



Productivity Commission Draft Report

Regulation of Australian Agriculture

Tasmanian Greens' Response

18 August 2016

Andrea Dawkins MP
Primary Industries spokesperson

Introduction

Since 2001, Tasmania has been subject to a moratorium on the commercial cultivation of genetically modified organisms (GMOs).

This policy has wide public and political support, and provides the State with an edge in the global marketplace.

The GMO-free status of Tasmania is an important part of Tasmania's world renowned "clean and green" image.

15 years after the moratorium was introduced, Tasmania is still monitoring GM contaminated sites as a result of a relatively small number of trials. Allowing the release of GMOs into Tasmania's environment would cause irreversible damage to Tasmania's brand.

The Tasmanian Greens are of the view that the moratorium is critical for Tasmania's economy, environment and natural brand, and strongly oppose the recommendation of the Productivity Commission to abolish the rolling ban on GMO's in Tasmania.

Response to the Report

The Tasmanian Greens will respond to recommendation 6.1 of the Productivity Commission's (The Commission) Draft Report, which states:

"The New South Wales, South Australian, Western Australian, Tasmanian and Australian Capital Territory governments should remove their moratoria (prohibitions) on genetically modified crops. All state and territory governments should also repeal the legislation that imposes or gives them powers to impose moratoria on the cultivation of genetically modified organisms by 2018.

The removal of the moratoria and repeal of the relevant legislation should be accompanied by the provision of accurate information about the risks and benefits to the Australian community from genetic modification technologies. State and territory governments, the Office of the Gene Technology Regulator and Food Standards Australia New Zealand should actively coordinate the provision of this information."

The Tasmanian Greens believe there are a host of serious issues regarding Gene Technology. However, our response will be confined to the economic impacts of a moratorium, as this is the only grounds on which GMOs can be banned by States and Territories.

The Draft Report makes blanket statements and refuses to acknowledge the very real plurality of views or the complexity of some issues. The Tasmanian Greens believe the Commission has erred in its analysis of the impact of Tasmania's moratorium.

Furthermore, the Greens believe that the recommendation in relation to Tasmania is irresponsible and unsupported.

Industry Views on GMOs

The Tasmanian Greens believe the Commission has irresponsibly and incorrectly suggested a consistency of industry views.

The Commission¹ claimed:

"State and territory moratoria on the cultivation of genetically modified crops were a major concern of participants. Many argued that the moratoria (effectively bans) on GM crops were unwarranted and that they deny farmers access to technological advances that are critical to remaining competitive internationally."

¹ Productivity Commission 2016, *Regulation of Australian Agriculture*, p.20

However, at least in the context of Tasmania, the issue has many views to the contrary. The 2013, review by The Department of Primary Industries, Parks, Water and Environment (DPIPWE)² observes that:

“There is no collective viewpoint across industry sectors as to whether there is an imperative to change the current policy position on the GMO moratorium from a marketing perspective...

...Some industry sectors such as beef, honey, fruit, organics, food tourism and wine all perceive negative market impacts or challenges if the current policy were to be altered.”

These are some of the key Tasmanian industries, and any suggestion that industry predominantly supports removing moratoria does not hold true for the State as a whole.

In fact, only two industries claimed the moratorium had resulted in financial disadvantage³ – poppies and dairy.

It is worth noting that at the time of the review, as well as at present, no approved technologies desired by these industries exist. As such, it seems implausible the moratorium is disadvantaging these industries.

Price Premiums

The Commission also claims trade benefits such as price premiums for non-GM crops are “questionable”⁴. This is an irresponsible analysis of the issue, the Commission has essentially attempted to discredit these observations without providing any substantive evidence.

The Commission should be fully transparent in its analysis and acknowledge that “questionable” means there is a lack of data to support the observations of industries claiming a premium.

