

# Tasmania's Genetically Modified Organisms (GMO) Moratorium

## Tasmanian Greens' Submission

3<sup>rd</sup> May 2019

GMO Moratorium Review

GPO Box 44

Hobart, Tasmania, 7001

Thank you for the opportunity to contribute to the 2019 review of Tasmania's genetically modified organisms (GMO) Moratorium.

The debate on the marketing implications of the GMO moratorium is a particularly difficult one, as it contains a large amount of hypotheticals and variables that are profoundly difficult to quantify, verify, predict or speculate upon.

Nonetheless, past reviews and the annual environmental scan have taken in a wide range of views, analysed all available evidence, and consistently resulted in a beneficial outcome for the State.

The Greens have consistently supported this moratorium. We are heartened by DPIPWE's continuing detailed engagement with the subject matter.

DPIPWE's annual environmental scans have noted there have not been a great deal of developments relevant to Tasmania since the last review, therefore we will principally confine our submission to those matters where there have been developments.

There are two other matters we wish to raise in this review. First, we believe it is time to alter the legislative mechanisms governing the prohibition of GMOs. Second, we are deeply concerned about the implications of Federal deregulation of genetic modification techniques, and are disappointed in the apparent lack of preparedness at the state level for dealing with this should it eventuate.

## Developments since the last review

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As noted in previous reports, co-existence of GM and non-GM is a significant issues. In particular, DPIPWE's last review<sup>1</sup> noted -

*"The ability of common law to address GM contamination and subsequent economic loss remains unclear in Australia, making it difficult for GM and non-GM farmers and producers alike to accurately assess their legal risks from GM crops. Questions remain about the ability of the liability system in Australia to deal with GM contamination under a co-existence framework."*

This question has been clarified somewhat since the last review by a case in Western Australia (Marsh v Baxter), where adjacent farming practices lead to 70% of the Marsh's farm losing organic certification. The case was dismissed by the court and no injunction or damages were awarded.<sup>2</sup> Martin J ruled the economic loss was due to "self-inflicted contractual vulnerability", and considered Baxter was as entitled to pursue his own economic interest as the Marshes.

The court's finding against the organic farmer's interests was in part made due to the fact that Australian law generally only recognises economic loss<sup>3</sup> as:

*"..some physical injury to a person or to property such as pipeline damage, damage to a house, or damage (disease) to a potato crop."*

In an analysis of this case one author<sup>4</sup> has concluded:

*"This case has provided no assurance that organic farming and GMO farming can happily coexist under the current legal framework..."*

*...there is no constraint on GM farmers to contain their crops within their boundaries, and no recognition in the case that GM crops are a source of contamination for organic farmers...*

*...There was no recognition of the special interests of organic farmers, and a rejection of the notion that wind-blown GM canola plants landing on an organic farm are in any way "contamination", nor that the neighbour's actions that led to the "incursion" of the GM plants are either a matter of private nuisance or of common law negligence."*

The use of court mechanisms elsewhere to solve coexistence-related disputes has been characterised<sup>5</sup> as:

*"...a form of legal "trench-warfare," in that the exercise is relatively pointless, costly and ultimately solves nothing."*

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<sup>1</sup> DPIPWE 2013, Review of the moratorium on genetically modified organisms (GMOs) in Tasmania, p. 70

<sup>2</sup> Paul, John 2014, Organic versus GMO farming: Contamination, what contamination?, p. 2

<sup>3</sup> Kershen, Drew L, Marsh v Baxter: Coexistence in Australia

<sup>4</sup> Paul, John 2015, GMOs and Organic Agriculture: Six Lessons from Australia, p. 13

<sup>5</sup> Phillipson, Martin 2015, Class Action Lawsuits and Anti-GM Litigation: The Legal Frontline of Coexistence.

In our view this confirms in no uncertain terms the concerns raised in the previous review regarding the inadequacy of common law to deal with these issues.

## Genetically Modified Organisms Control Act 2004

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In principle, a prohibition model that forces semi-regular re-evaluation is beneficial for transparency and community consultation. This is especially the case when dealing with issues of science and technology, which can see significant developments over a relatively short period of time.

We are of the view, however, that the five yearly expiration of this Act should be removed.

Section 36 of *Genetically Modified Organisms Control Act 2004* prescribed that the Act expires 15 years after it commences. The Act is amended every five years to extend the length of expiry by five years.

The usual mechanism would be a repeal bill, which would require the support of both houses. However, as it currently stands, an amendment bill is required to prevent expiration. As this must pass through both houses of Parliament, it could be blocked by either house. This is not ideal democratically.

Further to this it creates an environment where the Legislative Council, without the support of the Executive, can unilaterally initiate a significant policy shift. The expiration of this Act would leave a significant regulatory blackhole, and more likely than not the government of the day would not have the time to set up new regulatory or policy frameworks to deal with the dramatic change.

As noted previously, common law does not provide a suitable framework for dealing with co-existence disputes. As such, the sudden blocking of an amendment bill by the Legislative Council could leave Tasmania in a regulatory vacuum that could be disastrous for organic and non-GMO producers.

As such, we strongly support the repeal of section 36.

We note that DPIPWE's annual environmental scans can recommend triggering a full sale review, and there is no barrier to the Government of the day in initiating their own review, or Parliament to resolve that a review should be triggered.

The current framework is unnecessarily burdensome and inappropriately precarious.

## National Developments

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The Greens are concerned that omitting organisms modified by SDN1 or RNA-delivered RNAi techniques from the definition of genetically modified organisms will mean our current moratorium will not be able to capture organisms modified in this way.

As other jurisdictions overseas with strict import controls do consider SDN1 modified organisms to be GMOs, this would undoubtedly place our primary production sector at great risk.

We wrote to the Minister on this matter and received what appears to be a contradictory message. He stated the Government welcomed the outcome of the national review (which is to omit these techniques from a definition of GMO), as well as it would be strongly advocating for a precautionary response (which would be to include these techniques as GMOs). This statement does not make the Government's position clear.

We also asked the Minister whether or not plans are in place to respond to this recommended deregulation, should it occur, and whether Tasmania would be able to ban the import and use of SDN1 or RNA-delivered RNAi-modified organisms if they were no longer regulated as GMOs.

The Minister didn't address those issues, but noted advice the Government is seeking on trading implications with our trading partners would provide valuable input into this review.

We strongly urge DPIPWE to include in this review a full analysis of the implications of deregulating organisms modified by SDN1 or RNA-delivered RNAi techniques, and the options that the state may have for implementing controls over these organisms.

## Recommendations

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1. That the GMO Moratorium in Tasmania continue.
2. That section 36 of *Genetically Modified Organisms Control Act 2004* be repealed.
3. That the review examine options for Tasmania should the recommended deregulation of organisms modified by SDN1 or RNA-delivered RNAi techniques at the Federal-level occur.

We hope you consider this submission closely, and we look forward to responding to the outcome.

Yours sincerely,

A handwritten signature in black ink that reads "Rosalie Woodruff". The signature is written in a cursive style with a large, stylized initial 'R' and a prominent crossbar on the 'f'.

**Dr Rosalie Woodruff MP**

On behalf of the Tasmanian Greens