

Submission to the Office of Gene Technology Regulator (OGTR) on proposed changes to the OGTR regulation which would allow a wider range of GMOs to be released without adequate testing

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Legal Implications of your decisions and regulation

Why the OGTR members and officers should act with great caution and apply the precautionary principle in and over the Gene Technology Act and the Food standards Australia New Zealand Act.

1. At risk and at stake is Australian organic and non GM agriculture

You should be aware that an organic farmer in Western Australia, Steve Marsh – has an outstanding liability for around \$1,000,000 for seeking to redress losses caused by GMO pollution to his farm through the common law in the court system. That case is often incorrectly cited as authority for GM farming and crops being found to be safe. In fact, it was never decided in that case, as it was not an issue. Not because GM food, farming and crops are safe, but because it is simply beyond the resources of private individuals like farmers to finance a case with the time and expense that would be required to assess the evidence and decide this issue.

GM pollution is not tolerated at any level in organic farming, and extremely low levels are tolerated in non GM conventional farming. Most conventional farmers in WA do not want to farm GMOs and non GM conventional crops such as canola attract premiums. If the OGTR allows any wider release of GMOs, it will certainly cause more damage to the fast growing Australian Organic food sector, as well as damage to the wider non GMO agricultural sector. The beginning of that damage is already seen with GM pollution, but the problem is potentially much bigger. Widespread GM pollution over time may never be cleaned up and may result in Australian agriculture losing the ability to ever be and sell non GM products. This is

not a joke – it has happened in Canada with their canola industry (see 2 below). Canadian Organic farmers and conventional farmers who want to grow non GM canola, cannot do so due to the widespread pollution of the GM genes that were approved for release and now contaminate canola across Canada. US farmers have stopped wheat becoming a GM crop there because they have seen what has happened with the GM crops already released. The OGTR should serve the long term interests of Australian agriculture by stopping or drastically reducing and controlling GM releases.

2. GM is proven to pollute non GM.

The Canadian experience is proof for all the world to see and know that GM genes have polluted across canola seed and plant stocks in that country, and there is no reason why this will not happen in Australia. In Western Australia employees of Co-Operative Bulk Handling have admitted GM contamination across canola seed over time is inevitable. The vice president of the Canadian Farmers Union came to Western Australia to warn us about this from his own experience as a non GM conventional canola seed grower.

There are also studies that have shown that GM genes have polluted non GM corn varieties across North and Central USA. If the OGTR approves the release of a polluting GMO, who will recall this contamination? Who will be held responsible? Who will be liable for the economic and other damage? In the early years of Australian agriculture, rabbits were unwisely released, along with many weeds that have caused billions of dollars of damage to this nation. The decision to release GM genes now is a similar cross road. Genes cannot be contained because they are carried in seeds and pollen on the wind and with animals and human activity. There will be even less control over any potential release of GM genes into insects, animals, bacteria and viruses. The wind and weather cannot be controlled.

Steve Marsh's neighbor grew GM canola lawfully and still it polluted his neighbor due to storms, wind and floods. This and the already many incidents of GM pollution in WA and around Australia and the world, highlight the cavalier carelessness and lack of responsibility of the GM industry for the pollution its products have caused. GM canola has already polluted roadways around WA and non target farms. With this track record and the overseas evidence of pollution, there should be no further release

of GMOs especially into new (to GM) crops, animals or bacteria. It would be very unwise to release any more GMOs of any kind, until it is proven that they can be contained and will not pollute into non GM life forms.

3. GMOs have not been proven to be “safe”

It is well known and beyond dispute that GMOs have never been proven to be safe. First they were never approved with long term feed trials. GMOs have been approved across the world with only 90 day feed trials. This is an almost irrelevant amount of time to assess whether a new food that has not existed in that form in the 10,000 years of the duration of agriculture on Earth, is safe to eat over the term of a human lifetime. Long term feeding studies that have been done have shown or suggested that the real problems with GM foods show up after more than 180 days. Comprehensive long term feeding trials are only just being started now (2 years plus testing) and these will give a more accurate indication of the dangers or safety of GM food.

Protecting the public and guaranteeing the safety of Australia’s food supply from risks due to GM should be the number one priority for the OGTR. You will be or should be well aware of growing health and safety issues and concerns about GM foods all over the world. To allow any further releases of forms of GM foods, or to allow any unproven GM technologies to be released, is risking serious health and safety issues and consequences for humans and the environment.

4. The proponents of GM have a long track record of being wrong when saying their products are “safe”, and do not deserve the trust of the OGTR

As you should be aware, the main proponent companies behind GM agriculture have a history of selling products including DDT, PCBs, Dioxins, (and Agent Orange,) and assuring the public that those products were safe even after they have known they were not. History shows companies like Monsanto, the main GM proponent, cannot be relied upon. Monsanto has also been found to have falsified test data. These companies also do nearly all the scientific research to establish the safety of their products, which have usually been approved without any independent testing. Surely it would be extremely unwise for the OGTR to put any credibility in the undertakings of the GM proponents, that their current products – GM food and crops – are safe.