A lack of supporting data is distinctly different from evidence to the contrary. In contrast, DPIPWE was balanced in their analysis⁵, observing that:

“The Project Team notes that some examples were provided on the price premiums received for non-GM and/or certified organic products. The Project Team does not dispute these claims; however, it notes that verifiable published research in support of these claims was difficult to obtain, and commercial in confidence considerations often applied preventing the publishing of the information from individual businesses.”

² DPIPWE 2013, *Review of the moratorium on genetically modified organisms (GMOs) in Tasmania*, p. 5

³ DPIPWE 2013, p. 34

⁴ Productivity Commission 2016, p. 232

⁵ DPIPWE 2013, p. 24

The Greens urge the Commission to take care and be transparent with their phrasing. In relation to verifying the claims of businesses, it should be emphasised that a lack of publishable supporting research is not the same as evidence to the contrary.

Co-Existence

The Commission argues the benefits of non-GMO market premiums would be able to be realised regardless of a moratorium⁶, noting that:

“The ability for GM and non-GM crops to coexist has been demonstrated both in Australia and overseas.”

Again, the Commission has demonstrated both a lack of understanding of the Tasmanian context, as well as over-simplification in favour of a pro-GM position.

DPIPWE has noted significant complexities⁷, including, for example:

“An issue that will also require further consideration is who pays the additional costs associated with managing for co-existence. For example, the costs include monitoring, reporting, compliance, auditing, physical segregation of materials in the field and at point of harvest, logistics in the supply chain, plus the marketing strategies to manage Tasmania’s non-GM markets and brand positioning.”

This could require either GM or non-GM producers to pay significant costs, as well as create administrative complexities. This may arguably outweigh any possible benefit such a small potential market could deliver in the Tasmanian context.

There are also concerns relating to compensation for non-GMO effected industries⁸, for example:

“Associated with the issue of co-existence is the question of legal liability and the concerns of non-GM and organic farmers who may suffer contamination and economic loss in the event that GM crops are approved for release in Tasmania. All Australian jurisdictions have agreed that compensation for GM contamination should be sought through the courts rather than enacting specific civil liability laws.”

This means that a large part of Tasmania’s industries will potential be required to pursue legal action to seek compensation due to the activities of few. This is also likely to be a costly and time consuming exercise, particularly for smaller producers. Not only does this have the potential to disadvantage effected industries, but this framework is not particularly with defined, with DPIPWE⁹ noting:

⁶ Productivity Commission 2016, p. 21

⁷ DPIPWE 2013, p. 70

⁸ ibid

⁹ ibid

“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.”

In fact, one case in particular has already demonstrated an inability of common law to effectively compensate farmers.

In a case in Western Australia (*Marsh v Baxter*), adjacent farming practices lead to 70% of the Marshes’ farm losing organic certification. The case was dismissed by the court with no injunction or damages awarded.¹⁰ Martin J ruled the economic loss was due to “self-inflicted contractual vulnerability” and that Baxter was as entitled to pursue his own economic interest as the Marshes. The decision was in part made due to the fact that Australian law generally only recognises economic loss¹¹ 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”

Strangely, the Commission references *Marsh v Baxter* to describe cross-contamination, but does not discuss the implications of the case. In an analysis of this case one author¹² 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 characterised¹³ as:

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

The suggestion of the Commission that current arrangements are suitable for addressing coexistence concerns is, again, poorly justified in the Draft Report and not consistent with reality.

¹⁰ Paul, John 2014, *Organic versus GMO farming: Contamination, what contamination?*, p. 2

¹¹ Kershen, Drew L, *Marsh v Baxter: Coexistence in Australia*

¹² Paul, John 2015, *GMOs and Organic Agriculture: Six Lessons from Australia*, p. 13

¹³ Phillipson, Martin 2015, *Class Action Lawsuits and Anti-GM Litigation: The Legal Frontline of Coexistence*.

