

Hon Gail Gago MLC



Government
of South Australia

eA160100

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Dear Mr Cossey

Thank you for your letter of 1 August 2012 regarding the Genetically Modified Crops Management (Right To Damages) Amendment Bill 2012 that has been introduced into the South Australia Parliament by a member of the Greens, Hon Mark Parnell MLC.

This is the third occasion that Mr Parnell has tried to secure the Parliament's support for such a Bill and the South Australian Government has opposed Mr Parnell's Bill each time.

The Commonwealth's *Gene Technology Act 2000* established a national co-operative regulatory scheme for gene technology that seeks "to protect the health and safety of people and to protect the environment by identifying risks posed by or as a result of gene technology, and by managing those risks through regulating certain dealings with GMOs".

You may be aware that the independent panel that reviewed the Commonwealth *Gene Technology Act 2000* in 2005-2006 examined the matter of compensation and concluded that the operation of common law and consumer protection legislation in Australia provided sufficient coverage. Separate compensation arrangements were not considered necessary.

The national system provides for States and Territories to regulate genetically modified (GM) crops where there are risks to markets and trade, as these are not addressed as part of the national process, and the whole of South Australia is currently designated as an area in which no GM food crops may be cultivated, by virtue of the Genetically Modified Crops Management Regulations 2008.

The *Genetically Modified Crops Management Act 2004* provides certain other protections with respect to the spread of GM plant material. For example:

- A breach of a requirement under section 5(1)(a)(ii) would be an offence under section 5(12), which carries a maximum penalty of \$200,000.

CEO / DCEO / EX / CP / CB	
COMMS / ACCT	
ACTION:
DATE:	12 SEP 2012
FILE:

- Pursuant to section 24, if a person is convicted of an offence, the court in which the conviction was recorded may, in addition to any penalty that it may impose, do one or more of the following:
 - order the person to take specified action to make good any contravention or default on which the conviction is based in a manner, and within a period, specified by the court (including an order that the person destroy any crop that has been found to have been cultivated in contravention of this Act, or that the person deal with or destroy any GM related material);
 - order the person to pay to the Crown an amount determined by the court to be equal to a fair assessment of any financial benefit that the person, or an associate of the person, has gained, or can reasonably be expected to gain, as a result of the commission of the offence;
 - order the person to pay to any person who has suffered loss or damage as a result of any contravention or default on which the conviction is based, or who has incurred costs or expenses as a result of any such contravention or default, compensation for the loss or damage or an amount for or towards those costs or expenses.

Given that there is a national co-operative regulatory scheme for gene technology, no jurisdiction is able to introduce arrangements to address the compensation issue unilaterally. Any proposals regarding compensation would need to be considered by the Gene Technology Ministerial Council.

Thank you for writing to me on this important matter.

Yours sincerely



HON GAIL GAGO MLC

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