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## 8. Compensation for GMO contamination

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A [Parliamentary Inquiry](#) was launched in Western Australia (WA) in December 2017 into how to compensate farmers for economic loss due to contamination by genetically modified organisms (GMOs). The Inquiry was prompted by the Marsh v Baxter case.

In May 2010, Michael Baxter planted Monsanto's Roundup Ready GM canola at his farm near Kojonup in the wheat-belt of WA. Next door, farming 477 hectares, were organic farmers Steve and Sue Marsh. GM canola blew over the Marsh farm. The Marsh farm lost its organic certification due to GM contamination. Marsh sued Baxter for damages - the loss of the organic premium. The damages were agreed between the parties at A\$85,000. In a protracted legal battle the legal fees amounted to more than A\$2 million. Marsh lost the case. Baxter's legal fees were paid by Monsanto, and costs were awarded against Marsh. Marsh v Baxter was an expensive exercise to create the precedent that there is no protection in common law against contamination by GMOs.

An important aspect of the Marsh v Baxter case is that there was no proportionality between the actual damages sustained and the legal costs of pursuing recovery - in this case ultimately without success.

There were [94 public submissions](#) to the Inquiry from both foes and friends of GM farming. This was followed by [expert testimony](#) from witnesses.

It was pointed out by the Inquiry that the Marsh v Baxter case would have had "a chilling effect" on GM-contaminated farmers. The costs of pursuing a case could potentially bankrupt them. The net effect could be to silence such farmers. In any event, the number of farms contaminated is unknown.

There was no evidence presented that insurance against contamination by GMOs was available in the Australian market.

In the course of the Inquiry, four compensation proposals have materialised:

- a) Pro-GM advocates were of one mind in insisting that there is no problem and no mechanism for compensation is called for.
- b) Anti-GM advocates proposed a levy on the GM sector to create a pool of funds to fund potential contamination claims. This could be collected at the time of seed purchase, for example. This proposal lacks mechanisms to keep the size of the pool and the size of the claims in balance and how unspent pool might be disposed of.
- c) The committee itself raised the issue that the Government could fund a compensation scheme. This would mean no impost on the GM sector and it would assure claimants that claims could be met.
- d) The present author proposed a [compulsory third party \(CTP\) model](#). Under a CTP insurance model, the potentially harming parties (the GM farm sector) pay premiums and those harmed (the non-GM farm sector) are the beneficiaries. The harming party thus bears the cost. Harmed parties can be reimbursed in a non-adversarial environment on a no-fault basis. Premiums accrue to the the underwriting entity as with other insurances. The Insurance Commission of Western Australia manages a successful CTP scheme for motor injury insurance, and so CTP infrastructure is tested and in place in WA.

This Inquiry is ongoing and it is expected to report in early 2019.

### Further reading:

Paull, J. (2015). [GMOs and organic agriculture: Six lessons from Australia](#). Agriculture & Forestry, 61(1), 7-14.

Paull, J. (2015). [The threat of genetically modified organisms \(GMOs\) to organic agriculture: A case study update](#). Agriculture & Food, 3, 56-63.

Paull, J. (2018). [Genetically Modified Organisms \(GMOs\) as Invasive Species](#). Journal of Environment Protection and Sustainable Development, 4(3), 31-37



Steve Marsh, the organic farmer harmed by a neighbour's GM canola crop.



A field of canola in Western Australia

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