

*Standing Committee on Environment and Public Affairs — Forty-ninth Report —  
“Mechanisms for compensation for economic loss to farmers in Western Australia  
caused by contamination by genetically modified material” — Motion*

Resumed from 15 May on the following motion moved by Hon Matthew Swinbourn —

That the report be noted.

**Hon DIANE EVERS:** As things evolve and move along in the field of study of what is now referred to as synthetic biology, a lot of changes are taking place. It is not just genetic modification; a range of things are happening.

This committee report states that there is not enough evidence of a problem so we are not going to do anything is just not good enough. We need to look at this issue, how it is affecting people and the broader issues it will bring in the future.

Several members interjected.

**The CHAIR:** Order, members! Hon Diane Evers is addressing the Chair on a very important question. I have noted that Hon Matthew Swinbourn and Hon Samantha Rowe are seeking the call, and they will get it in due course. For now, it is Hon Diane Evers.

**Hon DIANE EVERS:** This issue does not require an all or nothing response; it is a bigger and broader issue. We are looking at the impact on farmers. We have seen that there is an impact and people have been affected detrimentally by GM crops, yet they have no recourse other than the courts. It is a very expensive and drawn-out process in which farmers are very likely to be hounded or bullied by organisations and enterprises that are larger than them and have more money, resources and access to the things that they need in order to win the case.

We have to be aware that these changes are not in the past, but what is coming in the future. We need to look more deeply into this industry to work out what we are going to do about it. As it is, one of the issues quite strongly related to GM crops is glyphosate use. We are seeing glyphosate use banned in one jurisdiction after another. Where it is not banned, or even in cases when it is, we are seeing court cases about the health aspects of glyphosate. If we look at genetically modified canola, putting aside some of the other GM crops, we see that it depends on more glyphosate being used more often. Glyphosate is spreading further through our environment.

I would like to see this report taken for what it is: a look at the current situation in which we have no mechanisms in place for farmers who are hurt to find some sort of recompense or way of addressing these issues. We cannot rely on over-the-fence discussions of farmer to farmer because the issue is bigger than that. We might ask about farmers who have been impacted on by their neighbour's canola coming across the fence, but we are also transporting canola along roads. We are transporting canola in large trucks that are not airtight or “canola-tight”. Sometimes trucks crash and overturn and the canola is left along the roadside to be strewn from one end to the other by coming traffic.

This is affecting councils as well. Councils that rely on glyphosate to control roadside weeds are no longer able to do that because glyphosate can no longer control the weedy canola coming up. New research is coming in that shows that with all this continued strong and intense use of glyphosate we are getting more and more glyphosate-tolerant weeds. This is another issue that has been brought about by the initial introduction of GM canola. Whose fault will that be? I would like to say it is still back on whomever allowed that canola to be grown in this state. How will we address it? It is not going to be addressed by those people. It will be addressed by the councils, farmers and other individuals who will have to make up for it.

I know that my option is to sit and wait until the majority of, or all, farmers realise that GM canola is not the godsend that they thought it was going to be. I have not checked how much was planted this year, but I guess it is probably less than last year, because farmers are realising that it is unnecessary. Many farmers are choosing more regenerative farming of their soil. Rather than putting more chemicals and synthetic additives on their soil, they are realising that there are other ways to farm, even using compost. It might seem old-fashioned, yet it works and makes our soil healthier and more absorbent of water and other nutrients.

I cannot say how disappointed I am that this report did not have an outcome that will allow farmers impacted on negatively by GM canola to have another option—to have mediation, arbitration or some sort of court to go to in good faith to work out a way to manage the situation. Currently, we have not put in place mechanisms to manage GM crops. It could be some sort of alternative dispute resolution process for not only farmers affected by GM crops, but also other issues that might happen, such as the spread of other weeds or stock getting out and onto somebody else's property. It is not that hard to say, “Hey, this might be something we should look into. Maybe we could check to see whether an alternative dispute resolution service might be a useful idea for our farmers and our farming communities.” We could base the service on the Family Court so it is not a who wins, who loses process, but a place to work out people's differences and find a solution to the problem rather than just monitoring the issue.

Multi-peril insurance is another possibility. We know that insurance companies are waking up to climate change. They are starting to realise that there are areas that are not flood prone, but are going to get flooded, and the premiums are reflecting that. Multi-peril insurance might be the way to do it. That insurance might somehow have to be funded by the people who have the GM crops that could possibly damage someone else's crops. It could be that all farmers are in it together. Of course, collectively, insurance is one of those great unacknowledged socialist activities, I suppose, whereby everyone is involved by buying their share of it. With a collective group, it makes it cheaper for everyone. That is something else we could look at. It could be looked at from a federal perspective and encouraged more widely than only in WA. There are options that we could look at.

