



ABN 67 104 140 918

**A:** 60 Leicester St, Carlton Vic 3053

**T:** 03 9347 4500 / 1300 133 868

**F:** 03 9341 8199

**E:** [info@geneethics.org](mailto:info@geneethics.org)

**W:** [www.geneethics.org](http://www.geneethics.org)

June 16, 2014

Minister Leon Bignell  
SA Minister for Agriculture, Food and Fisheries  
GPO Box 1671  
ADELAIDE SA 5001

Dear Minister Bignell:

Congratulations on your appointment and thanks for your strong public commitment to keeping South Australia free of commercial genetically manipulated (GM) crops till September 2019, at least.

Farmer Protection Laws are now needed to also protect vulnerable landholders whose crops or land may become GM contaminated and to make South Australia's GM-free Zone more secure. GM crop releases within the state and GM canola grown close to state borders pose contamination hazards that may lead to legitimate claims for compensation for economic loss.

Bayer's commercial GM seed bulking on 105.4 ha at 26 sites [http://www.pir.sa.gov.au/gmc/crop\\_sites](http://www.pir.sa.gov.au/gmc/crop_sites) in 2013/14 is a commercial activity that especially compromises the integrity of the state's GM-free Zone. The OGTR issued an unrestricted and unconditional commercial licence DIR021 for Bayer's canola varieties in 2003 so the regulator exercises no monitoring, surveillance or control over these activities.

Please urgently consider legislation to protect landholders, like that proposed by Mark Parnell MLC in his Private Members Bill - the Genetically Modified Crops Management (Right to Damages) Amendment Bill. We propose that you request a Parliamentary Committee to consider the issues and solicit advice, evidence and representations from interested parties.

The Bill seeks to avoid the situation, for example, where West Australian organic grower Steve Marsh had only the option of suing his neighbour Michael Baxter in court for substantial economic loss which he sustained when his organic certification was revoked. The judgement is still open to appeal but whichever way it finally goes, some fundamental issues will remain unresolved that it is in your power to deal with.

We propose that the new law create a compensation fund with a small levy on all commercial GM activities, from which anyone harmed by GM contamination could be automatically compensated for economic loss. An initial levy of, say, up to \$1/kg for all GM seed dealt with, sold or produced in the

state would be paid into the fund so that injured parties did not have to sue for their losses. It is appropriate that the GM industry pays for the risks, damages and costs of its GM crops, rather than passing them on through their contracts of seed sale to growers and other landholders. The proposed Farmer Protection Law may not need to cover research trials as they are under OGTR supervision and other compensation mechanisms may therefore apply.

The Marsh vs Baxter case in WA highlights the urgency of the law we propose. The court's judgement did not resolve the crucial issue for now and the future of how genuine losses from GM contamination will be compensated in a fair and timely way. For example, this year in WA a premium of up to \$70/tonne is being paid for GM-free export canola. It would be very difficult to recover the very substantial economic losses that may result from any GM contamination which cancelled access to those markets. Litigation is just too expensive and acrimonious to be a viable long-term solution for most parties so there is a need for another mechanism.

We ask you to seize this opportunity to protect farmers and other land-holders. This is an opportunity to review and correct a long-standing error in how governments have viewed GM liability. The Commonwealth Agriculture Department's paper: \*\* "Liability Issues Associated with GM Crops in Australia, explains what went wrong with the policy from our point of view. In September 2003 it reported:

"When drafting the Gene Technology Act 2000 (Cth), the legislature considered liability issues associated with GMOs and chose not to implement a specific liability regime for damage caused by GMOs. ... where the activities of one farmer affect a neighbour, recourse is to existing statute and common law."

The option of suing is effectively gone and another liability regime is needed now. Governments foresaw GM contamination and knew the consequences but chose not to act.

Please sponsor Mr Parnell's Bill or pick up the intent and solutions it proposes by reference to a committee.

We are ready to provide you with any briefings, further evidence and advice you may need to ensure that the benefits of Farmer protection Laws are realised for all South Australians.

Yours sincerely,

A handwritten signature in black ink that reads "Bob Phelps". The signature is written in a cursive style with a long horizontal stroke at the end.

Executive Director

\*\* [http://www.daff.gov.au/\\_\\_data/assets/pdf\\_file/0004/182821/liability\\_issues\\_paper\\_final.pdf](http://www.daff.gov.au/__data/assets/pdf_file/0004/182821/liability_issues_paper_final.pdf)