NASAA WA's

SUBMISSION

TO THE PRODUCTIVITY COMMISSION REGULATION OF AUSTRALIAN AGRICULTURE

BACKGROUND

NASAA WA is an independently affiliated organic organization in Western Australia representing its members and certified organic operators.
This organization has witnessed firsthand the enormous impacts and harm GM canola contamination can have on its operators {Mr Marsh}. The failure of Governments and Regulator's to put in place appropriate regulation around the use and containment of this technology is of a serious concern. The Supreme Court of Western Australia ruled there is Nil Legislation regarding GMO's in Australia. **Ref: Marsh-v-Baxter [2013] WASC 209.**
NASAA WA has approached its operators and asked if there was support to change the organic industries nil tolerance towards GMO's, in organic production or by their customers. There was no support to change the nil tolerance.

SUBMISSION SUMMARY

At two levels:

1 **Process**
2 **Content**

Process

- We believe from the materials presented that the Commissioners Mr Lindwall and Mr Baxter as authorised authors and responsible parties of the Overview and Draft Report July 2016, demonstrate a level of preconceived bias that is contrary to the fair, open and independent

workings of the Productivity Commission as defined in the Productivity Act 1998 .

- Material statements made by Mr Lindwall and Mr Baxter and the manner of their presentation bring the Productivity Commission function, objectivity and integrity into question.
- Principally the statements made in regard to GMO technology are a particular concern to our group, its members and operators.
- The Commissioners 'Pro GMO' statements and authoritive assertions towards its management suggest neither independent, transparency nor community wide considerations relating to the impact of GM technology on Australian Agricultural systems, the domestic and international Food supply chain from producer to consumer, have been properly considered.

For example the following statements highlighted in bold italic demonstrate our concerns.

Key Points 3rd dot point pg 2 Overview

Some regulations lack a sound policy justification and should be removed. Examples include restrictions on the use of land held under pastoral lease arrangements, ***state bans on cultivating genetically modified crops***, recent changes to tighten foreign investment review requirements for the agricultural sector, barriers to entry for foreign shipping providers, ***mandatory labelling of genetically modified foods*****,** and statutory marketing legislation relating to rice in New South Wales and sugar in Queensland.

Furthermore in Draft Finding 6.1 point - 2

- ***The successful coexistence of GM and non-GM crops is possible and has been demonstrated both in Australia and overseas.*** This means that if there is any market access or trade benefits including price premiums for non-GM products, they would be achieved regardless of whether GM crops are in the market.

The Pro GMO rhetoric clearly warrants concern as we believe such statements made are extremely prejudicial and do not appear to be a result of independent and considered inquiry.

Content

We wish to make comment on the following matters:

- Non GMO food and fibre production including Organic, Bio-dynamic, Biological, GM Free and Non GM conventional systems and their markets are sensitive to traceable amounts of non product specific traits and/or material contaminants such as GMO material, Chemical Residues, etc.

For example a recent shipment of Feed grain to South Korea from Argentina was rejected by the South Korean authorities in response to a detectable and unacceptable amount of GMO contamination. You will note that this ship was then coming to Australia. It must be considered what would happen if this ship was not adequately cleaned down and subsequently loaded with Australian wheat and then rejected if traces of GMO were detected. This could result in Australian grain growers becoming liable for considerable losses.

Reference - http://www.reuters.com/article/us-southkorea-wheat-argentina-idUSKCN1060HD

- Either inadvertent or direct, such contamination is evidence that the stated checks and balances of a self-regulating industry to maintain segregation of Organic , GM Free, Non GMO and GMO products are a cost and liability burden placed unfairly on all farmers rather than directly met by the GM technology patent owners and providers where this should be their responsibility.
- Prudent regulation such as the WA Genetically Modified Crops Free Areas Act 2003 serves the purpose to regulate the controlled release of GMO technology in order to maintain a pre cautionary approach to the introduction of such new technology.
- There is no evidence in WA that the existence of the legislation is reducing WA Farmers productivity and is either 'excessive' or unnecessarily burdensome to warrant any change other than change considered and supported at a time when the people of Western Australia as a whole and not by Government, Corporations, and industry groups with vested and/or commercial conflicts of interest.