I suppose the scope of this report maybe did not go far enough, and the committee looked only at the current issue and was able to say that only one farmer has taken anything to court and therefore there is not enough evidence to demonstrate that we need to go further. I think this is just the beginning and we need to take this further and to look at synthetic biology technology because things are changing. Again, we are sitting here thinking that everything is just as it has been, but that is not the case. Things are changing and we are in a position to get information and resources together to explore the impact of GM crops. We can bring in the scientists and get some deliberative process going. We can bring in the stakeholders. It is not just the farmers, although they are a big part of it; we should bring in the other stakeholders. We should bring in people who sell the chemicals and let them hear what is happening. Let us ask them questions to find out what they are doing to protect farmers who do not want GM canola getting onto their land. We could take the process a bit wider and look at what we can do rather than just saying, "No, we're not going to do anything this time because we don't see there's a problem." Even if we do not see the problem now, the problem is coming, and I really hope that we are able to address it in this chamber rather than waiting for individual farmers to bear the brunt of the damage that might occur. Thank you.

**Hon DARREN WEST:** I also want to make some comments on the Standing Committee on Environment and Public Affairs' report "Mechanisms for Compensation for Economic Loss to Farmers in Western Australia Caused by Contamination by Genetically Modified Material". I thank the members of the committee for their good work on the report, which essentially came about as a result of a petition arising from the very unfortunate case of *Marsh v Baxter*. For members who may not have been around or may not be aware of this, the former government chose to allow the commercial production of genetically modified material in Western Australia. That allowed the commercial production of genetically modified crops. However, it failed to put in checks and balances that could treat incursions of genetically modified material onto an organic property, which I accept is and will remain a quite rare occurrence, in a similar manner to an escaping fire, chemical over-spray or escaping livestock, all of which allow for some level of compensation to be paid to the affected neighbour by the person who over-sprayed, allowed the fire to escape or let the livestock escape. I think members would find that those events happen and that goes on quite regularly around the state, and that these things can generally be worked out between neighbours. They can meet at the fence, look at the affected crop, do a rough calculation of what that affected area might have been able to produce, come up with a monetary value and make the compensation payment. Sometimes there is not even compensation. There is just acknowledgement of the facts, because one day things might be the other around and we all have to get along.

*Marsh v Baxter* was unique in that the Marsh property lost organic certification and the Marsh family felt that it was due some compensation. It became a landmark case, which played out in the courts over several years and ended up, I understand, in the High Court. It was a very expensive exercise of not only high monetary cost but also high emotive cost to the community in the Kojonup area, which was divided. The men were childhood friends who had travelled on the same school bus and were next-door neighbours. It is my view that a lack of government oversight caused a situation that might have been avoided if there had not been an approach of throwing open the GM door at all costs.

The committee has made a number of findings, none of which particularly support my view. I believe there was a great rush by the previous government into an area in which we might have been a bit more cautious. In the dying days of the Barnett government, it ceded the capacity to determine which GM crops were grown in Western Australia from the elected member who was the sworn government Minister for Agriculture and Food to somebody that nobody knew. When I asked the question during the debate, nobody on the then government benches knew the name of the Gene Technology Regulator, which I thought was significant. There was a lack of not only oversight over the introduction of genetically modified crops into Western Australia by the Barnett government, but also care. Due diligence should have been done about who we were ceding that important authority to. I think that all the issues that came out of the *Marsh v Baxter* case might have been avoided if a competent government had been in place at the time.

Genetically modified crops were the great white hope. There was a view in the community that they would solve all the problems with resistant weeds that we faced in agriculture. It has proved to be a bit of a furphy. The number of genetically modified crop hectares planted in Western Australia is already decreasing dramatically. There are a few reasons for this. One reason is that the market is not particularly impressed with GM food. There is

a significant discount on selling GM grain as opposed to non-GM grain. The seed is particularly expensive because it can come from only one supplier. It has a terminator gene, so farmers cannot keep their own seeds. They have to buy new seeds every year. As a rule of thumb, the yields are a little smaller. For those reasons, farmers are turning their backs on genetically modified crops in favour of other methods of controlling weeds, particularly ryegrass weeds in the southern areas. There will always be demand for Roundup-ready canola as a tool in farming, but I think that demand will continue to decline, especially now that there are questions about the use and effects of glyphosate. Glyphosate is a very important tool in agriculture, especially in Western Australia. We use it as a knockdown. When the rains come and the first batch of weeds grow, instead of cultivating them with machines and using a lot of fuel and expense, we can simply spray them with glyphosate, kill the weeds, then use modern seeding techniques to plant the crop among the dying weed burden and create a nice and clean seedbed. The use of genetically modified crops opens up a new range of uses for glyphosate, which includes spraying it on food crops. I think we are trekking a dangerous path there. We are already seeing increased resistance to glyphosate in ryegrass populations. I think that allowing additional uses of glyphosate, with rules about how it can be used in rotations that nobody ever polices, only aids and abets ryegrass resistance to glyphosate. I do not know how successful the introduction of genetically modified canola into Western Australia has been. Some farmers have certainly benefited from it, but I do not think it is the big answer for the long-term future of agriculture that we were hoping for.

