



14 February 2018

The Hon Matthew Swinbourn MLC, Chair  
Standing Committee on Environment and Public Affairs  
Parliament of Western Australia  
Parliament House  
4 Harvest Terrace  
West Perth, WA 6005

By email: [lcco@parliament.wa.gov.au](mailto:lcco@parliament.wa.gov.au)

**Re: Inquiry into mechanisms for compensation for economic loss to farmers in Western Australia caused by contamination by genetically modified material**

The Grain Industry Association of Western Australia (GIWA) thanks the Chair and Committee for the opportunity to provide this submission to the Environment and Public Affairs Committee Inquiry into mechanisms for compensation for economic loss to farmers in Western Australia caused by contamination by genetically modified material.

**About GIWA** The Grain Industry Association of Western Australia (GIWA) was formed in 2008 in response to deregulation of the Australian wheat market and is the not-for-profit state based grain industry association. Originally an amalgamation of several smaller state based commodity groups, GIWA has over 150 company and individual members from throughout the grains value chain from researchers, plant breeders, growers, input and agronomic and farm business service providers, logistics and bulk handler service providers, marketers and traders. GIWA leverages financial membership income with thousands of hours annually of volunteer member expertise through the GIWA commodity councils to support the industry good functions required for a globally competitive West Australian export crop in the areas of grain standards, trade and market access, varietal classification and rationalisation, industry engagement in supply chain issues, biosecurity, capacity building and research, development, extension and adoption. The Chair of GIWA and chairs of four out of the five GIWA commodity councils are growers.

GIWA has strong national links with the ten major national grain organisations (Grain Growers Limited, Grain Producers Australia, Grains Research and Development Corporation, the Australian Export Grain Innovation Centre, Grain Trade Australia, Australian Oilseeds Federation, Barley Australia, Pulse Australia, Wheat Quality Australia, the Grain Industry Market Access Forum).

GIWA is an associate member of the Australian Oilseeds Federation, Pulse Australia and Grain Trade Australia.

**Australian grain industry competitiveness, based on market choice and access to technology**

GIWA supports market choice and co-existence for plant breeding and agricultural technologies in Australia. We support a grower's right to choose whether to use organic, conventional or genetically modified (GM) technologies, and the customer/consumer's right to choose to purchase organic,

conventional or genetically modified food.

As a member of Grain Trade Australia, GIWA supports the National Grain Industry Code of Practice to facilitate and manage trade. Grain Trade Australia has clear policies for management of GM material in the grain value chain <http://www.graintrade.org.au/> GIWA supports the commercial release, trade of grain and stewardship programs for genetically modified and other innovative breeding techniques where these have been assessed under the National Regulatory Scheme for Genetically Modified Organisms and approved for commercial release by the Office of Gene Technology Regulator (OGTR) <http://www.ogtr.gov.au/> and other relevant Federal, State and Territory regulators <http://www.ogtr.gov.au/internet/ogtr/publishing.nsf/Content/legislation-2>

**World class GM canola technology drives growth in WA grain industry** The technology in genetically modified canola has had an enormously positive impact on the profitability of Western Australia's AUD\$5 billion grain industry and AUD\$7.6 billion agrifood export sector.

In the space of 8 years since the first trial of GM canola in 2010 in Western Australia, canola has become the most important break crop in WA's cropping rotation, worth \$730 million + annually to WA growers (break crops being canola/pulses/pastures in the cereals rotation of wheat/barley/oats). Canola is currently regarded by the WA industry as the most profitable crop by gross margin, and provides growers access to markets in the European Union, China, Pakistan, the UAE and elsewhere.

Western Australian growers are not least cost producers globally, so market choice in technology is critical to their productivity and international competitiveness. Between twenty five and thirty per cent of the Western Australian canola crop is currently GM canola with herbicide resistance tolerance traits, worth approximately \$220 million annually

<https://www.agric.wa.gov.au/canola/current-canola-variety-guide-western-australia>

Many canola growers grow *both* conventional and GM canola depending on market signals, rotation management and seasonal conditions, reflecting the global trend for investment in genetically modified technology <http://www.isaaa.org/resources/publications/pocketk/1/>

The wider choice provided from access to both GM and non-GM varieties allows growers to manage multiple factors affecting the productivity of growing canola on their farm such as market, financial and production risks (water use efficiency, yield, oil content, soil health and rotations, chemical usage, herbicide resistance, disease package). In 2017/18, approximately two thirds of canola exported out of the Geraldton port zone was GM canola, a percentage which is growing each year due to growers benefiting from the plant establishment vigour and robust yields of GM varieties.

**Support for the Genetically Modified Crops Free Area Repeal Act 2016 Western Australia** GIWA, along with a significant number of grain industry and grower organisations, supported the Genetically Modified Crops Free Area Repeal Act 2016 which gave plant breeders regulatory certainty for investment in GM options for Western Australia. As a result, organisations such as the Grains Research and Development Corporation (funded by growers and the federal government), and private sector plant breeders such as Advanta, Pioneer, Bayer and Nuseed responded with further investment in research, development, extension and adoption of new agricultural technologies in Western Australia.

