

4 November, 1999

Mr Ian Dundas
Committee Secretary
House of Representatives Standing
Committee on Primary Industries & Regional Services
Parliament House
CANBERRA ACT 2600

Dear Mr Dundas

Thank you for your letter of 2 September 1999 concerning the inquiry into primary producers' access to gene technology.

ICA is the peak consultative and co-ordinating body for the insurance sector of Australia, representing members' interests both domestically and internationally.

Membership presently comprises 123 insurance and reinsurance companies who together account for in excess of 90% of the general insurance premium income within Australia.

ICA is aware that gene technology companies may have difficulty obtaining insurance and we have detailed below information, which will assist your Committee in better understanding the complex issues facing insurers on genetically modified products.

All major local reinsurers and a number of general insurers prominent in liability insurance were contacted and asked to provide their comments. Generally most insurers and some reinsurers still had not reached any clearly defined position. Far more research was needed by insurers/reinsurers to gain an appreciation of the risk profile of this relatively new (for Australia) technology.

Insurability

General insurers in Australia providing product liability and environmental insurance are prepared to accept risks where there is a clear perception of the nature and size of exposures producing losses (which can be quantified drawing on past empirical experience). There is little if any meaningful loss experience available to insurers on genetic engineered risks in Australia. There is a perception amongst insurers that genetic engineering is dangerous characterised by an extremely diversified risk profile of a new technology.

General insurers are reluctant to accept incalculable risks where it is difficult to predict what loss scenarios will arise. This is particularly true with risks involving

lengthy periods before manifestation of latent injury or damage occurs such as in the case of asbestos.

Not only do general insurers face uncertainty in the assessment of risk potential from new technology they are also confronted with the socio-political risk of change. The legal system in Australia offers consumer and politically motivated self-interest groups ample opportunity to put pressure on governments and industry for change. If it were possible to accurately quantify losses from the diversified potential uses of genetic engineered risks insurers would be vulnerable to the risk of socio-political change.

The legal framework in Australia, which has in recent years developed towards strict liability (noting in particular Part VA of the Trade Practices Act) makes it extremely difficult for producers of genetically engineered foods or produce to defend liability actions involving complex issues. The facts are difficult to establish amidst conflicting scientific evidence against the backdrop of persons who have or are likely in the future to suffer harm. The problem for the insurance industry is accentuated by class actions for serial and latent claims or from the substantial costs involved in defending politically targeted policyholders.

It is doubtful that the insurance industry would view claims arising from change in societal values towards genetic engineering as anything other than the producers business risk.

Available Insurance Coverage

Most traditional insurers respond to risks involving new technology with great caution even following careful underwriting with the co-operation of scientists and safety engineers. With insurability there will be a large gap between the cover on offer and the level of coverage required for genetically engineered risks.

General insurers who are prepared to provide insurance for product and environmental liability for genetically engineered risks are likely to offer a specific stand-alone policy on a "claims-made" (covers claims in the period of cover) or "manifestation" basis. The wording may well exclude claims arising from changes in genetic make-up of humans or animals or from second generations. The policy coverage will be similar to that available to the pharmaceutical industry restricting all serial claims arising from one common event irrespective of what period they manifest to a single policy year limit of liability.

Alternative Financial Risk Coverage

Genetic engineered risks as previously covered, are either currently uninsurable or unattractive to the general insurance industry in Australia. Coverage that is available is either restrictive or inadequate.

A demand for alternative coverage to traditional risk transfer has been created. Research indicates that there are a number of finite risk or alternative risk financing models being used alongside traditional forms of insurance cover. Tailor-made hedging instruments are carried and financed jointly by the policyholder and

insurer/re-insurers. There is one major reinsurance broker in Australia known to be currently specialising in this area.

Swiss Reinsurance

In the transcript provided to ICA of a public hearing with Bob Phelps of Gene Ethics Network, he says that the Swiss Reinsurance Company does not think gene technology is insurable.

Swiss Reinsurance is one of the largest and respected reinsurers in the world and is a licensed insurer in Australia.

In a report on genetic engineering and liability insurance by this Zurich based reinsurer they have made a number of key points which are:

1. There is a lack of clear loss experience and means for calculation culminates in the fundamental questions of the insurability of such risks.
2. For the insurance industry, genetic engineering is potentially one of the most particularly exposed technologies of the future.
3. The less acceptance the public shows towards new risks, the less trust is placed in the means to deal with them and the greater the likelihood that the possible negative consequences of each new technology will become a problem for the insurance industry.
4. The insurance industry does not perceive genetic engineering risks as clearly definable, but primarily as part of an uncertain societal development.
5. Insufficient loss experience and changing societal values are reflected in a risk of change for which no quantifiable elements are available.
6. The risk profile of genetic engineering is extremely diversified and very difficult to anticipate. There is no clear conception of the risks accepted, so how can genetic engineering risks be insured?

It is currently not possible to give a direct answer to the question. A lot depends on whether consensus can be reached on the relevant loss scenarios in a dialogue involving the genetic engineering industry society and the insurance industry.

7. If one single genetic engineering loss manifests itself not only at the seed manufacturer's, but also at the farmer's and the foodstuffs industry, different underwriting liability covers could be triggered simultaneously.
8. An increasing number of alternative risk financing models are taking their place along the traditional forms of cover. Jointly financed by the insured and insurer.

9. The insurance industry is seeking dialogue with clients and those affected on the subject of genetic engineering. Risk-related information must be exchanged openly and differing values taken seriously.

With the lack of a suitable product history it is relatively easy to see why insurers would be cautious. This is well founded given other man-made disasters this century involving products for human consumption. In many of these instances it is insurers that have been called upon to meet extensive liabilities which eventually are passed on by way of increased premiums. For example, there have been many pharmaceutical disasters where parallels may be drawn to GM technology.

In our view liability insurers would be cautious when considering GM products and more needs to be known about the potential risks. The unforeseen risk at this stage may be too high.

Sincerely

Robert Drummond
Executive Manager