As the *Marsh v Baxter* case showed and this committee has found, the law remains silent on whether organic farmers who lose their certification or farmers who are impacted in any way by the planting and production of genetically modified crops should be compensated. There is no mechanism for them to be compensated for a loss of income as a result of the use of genetically modified crops. I still believe that that is a shame.

As I said earlier, it is a very rare event, but there is still the distinct possibility that farmers—organic farmers especially—will be impacted by this in the future. Genetically modified canola has had its rise and is now on the decline. I note that Western Australia has the largest number of registered organic hectares of any jurisdiction in the world and that is increasing. I genuinely believe that consumers—especially more affluent consumers—are turning towards organic products and healthier diets and that trend will continue.

We squabble about whether sheep should be allowed to be exported live, but the big threat to livestock production in this country and others is the introduction of artificial meat that can be produced from plant products. It looks, tastes, feels and smells like meat, but is not meat. I believe that people's diets are moving away from genetically modified crops towards other options and that will eventually make the whole genetically modified plants decision for us. As food producers, we need to remember that the customer is always right. In our case, the customers may be in Europe, Asia, Australia or the city of Perth, but those customers are always right, and they are voting with their feet when it comes to genetically modified foods. Many countries in the world—I think about 33—have banned genetically modified food crops.

I think genetically modified technology has a great place, but I am not sure it is in edible food products. We will have to wait and see how that progresses.

**The CHAIR:** Hon Darren West.

**Hon DARREN WEST:** I think there are tremendous opportunities in the genetically modified space. In the future we will get benefits from trees that produce greater wood yields, and all kinds of plants that can help with the production of pharmaceuticals and the like. But I am not sure that spraying glyphosate on a food crop and trying to sell that genetically modified food crop into discerning markets is a great way forward for agriculture in Western Australia. We need to look at ways in which we can produce less, but sell it for more. We are battling against a changing climate. There are people on the other side who do not think that that is a thing, but I can tell members that I have seen the climate change significantly in my time farming, and we are seeing it again this year. The rainfall patterns, the temperatures and the humidity are changing. Whatever is causing that is a separate debate, but I think it is getting harder and harder to produce high yields in Western Australia. We do pretty well though for the rainfall that we get. We need to be more efficient with our water use, but we also need to obtain a high price for the quality of food that we produce. That is the way that Western Australia will set itself apart from our major food producing competitors.

I accept from this report that some things are being done well, and I need to make mention of the practices of Co-operative Bulk Handling, the grower-owned bulk handling operator that does a very good job in handling and keeping distinctly aside the genetically modified seed and grain from the other. A mix-up would be catastrophic for our reputation and of course for the loss of value of a lot of that product that was contaminated. Co-operative Bulk Handling does a fantastic job and goes to extremes to make sure that genetically modified grain and seed is not mixed with the higher price, higher quality conventional product. It has done a good job and goes to a great length, and I suggest expense, to make sure that we have had no major hiccups in that regard.

Although it is still possible to grow genetically modified canola in Western Australia, fewer producers are doing so. It is still grown, and there are still producers who feel that that is the best way that they control wild grass or wild radish in their crops. They often see it as a last resort, because our conventional ryegrass herbicides no longer work, many of the radish herbicides no longer work, and now we are down to glyphosate. When that no longer works, I do not know what options will be left. Farmers are implementing such strategies as seed destructors on the back of their harvesting machines. An invention was created by a farmer from the Agricultural Region, Darkan's Ray Harrington, the president of the Shire of West Arthur—a very intelligent man who has come up with some tremendous inventions over time. This machine pulverises weed seeds as they come out the back of harvesters so that they cannot germinate. Many of those are being installed onto harvesting machines right across the grain growing areas. They have an impact, because weed populations are a numbers game. The more weeds that survive, the more weeds that can survive the chemical. They breed on and create more seeds that can survive the chemical, and over time we end up with a large resistance problem.