The Genetically Modified Crops Free Area Repeal Act 2016 provided regulatory certainty for additional market development for the two WA based domestic oilseed crushers who employ in the metropolitan and regional areas and export globally – publicly listed GrainCorp at their Pinjarra site who crush, refine, bleach and degum crude oil, and privately owned Alba Edible Oils in Hamilton Hill and Kojonup who crush, refine and bulk export as well as produce value added premium branded edible oil products.

The Genetically Modified Crops Free Area Repeal Act 2016 also provided regulatory certainty for additional market development for the two WA grain bulk handlers CBH and Bunge to develop rigorous systems for the accumulation, segregation, bulk handling, testing and marketing of canola through the oilseeds supply chain from paddock to food and industrial ingredients, feedstock and biodiesel customers globally. At approximately \$500 per tonne, a 50,000t shipment of canola is worth over \$25 million. The price differential in the market between GM and non-GM canola ranges somewhere between \$30 and \$50 per tonne, a strong market signal for WA growers that there is international demand for *both* conventional and GM canola.

The process of scientific enquiry, regulatory due diligence and stakeholder consultation for the introduction of the Genetically Modified Crops Free Area Repeal Act 2016 in Western Australia was based on the cumulative results of a number of state and legislative enquiries into gene technology dating before and after The Gene Technology Amendment Act 2015 and The Gene Technology Act 2000 were introduced nationally.

**Common Law and Unintended Consequences of this Enquiry** All of this growth of the WA canola industry took place under Australia's common law and consumer protection framework.

May we emphasise that if the Committee were to support the introduction of a legislated compensation mechanism for economic loss caused by the use of GM technology, then effectively they would be supporting the elevation of a voluntary organic accreditation scheme from the Marsh vs Baxter case (with 0 tolerance for GM contaminants when the majority of global systems have a 0.9% tolerance) *over* the rule of common law.

**Legislated compensation mechanism would equate to a cost burden on production and barrier to investment** GIWA does not believe any additional liability compensation mechanism for economic loss incurred by gene technology is warranted – effectively this would equate to a cost and regulatory burden on production and a disincentive for investment, as it does in some European Union jurisdictions. The following quote is sourced from one of the state's pioneering GM canola growers:

"I am a committed break crop farmer, and GM canola was a game changing technology. It comes with an excellent stewardship program. Early sowing can extend the growing season and it gives me higher yield, better weed control and cleaner country. Having both GM and non GM canola gives me flexibility, elongates the life of rotations management, and reduces disease (nematodes, rust, septoria, yellow spot which can cause millions of dollars' worth of damage).

If I had a dispute with someone about economic loss caused by me planting GM canola, if it went that far I would sort things out through the courts. But if I had to pay an amount per hectare into a compensation fund for the privilege of using the technology before I'd even got to the court then that would equate to a tax on production.

How is that going to make my business competitive?"

**The Marsh vs Baxter 2015 case: common law prevailed** GIWA acknowledges that this enquiry has been commissioned because of a group of consumers who do not support GM technology are concerned about the results of the Marsh vs Baxter case, and wish to continue the debate about whether conventional, organic and genetically modified technologies can co-exist.

Western Australia has had this debate already, and made the choice to allow GM technology under the previous Barnett Liberal government, supported by the dispute resolution and liability framework of common law.

GIWA does not feel it necessary in this submission to go over the details of the Marsh vs Baxter case, except to comment that no one in the Western Australian grain industry was happy to see the deep personal stress and negative community impact that resulted from two neighbours incurring costly legal action which quickly became politicized. <http://www.farminstitute.org.au/ag-forum/getting-the-story-right-on-the-marsh-baxter-gm-case>

The common law system of the Supreme Court of Western Australia, in which the case was addressed on appeal in support of Baxter, offered a nationally accepted legislative framework for liability assessment and compensation. <http://decisions.justice.wa.gov.au/supreme/supdcsn.nsf/judgment.xsp?documentId=04D8D1E20865F6D548257EB50018D69A&action=openDocument>

**Conduct of the Enquiry** With respect to the Committee achieving a balanced and informed position on this important issue, GIWA respectfully suggests the Committee receive evidence and base its findings on:

- 1 an understanding of the production systems, accreditation and stewardship programs involved in the organic, conventional *and* GM canola supply chain
- 2 rigorous scientific evidence
- 3 a balanced stakeholder consultation process, and
- 4 full economic impact assessments

As part of the Committee's due diligence, we extend an open invitation to Committee members for GIWA to host a fact-finding field visit with growers of conventional and GM canola in the WA grain belt.

**In conclusion: no GM regulatory burden through the back door** The Western Australian grain industry need only look over the border to South Australia (also export oriented) where GM crops are banned and the global competitiveness of South Australian growers is negatively impacted because they are denied access to technology and markets, to remind ourselves of how valuable the GM canola market is to regional Western Australian farming businesses.

The Western Australian grain industry supported the Genetically Modified Crops Free Area Repeal Act 2016 and that commitment remains. Any introduction of a regulated compensation mechanism for economic loss caused by the use of GM technology would impose a cost-burden on the industry and inhibit investment in potential consumer driven food ingredient traits like omega three long chain fatty acids.

Thank you in advance for your consideration and please don't hesitate to contact us if we can assist you with further information.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Larissa Taylor', with a stylized flourish at the end.

Larissa Taylor  
CEO

Grain Industry Association of Western Australia  
08 6262 2128  
[ltaylor@giwa.org.au](mailto:ltaylor@giwa.org.au)