Reference – WA Government, DAFWA and Monsanto Intergrain Partnership

- We therefore feel that the statement made by the Commissioners at Points 3rd dot point - pg. 2 – Overview in supporting GMO's is unfounded or poorly evidenced. 4
- To the contrary in Western Australia there was a clear policy position and justification to regulate the introduction of any newly promoted and potentially virulent element – especially GMO's that directly threaten the status quo and established markets of the prevailing industries.

Reference: INFORMATION PAPER ON GENETICALLY MODIFIED CANOLA – May 2009

Reference: DAFWA – 2009 GM CANOLA TRIALS PROGRAM, pages 22 to 23

- This position is also stated by the SA Government in their reasons for maintaining a moratorium is clearly demonstratively justifiable.
- The Reports justification and confidence that Non GMO and GMO Production systems can 'Co-exist' is wholly based on vested industry reference to supply line 'Segregation' capacity. This is very poor logic and appears a position 'cherry picked' from submissions despite wide spread evidence to the contrary.
- Subsequent contamination 'events' such as noted by the Draft report Box 6.7 Marsh – Baxter case in the WA Supreme Court and D West observations CBH contamination Box 6.8 are clear evidence to the contrary that vested interest segregation capability statements referenced to in the report have no basis, let alone be evidence of 'coexistence'.
- Furthermore it is worth noting that the referenced submissions are hardly representative, posted out of self-interest and/or commercial conflicts of interest for example –
- The WA Government with a clear conflict of interest as a commercial partner in the technology breeding program through Intergrain.
- The WA Pastoralist and Graziers Association a small farming organization known for its Pro – GM Activism and ideologically driven views. The PGA only represents a small number of farmers but get large corporate sponsorships.
- CropLife clearly a Biotech and Chemical industry organization with clear conflicts of interest in the outcome of having no regulation impacting on its member's business activities and who still emphatically assert that

there has been “Zero” contamination. This organization does not take responsibility for the contamination and harm GM canola has done to the Marsh’s in WA.

- It needs to be further stressed that the justification for the ‘coexistence’ statement from a WA context as referenced by the WA Government and PGA is based solely on the limited experience with GM Canola.
- It is worth noting that GM Canola is small crop volume wise compared to other grains like wheat yet the Government and Grains industry has failed to maintain credible GM segregation integrity upon its introduction.

Reference: DAFWA – 2009 GM CANOLA TRIALS PROGRAM

Reference: Marsh v Baxter -Supreme Court Western Australia

- The proposal to introduce further GM crops such as GM Wheat, which is a major crop by volume, will without doubt be impossible to segregate, albeit at great cost to the industry, both non GM supplier and GM supplier alike.

Reference: NO APPETITE FOR AUSTRALIAN GM WHEAT – April 2013

- ***Therefore our group is very critical that the context of the recommendation in finding 6.1 is extremely short-sighted and very naïve if it is to suggest that the current segregation capacity is proof that coexistence is achievable.***
- In our opinion **‘coexistence’** goes beyond end point product placement and the Findings reference that trade has occurred with Non and GM product is little justification for the statement and shows a total lack of regard to the broader productivity imposts of managing conflicting enterprises over the whole industry. Especially so for those who are trying to meet specific non gm market demand
- Furthermore, we wish to state that the Draft Finding 6.1 as included below merely states the current status quo of the current regulatory process at a Commonwealth level but fails to acknowledge important matters and considerations such as markets including issue of Containment, Co-Existence, Liability and Consumer Choice - the people’s

considerations. These matters are a primary constitutional function of State Governments and therefore have an essential place relating to GM technology and its release.

- To this end the current regulatory mechanism of the WA Genetically Modified Crops Free Areas Act 2003 is appropriate in that context.
- Suggestions that the States abdicate nationally all responsibility of consideration to GMO regulation is a potential direct threat to WA Agricultural productivity, objectives and sovereignty and should be removed from the draft.
- Introduction of GM technology is relatively new and warrants a precautionary approach. The external threat of GM technology needs further analysis and therefore warrants further investigation and analysis than the report suggests has taken place.

CONCLUSION

It is our understanding that the Productivity Commission Regulation of Australian Agriculture is not dealing with the health and safety of GM Crops as that is the responsibility of other regulatory bodies but is dealing with market regulation and access. This also involves the rights of consumer choice.