We all have a role to play in the area of ensuring that genetically modified crops are grown in a safe and sustainable manner. Farmers need to take care as a result of the Marsh and Baxter case, even though the outcome fell on the favour of the grower of genetically modified crops. But there were no winners in the Marsh and Baxter case. There were no winners at all. This was a major oversight of government, rushing and falling to pressure to allow the introduction of genetically modified crops without doing its due diligence. There were no winners and should it happen again, I would imagine there will be no winners in that instance as well. We all have a role to play to ensure that if we grow genetically modified crops, which we are legally allowed to do in Western Australia, we treat those crops as a possible contaminant and go about our farming practices accordingly, because it is important. Just as people have the right to grow genetically modified crops on their farm, people have the right to grow organic crops on their farm, and anyone who takes that capacity away is incurring a loss to the farmer.

I think the committee has done a good job on this very worthy inquiry. There are people who would have sought some different recommendations and outcomes from the inquiry, but the committee has done some pretty good work and come up with a report that lays all the issues out on the table and makes the whole business clearer and perhaps demonstrates the lack of capacity for organic growers or non-GM growers to be compensated for loss that could be directly attributed to their genetically modified crop-growing neighbours. Genetically modified material contamination would fit well in with overspray, fire escape and livestock escape, all of which affected farmers can claim compensation for from their neighbours on their loss of income. The committee has pretty much found out what we suspected, and the Barnett Liberal–National government deserves its fair share of blame for rushing the right to grow genetically modified crops through in 2010 without doing all its due diligence on what might be the outcomes of that decision. The outcomes were obviously an increase in hectares planning and the capacity for farmers to manage weeds, but they were offset by the lack of due diligence around what some of the negative outcomes of that decision may be.

I thank the committee. It is a well-written and good report. This is clearly an agricultural issue that is very dear to me and the electorate that I represent. I remember well the long debates that we had about genetically modified crops. When we boil this all down, consumers are still not convinced on the benefits of genetically modified foods—full stop. Many of them go out of their way to avoid genetically modified foods and choose to buy healthier organic options of higher value. That is the way forward for agriculture in our state.

**Hon MATTHEW SWINBOURN:** I will just make some short comments about the report that arose out of my committee of which I was the chair. The first point I would make is that the terms of reference of the inquiry was quite narrow. We were not looking at whether genetic modification was good or bad. We dealt with the factual situation that GM is now part of the Western Australian environment—it is part of the Western Australian agricultural system—and whether there was justification for introducing a compensation scheme that went beyond what is ordinarily available under common law. In our approach to that, we did not start with a fixed position about what ought to have happened, which might be contrary to the position that some members of this chamber would have liked us to have taken. We were really just investigating how we should deliver a new compensation system, rather than whether the existing one was adequate and there was justification for it. I do not want to speak on behalf of the other members of the committee, but I note that the committee was made up of a member of the Liberal Party, a member of the Nationals WA, a member of the Greens and two members of the Labor Party, so it was hardly a committee that was constituted in a way that would suggest a predetermined outcome or a predisposition to a particular position. The process itself was very open. We took written submissions, we invited certain submitters to provide us with oral evidence and we sought additional information and clarification. We spoke to people from Western Australia, interstate and overseas. We also looked at compensation mechanisms that have been put into place by other jurisdictions, and in looking at those we were not able to find any compensation mechanisms that were delivering any compensation in a real sense. Much was made of the Danish system but, as I can recall, there has not been a single claim made under that system. The compensation system in Denmark effectively provides for a mechanism that excludes GM products from its market. To some extent, many of the proponents we heard

from who were for a new compensation mechanism were essentially arguing to make the cultivation of GM products in Western Australia so burdensome that it would drive them out of the market, which is not the position we were looking at. They wanted to make it such that it would be a prohibitive activity to engage in because of the costs that would be involved by putting a levy on the tonnage of GM canola and those sorts of things.

As I say, I cannot reiterate enough that we looked for evidence to support the proposition that there was a necessity for a new compensation mechanism to be in place. We did have some evidence. There was obviously the evidence involved in the *Baxter v Marsh* case. That case has been well ventilated through the court system and that information is available for everybody to look at. That case is old now, and we have not had any more legal proceedings since the *Baxter v Marsh* case, or *Marsh v Baxter* depending on what stage we are at in the proceedings. That evidence is just not available to us. The committee looked for that evidence. We tried to see whether there was evidence of economic loss, which is what we are talking about—economic loss as a result of contamination—and we simply could not see that to justify the extension of a new system for GM products in our marketplace. There are well-known problems with tort law and establishing economic loss, but, and this was our finding, they are not exclusive to this area. It would have been disproportionate to address tort law deficiencies for one group without looking at the broader issues of dealing with economic loss in the tort environment. There needs to be broader tort law reform. It needs to be applied across the board in relation to issues of economic loss. That is the really important takeaway here.