Net Benefits to Tasmania

When arguing that moratoria fail to demonstrate net benefits, the 2014 Tasmanian Regulatory Impact Statement is highlighted¹⁴. The statement, in reality, acknowledges a *quantifiable* net cost of \$1.5 million over five years. However, claims that there is likely to be an overall *net benefit* due to unquantifiable factors.

While the Draft Report acknowledges these findings, it's misleading to use this as evidence of failure to demonstrate net benefits. The statement does in fact, specifically, conclude that net benefits are realised by the moratorium.

The Commission seems sceptical of these findings, but fails to justify their scepticism.

\$1.5 million over five years is only \$300,000 a year. This means in order for the moratorium to have net benefits, the entire State would only have to derive "unquantifiable benefits" exceeding \$300,000 a year. Even under the most conservative of estimations, this is a target not difficult to exceed.

The Tasmanian honey industry alone is responsible for generating between \$120 and \$180 million per year¹⁵. In order to exceed this \$300,000 loss by itself the industry would only have to be receiving a premium of between 0.17% and 0.25%.

Putting the issue of premiums aside, only \$300,000 decline in demand for Tasmanian products would have to occur to produce a net loss in the event of a lapsed moratorium. Relevant to this is the fact that the introduction of GM crops in Mexico¹⁶ has:

"...affected negatively the exportation of honey (a major income for rural populations) produced in the southeast, as GM pollen presence has been questioned by importing countries."

Due to the small sum of unquantified benefits required to economically justify the GMO moratorium, the only scenario in which a lapsed moratorium could deliver economic benefits is if it made no impact on any consumers' decisions to buy Tasmanian products. This is an extremely unrealistic proposition.

Putting speculation regarding the benefits of the moratorium aside, the Tasmanian Greens believe that a paltry annual \$300,000 insurance policy (70% of which is borne by the Government) against the very real potential negative consequences of removing the moratorium is a sensible measure.

To put it another way, saving \$300,000 a year is not worth the irreversible risk of profound damage to various key Tasmanian industries.

¹⁴ Productivity Commission 2016, p. 235-236

¹⁵ DPIWPE 2013, p. 30

¹⁶ Caroline Burgeff, Elleli Huerta, Francisca Acevedo, and José Sarukhán 2014, *How Much Can GMO and Non-GMO Cultivars Coexist in a Megadiverse Country?*

Conclusion

While the Tasmanian Greens do not support GM technology for a plurality of reasons, it is acknowledged that, on economic grounds alone, allowing the commercial cultivation in some jurisdictions may be practical.

The Greens wish to emphasise that economic conditions vary and the blanket analysis conducted by the Productivity Commissions fails to acknowledge this.

The Draft Report does not take seriously the issues in Tasmania and that the Productivity Commission has failed to perform their due diligence.

The Tasmanian Greens wish to emphasise that only one GM crop is currently approved which is suitable for Tasmanian conditions, canola. Whereas a wide range of sectors in Tasmania claim the GM-free status of Tasmania is important for their industry.

While this significance is difficult to empirically prove and economically qualify, it's not the same as claims being discredited. These claims should be taken seriously by the Commission, particularly due to the proven economic loss in the same industries elsewhere from GM contamination.

All other issues aside, the evidence overwhelmingly suggests that commercial GM cultivation in Tasmania carries a wide range of economic risks. These are risks that have been realised elsewhere to the economic detriment of comparable sectors, and low potential economic benefit.

The Tasmanian Greens are disappointed the analysis and conclusions made by the Commission appear superficial and appear only to acknowledge one select voice.

It is also of great concern that the Commission has failed to hold hearings in Tasmania.

For these reasons, the Greens recommend that the Commission re-evaluate their recommendation in light of the issues raised, and put off the report until hearings are held in Tasmania.

In the absence of the adoption of these measures, the Commission is not in a position to comment on a Tasmanian moratorium, and should remove their recommendation in relation to Tasmania.

Submitted by Andrea Dawkins MP, on behalf of the Tasmanian Greens