It has widely been proven around the world and in Australia that GM crops cause GMO contamination and unacceptable risk of market loss, harm and liability of conventional cropping, Organic, GM Free and Non-GM farmers.

The Productivity Commission Regulation of Australian Agriculture must acknowledge that in a democratic society like Australia, farmers and businesses have a basic right to choose lawfully, how they farm their land or operate their business be that Organic, GM Free or Non GM and including GM for that matter without being affected and/or impacted on

by their neighbour's activities especially with new patented technologies including GMO's.

A good example of this is the fact a farmer has a duty of care and regulatory requirements to contain his livestock, fires, chemicals, etc. If for example a farmers livestock escape and cause any damage in any way to a neighbour the owner is liable yet those livestock are deemed safe for human consumption and GMO's should be treated no different.

In regard to Organic Standards and Certification Processes or any industry standards or requirements for that matter, which are in place to assure and guarantee to the customer that what they purchase meets their requirement. The continue attack on the Organic farmers, the Organic Industry and their standards by the Biotech - Chemical industry and Pro GM Lobby which have conflicts of interest is clearly **Discriminatory and Anti Competitive**. Furthermore, both the Supreme and Appeals Courts in Western Australia ruled the Australian Organic standards are lawful, so the matter regarding organic standards has been resolved.

The fact that the pro GM industry are attempting to force or impose on Organic, Biodynamic, GM Free and Non GM conventional farmers a level of GM contamination disguised as adventurous presence is further evidence that the pro GM industry understand that GMO's released into the environment cannot be contained or segregated.

The Trial Judge in Marsh V Baxter ruled that there is Nil legislation after GM crops are released into the environment. There are some important points in this case –

1) GM Industry self regulation has totally failed and as the 2009 GM Canola Trials Program demonstrated at page 22 last paragraph where swathed GM canola blew onto a neighbouring property, this same event happened to Marsh the very first year GM canola was commercially released in Western Australia at great cost to Marsh. It is arguable that both the WA State Government and DAFWA were **derelict and negligent** in their duty of care to Marsh or any other farmer and/or business contaminated by GM canola. Clearly the Australian courts to date failed to deal with this liability, indeed the WA Appeal Court was divided on this matter. Given also that the WA State Government and DAFWA released public statements that GM canola can be segregated from

paddock to plate is in its self **deceptive and misleading** especially when their own trials proved as fact, GM canola could not segregated or contained from contaminating neighbouring properties.

2) There is also another important point regarding industry self regulation again in the Marsh v Baxter case, the GM industry and Pro GM lobby with all its resources backed Baxter. In the end it was admitted by Monsanto publicly they had indeed indemnified Baxter though financial assistance for Baxter was publicly denied by Monsanto and the pro GM lobby. **This is arguably deceptive and misleading conduct, interference in natural justice and anti competitive behaviour.**

NASAA WA hopes the Productivity Commission Regulation of Australian Agriculture considers this submission and others that demonstrate the various problems and risks with the introduction of GM Crops carefully and equably.

Thank You

Extract

DRAFT FINDING 6.1

There is no economic or health and safety justification for banning the cultivation of genetically modified (GM) organisms.

- The Office of the Gene Technology Regulator (OGTR) and Food Standards Australia New Zealand (FSANZ) assess GM organisms and foods for their effect on health, safety and the environment. Scientific evidence indicates that GM organisms and foods approved by the OGTR and FSANZ are no less safe than their non-GM counterparts.

The successful coexistence of GM and non-GM crops is possible and has been demonstrated both in Australia and overseas. This means that if there is any market access or trade benefits (including price premiums for non-GM products), they would be achieved regardless of whether GM crops were in the market.

DRAFT RECOMMENDATION 6.1

The New South Wales, South Australian, Western Australian, Tasmanian and Australian Capital Territory governments should remove their moratoria (prohibitions) on genetically modified crops. All state and territory governments should also repeal the legislation that imposes or gives them powers to impose moratoria on the cultivation of genetically modified organisms by 2018.

The removal of the moratoria and repeal of the relevant legislation should be accompanied by the provision of accurate information about the risks and benefits to the Australian community from genetic modification technologies. State and territory governments, the Office of the Gene Technology Regulator and Food Standards Australia New Zealand should actively coordinate the provision of this information.