Please consider whether as members of the OGTR you would be prepared to sign personal guarantees on your own behalf, putting your own assets on the line in the event of GM technologies you allow to be released being found to be unsafe. If you have any safety concerns at all, then you should not be approving the release of the GM technology involved. I believe there are enough problems indicated around the world with uncontrolled GM pollution and mounting health concerns with GM foods, that potential personal liability for members and officers of the OGTR may very well be an issue in the future. When GMO's were first approved, there was no evidence as there is now, of the pollution and health concerns. I believe that in the common law of negligence, it would be held that a "reasonable man" would know of the evidence of these problems and be held to account if they are ignored. The future actions of the OGTR will one day be scrutinized in this light. On that day the officers of the OGTR will not be able to say that "they did not know", because the evidence including many scientific studies, is now available.

5. Strict liability should be applied

I have met farmers who have been left with the costs of damage from chemicals like DDT affecting their land. No responsibility was taken by the companies like Monsanto that made and sold the chemical, nor by the regulators or the recommending "experts" like the various agriculture departments. I am concerned that through the OGTR the Australian taxpayer and Government is underwriting the already emerging risks of the new and unproven GM technology. Why should the taxpayer be doing this? You are funded by the government therefore the taxpayers, and you owe it to them to protect the wider non GMO agricultural industry, the farmers and the consumers.

I am also concerned that the GM industry has pulled a ruse on the Australian Government that as GMO releases are approved in Australia by the OGTR, the government/Australian people will be held liable for the pollution and health/safety consequences. This is very convenient for the GM industry proponents with a long history of broken promises that its products are safe. Wisdom demands that the only way any GMO should ever be approved for release, is if the proponent company is held to strict liability for any damage the product causes. If these products are so safe and containable, let the proponent industries who stand to profit from their release, be strictly liable if it emerges that they were not "safe". The government of Australia, consumers and consumer groups, farmers and farming groups, should not have to bear the cost of proving negligence.

Evidence of damage which we are assured will not happen, should be enough.

6. New GM Techniques

“New plant breeding GM techniques” or “gene editing” are still unproven and as the names indicate, they are new. My understanding is that reviews commissioned by the Austrian and Norwegian governments concluded that not enough is known about the risks posed by these new GM techniques. They recommended that products derived from them require comprehensive case-by-case risk assessments. What we need is more regulation and higher safety standards from you, not less.

Therefore before release or commercialization any foods or organisms created with these techniques should all be comprehensively tested for risk. In the case of food this should be 2 year feeding trials, as it should be for all GM foods. In the case of the dangers of the potential for widespread pollution this should also be properly assessed before release.

David Suzuki in one of his books wrote of a case in the US of a soil bacteria that was genetically modified to break down straw left as crop residue. The GM bacteria was tremendously effective to break down the crop residues, however, scientists noticed that all green life near the GM bacteria died. David Suzuki, as a former Genetic Engineer himself, was concerned that this GM bacteria had the potential to wipe out plant and human life and that such organisms could be created with few controls and limits.

Please realise that the taxpayers who fund the OGTR, are relying on you to protect us from these kinds of potentially life and health threatening risks. GMOs have not ever yet been proven to have brought any consistent lasting gains or advantages that would make it worthwhile in any way to expose people and our food to the potential risks. The reputation of the OGTR is that it is working with the GM companies to help them get GMOs commercialized. I suggest that your first loyalty should be to the Australian people, to protect and safeguard them and this nation. Better to be cautious and wait for safety to be proven, than unleash a future GM equivalent of the rabbit and cane toads plagues on this nation. Your responsibility is greater than perhaps you realise, and people will hold you accountable if you fail to protect Australia and Australians through lack of great care and caution.

7. Compensation for damage should be considered

It has already been suggested that strict liability be applied to any damage caused by GM products. I have witnessed the devastation to one farmer here in WA who attempted to get compensation for the damage GM pollution caused his business. He was left a million dollars out of pocket. Insurance companies are professional assessors of risk and they do not insure for GM damage. Why should farmers and the public be exposed to a virtually uninsurable risk? Is the OGTR more able than the insurance industry to assess risk? Perhaps the fact that insurers have to pay out any future claims for GM damage, makes them refuse to insure these risks because it will cost them.

At present farmers and the public are exposed to risk, and the court system is too expensive for them to take on the huge job of proving GM to be unsafe. It took 30 years of campaigning and legal cases to prove smoking causes cancer, a fact we all take for granted now. What is needed in the case of GM products already commercialized and proposed to be so, are mechanisms for the GM industry to compensate those who suffer GM losses.

Thanks

Thank you to the OGTR for this review and for considering this submission. I trust that you will exercise great caution before allowing any release of GMOs made with old or new technologies, and especially in any crops, animals or life forms which have not been the subject already of a GM release. You are all that stands between this nation and potentially massive risks as outlined above. The people of Australia are relying on you to be strong in your actions to protect them.