture, wheat makes up 70% of WA's annual grain production and generates A $2-3 billion for the State economy each year. GM wheat is a major economic risk and can not be ignored by refusing risk management and fair compensation to those adversely affected. Removing moratoria legislation with the role to assess economics removes the ability to protect economics. If GM wheat is commercially released, the net cost to the community will be significant. Commercial release of GM wheat in WA alone could immediately jeopardise a $2-3 million industry and the associated businesses that rely on this industry. Contrary to the promotions of the GM industry and Governments, denying GM crops through State moratoria will assist the agricultural industry to remain competitive internationally.

8.5 GM wheat research is continued with an aim to profit from farmers, not for farmers, and it has serious implications to the wheat industry. For government to prioritise government profits ahead of a viable agricultural industry by placing the wheat industry at serious risk is undemocratic, unconstitutional and unacceptable to the public. To deny economic risk assessment by removing the ability for States to assess economics is nothing short of negligent, and government must be held accountable.

8.6 It is unreasonable to expect non-GM farmers to accept liability for such a negligent decision. If the GM industry were to be liable for economic losses caused by their product, they would not consider commercially releasing GM wheat as risks can not be managed. A strict liability legislation is urgently required.

9. Anti-Competitive Practices Promoted by Government

9.1 Anti-competitive practise has been promoted as a result of government support for industry self-management by GM license owners. It is disturbing that a committee to deal with anti-competitive practises in agriculture has been nominated as these committee members are very supportive of GM and may act in the best interests of the GM industry rather than the general public.

9.2 Under our existing law, Monsanto is currently rewarded for contamination as contamination is inevitable. Under UPOV 91 International Treaty and the End Point Royalty system, Monsanto has the ability to deduct their user fee from every farmer's income if a positive test for as low as 0.01% is registered. While US and Canadian farmers are to be sued if contamination is

found, Australia has a similar End Point Royalty system as Brazil and Argentina, and all farmers are charged a GM user fee unless the farmer can prove there is no GM present. In WA, Cooperative Bulk Handling (CBH) has a contract with Monsanto to test all canola seed and report any positive testing. It is left to Monsanto's discretion to self-manage when they wish to deduct their user fee from contaminated consignments or from all consignments unless proven a zero contamination. Permitting this degree of self-management where a company is permitted to deduct a fee from those not wishing to use their product is clearly anti-competitive and must be prevented.

9.3 Under the contracts between the GM growers and Monsanto, Monsanto owns the GM crop yet exempts itself from liability by ensuring the GM farmers accepts all liability for health, environmental or economic risk. The Australian government has accepted the responsibility to assess health and environmental risks yet the GM farmer, not Monsanto, will be liable if Monsanto's own research is inadequate. Unlike standard business obligations, Monsanto has exempted themselves from responsibility if their product is a health, environmental or economic risk to others.

9.4 Monsanto appoints advisors to advise the farmer how to farm the patented crop, what products to use and who to sell it to. In effect, by adding a gene to a non-GM variety, Monsanto has control of upstream and downstream food supply, and can effectively promote anti-competitive alliances with industry participants.

9.5 Contamination and economic loss is considered inevitable but common law has revealed that the non-GM farmer has no legal redress for this unfair liability passed onto Monsanto's opposition. In no other industry is a company permitted to pass unfair costs and liabilities to oppositions.

9.6 If Monsanto and plant breeding alliances ensure a GM gene is added to all varieties produced through alliances with plant breeders, farmers will be denied the ability to grow non-GM crops. Therefore an American company will decide the distribution of Australian food produced and the contract clearly states disputes are to be dealt with by American law, not Australian law. If food is short in the future, Australia will have no legal right to access food grown in Australia as it will be owned and controlled by an American multinational. This is clearly a food security issue and explains why America is promoting GM crops so forcefully.

10. Strict Liability

10.1 Contrary to the reports quoted claim by Commissioner Paul Lindwall, bans on GM crops do support public interests as they are supported by well documented evidence of risks an**d** inability to manage these risks. The existing regulation surrounding GM crops are well in line with the reports concern that regulatory impact assessments (RIAs) are disproportionally influenced by GM industry stakeholders. Unfortunately, the regulatory process has failed as industry players have been permitted to primarily self-manage risks and benefit financially from the inability to manage risks. The unfair liability issues imposed on those not wishing to adopt this patented technology is unrealistic.

10.2 It is not acceptable that the GM proponents promote coexistence as possible yet expect the non-GM farmers to be liable for any economic loss that it causes. If the GM industry truly believed their myth that coexistence was possible, accepting liability would not be an issue for them. If the liability rested with the GM proponents, rather than the non-GM farmers, the GM industry would be far more reluctant to promote their GM product in a way that will cause economic loss to others. Non-GM farmers should not be denied the right to maintain optimum competitiveness on an international scale.

11. Solutions

As a solution to manage the risks of GM crops, the legislation required is:

1. To ensure a strict liability legislation is introduced to ensure the GM industry, not the non-GM industry, be liable for all economic loss caused by GM crops.
2. To hold a Senate enquiry to expose all government and industry agreements, commitments and financial incentives that are behind unreasonable support to promote GM crops under industry self-management.
3. To sever government alliances with GM patent owners, or prevent government intervention to unrealistically support their interests over community interests. If this is considered unrealistic, farmer funded GRDC contributions must be stopped or managed in a way where farmers own a share of the intellectual property they pay for rather than being forced to subsidise companies such as Monsanto.
4. To retain and strengthen legislation to assess the real risk and the risk management required to deal with all health, environmental and economic risk associated with GM crops.
5. To enforce compliance with risk management conditions of license.

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