Obviously, people who had an idea of what they wanted out of the inquiry process were disappointed. There were people who were making grave predictions about where this committee might end up and what sort of socialist utopia we might have been trying to create around this sort of stuff, but I am very proud of the work the committee has done. I am proud of the way that committee members and staff worked. I think this is probably an opportune time to express our gratitude to our committee staff members who did very well through this process in dealing with the large number of submissions and other material, and they supported us well with their research and writing. As I say, in an evidence-based approach there needs to be evidence to support an outcome, and we simply did not have that evidence. That is the outcome of the report. Maybe in time genetically modified crops might justify a new approach to compensation. There may be instances of cross-contamination or major impacts, but, as I say, the evidence was not there to support that. The onus was on those making those claims to provide that evidence. It is simply not enough to deal with anecdotes and stories about what people heard down the pub or something. We needed actual evidence, and it just was not sufficient to support that.

Like Hon Darren West, we commend Co-operative Bulk Handling Ltd for the work it does. To a large part, it was evident to me that the system of GM and non-GM crops in our community is extremely well managed by the practices that CBH engages in and the efforts it makes to ensure that those crops are not mixed. That is really important in terms of how our non-GM products are marketed across Australia and other parts of the world. Again, no crops exported from Australia have been rejected for having contamination by GM materials. That means that testing is happening at both ends—the end that products are sent out from and the end at which they are received. The fact that there is an absence of shipments rejected does not support the finding that there is economic loss associated with GM contamination. There are farmers here who farm both GM and non-GM crops together, and the people who engage in those farming practices keep them separate and keep working within that process. It is a market-driven approach.

We heard evidence from people who were absolutely not affected by GM canola, which is the only GM crop we currently have—those who are growing vegetables and those sorts of things—and there was no clear connection between their activities and those of canola farmers. Again, there was a simple lack of evidence for the claims that there is a need to intervene. Of course, if there is any change in the system, there is a cost that somebody has to pay somewhere along the line. This is one of the issues that mitigated my views about the introduction of a new system. I am not saying that what we have is perfect—I do not think the committee found that—and we are not saying that there were not issues, but there simply was not a sufficient level of evidence or justification to impose a whole range of new costs on farmers to deal with that.

The argument about the introduction of GM crops into Western Australia is one people will continue to have. I will continue to argue about their merit, whether they are worthwhile, their safety and all sorts of things, but if we have regard to the terms of reference of the committee's inquiry, that is not what we were looking at and it is not a judgement that we were making. We made it very clear to people that that is how we approached our task. I am happy to put my name to the committee's report. I think we did what we could with the time and resources we had. If another committee or another Parliament wishes to look at this matter further or more evidence becomes available to support an idea that there should be a different system in place, there is still the opportunity available for that to happen. Those are my comments.

**Hon DIANE EVERS:** I in no way want to discredit or undermine the work of the committee. I think the committee did very well in looking for information. As Hon Matthew Swinbourn said, the fact that there have not been any cases since *Marsh v Baxter* shows that there are known problems with our legal system. That may have stopped people from going through the system in order to have their cases heard. I speak for the people who have been

silenced by the *Marsh v Baxter* case—those people who do not feel that the mechanism is available to them or worthwhile enough to continue with. It has been said that we cannot start here when we know that broader reforms are necessary, but we have to start somewhere. This is one of those areas in which people are being silenced. Given the cost of going through the process, they do not have that option. It has been said that the people growing GM canola should not have to bear the brunt of the costs, but neither should the farmers who have it appear on their land. I recognise what Hon Matthew Swinbourn is saying, but I do not agree. I think we do have to start somewhere. Although, as he says, it is part of the environment, I still believe there will be a time when it will not be part of our environment if we are able to manage this in the future.

The committee looked at some compensation schemes and did not see the right one or one that could be used to fix the issue, but that does not mean that there is not one out there. I think that is what we have to be looking for; that is, what can we do to address this issue? There are farmers who still have this sort of thing happening and the possibility of it is still happening, especially with the Gene Technology Regulator still looking at the introduction of new crops. What will we do when those are introduced? Will we wait until then to figure out the system? Would it not make more sense to have a system in place so that when new crops are introduced, we can do something about them?

*Consideration Postponed*

**Hon DIANE EVERS:** I would like time to review some of the things that were said today. If there is nobody else to speak, I move —

That consideration of this report be deferred to the next sitting of the house.

**Question put and passed.**