



appendix 3

Outcomes of Consultation: Submissions
from the Public

Section contents

3.	Analysis of Public Submissions	22
3.8	Liability	80
	Background	80
	Outline of this section	80
	Problems around attribution of liability	80
	Producers' liability	82
	The State's liability	82
	Liability insurance	82
	Regulatory framework	83

3.8 Liability

Background

Warrant item (e) called for information on:

the liability issues involved, or likely to be involved, now or in the future, in relation to the use, in New Zealand, of genetic modification, genetically modified organisms, and products

Outline of this section

Rarely did public submitters specifically comment on liability issues. The comments of the 256 submitters (2.3% of the total) who did were mainly focused on attribution of liability and problems around attribution, forms of liability, the regulatory framework and liability insurance.

Problems around attribution of liability

Twenty-four public submitters wrote about inherent characteristics of genetic modification effects that they felt made it difficult to establish the extent of liability (see Table 3.15). These characteristics, described in more detail in previously in terms of evidence and uncertainty, included the unpredictability of effects, their potentially wide dispersal, the difficulties in tracing the original source of impacts, their cumulative nature and their potential longevity. Given these difficulties, submitters expressed concern about how to ensure that producers took responsibility for their actions. When public submitters commented on liability they were often more concerned about moral responsibility.

Public submitters also demanded reparation to address negative effects. However, 51 submitters wrote about problems around establishing the extent of liability (see Table 3.15). Some felt that there is no adequate policy in place to ensure that producers are held liable for any negative consequences of their genetically modified organisms and products. They expressed worry that these producers would be able to evade responsibility because of the difficulties in establishing a direct link between them and the problems they have caused. One submitter’s comment provides an insight into the wider concern: “...it is unclear who will take

Table 3.15 Main issues raised on liability (n = 256)

Main issues raised on liability:	Number	%
Polluter should pay for damages	84	32.8
Implications for government liability of negative impact of GM use	78	30.5
Non-insurability of risk	73	28.5
Difficulties in establishing the extent of liability	51	19.9
Difficulties in establishing liability, given GM-impact characteristics	24	9.4
Implications for government liability where GM benefits denied	4	1.6
Other	9	3.5
The “Other” category included issues related to:		
<ul style="list-style-type: none">• expansion of liability to include individuals in companies, such as researchers• requiring ERMA and/or government to assume responsibility for enforcing liability legislation• the level of government liability. For those arguing for government liability, they assumed central, not regional, level of government• ensuring a clear framework for liability was established and understood prior to any genetic modification activities		

Multiple response

financial responsibility for any catastrophes resulting from the release of GMOs into the environment. This is certainly a burden that the public would not want to carry.” The concern most frequently expressed was that New Zealanders “should not be left holding the bag”. There was worry that multinational companies could reap the benefits of genetic modification, leaving the government and the people of New Zealand to deal with the mess left behind. The following sub-sections outline the different liability options raised by public submitters and their responses to them.

Producers’ liability

Even though submitters acknowledged that there could be difficulties in establishing who was liable for genetic modification effects, and the extent of their liability, they were most likely to suggest the ‘polluter-pays’ principle. This requires producers taking responsibility for untoward side effects of their products and activities. Eighty-four submitters saw adoption of the ‘polluter-pays’ principle as fundamental to the introduction of genetic modification in New Zealand. They outlined proposals ranging from financial bonds to compensation funds that companies would have to complete before they would be allowed to operate. They also made more general comments about multinationals, stressing that they must not be allowed to hide in other countries to avoid taking responsibility. Some submitters suggested that the polluter-pays principle is a fundamental safety mechanism, ensuring that companies would think twice before pushing potentially harmful products on to the public or environment without proper testing.

The State’s liability

Seventy-eight submitters explicitly rejected any state liability for the negative impacts of genetic modification use, which they equated with society taking responsibility. They were adamant that the government and the people of New Zealand should not be liable for damages caused. The concern was frequently expressed as “why should we take all the risks while they [multinationals] get all the benefits?” Public submitters addressing the question of liability were overwhelmingly in favour of making companies and those working for them liable for any and all adverse consequences.

Liability insurance

As Table 3.15 shows, 73 public submitters wrote about liability insurance. Some referred to the refusal of insurance companies to insure genetic modification activities. They interpreted this refusal in two ways. First, insurance companies’ refusal to provide operators with protection was demonstration of the unacceptably high risks associated with genetic modification. Second, given the reluctance of insurance companies to provide cover, a requirement for operators to take out public liability insurance could provide an effective way to constrain genetic modification activities.

Regulatory framework

The HSNO Act provides most of the regulatory framework for establishing liability. The Act provides for significant penalties and:

- makes it an offence to knowingly import, release or process a new organism without appropriate approval and fail to comply with any conditions of the approval
- makes it an offence for a manufacturer, developer or importer of a new organism to knowingly fail to report any new significant information or adverse effect of that hazardous substance or new organism
- enables a Court to order a person who offends to mitigate or remedy any adverse effects on people or the environment and to order the destruction of the new organism.

Forty-four public submitters specifically referred to the current framework for establishing liability, of whom two considered it adequate and 42 considered it inadequate. Amongst the latter, their concerns mainly reflect their belief that:

- Current legislation favours producers and scientists.
- Current regulations cannot be enforced because risks are too difficult to assess and liability too difficult to establish.
- The lack of bonds and other mechanisms mean it will be difficult to make polluters pay for any damage.
- Current regulations are not sufficiently enforced.