



Financial Fitness Should be Requirement for GM Release

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Developers applying to release GM organisms will face fewer compulsory checks on their financial fitness than a bank would make on someone looking for a mortgage on their home, said Sustainability Council Executive Director Simon Terry.

Government has rejected placing any requirement on ERMA to test if an applicant is financially fit. Without effective checks, companies can undercapitalise relative to their potential liabilities. This would leave others to pick up the tab if a GM release causes damage for which the developer is liable, but cannot pay.

Under the proposed new legislation, GM developers will not be liable for any damage caused by activities that have been approved by ERMA. Other legal remedies may cover certain types of damage. Where companies breach ERMA conditions, they will be liable for damage caused and the issue of their financial fitness to meet claims arises.

No liability regime can be effective unless the GM developer has the means to pay when a legitimate claim is made.

ERMA should require proof of sufficient financial cover as a condition for GM release. The availability of a range of financial assurance mechanisms means that sound GM release projects would not be unduly penalised by such a requirement. These mechanisms are described in a new paper released today by the Sustainability Council.

Self-insurance is the simplest means of providing a level of cover. ERMA could require that a GM developer was at all times able to call on a minimum levels of funds to meet claims. However, self-insurance will not cover claims worth more than the company. This limits its application and makes third party insurance important.

Although retail insurers will generally not provide cover for GM release activities, there are capital market instruments that can provide insurance. Special purpose bonds can be issued surprisingly cheaply on overseas markets, and this mechanism has been used by global reinsurance companies for a range of non-GM risks. The costs are relatively modest because investors like the fact that the bonds are not linked to normal market cycles and thus provide portfolio diversity.

Insurance is a normal business cost. The Civil Aviation Authority inspects aircraft for their airworthiness and checks that procedures are followed. However, if there is an accident, the airline is still liable for any damages. There is no reason to treat biotechnology differently from aviation by exempting it from the cost of insuring risky projects. To do so amounts to a blanket subsidy to GM developers.

If Government does not think the private market mechanism can provide cover arrangements, then it could provide cover itself. Government demonstrated in 2001 that it was willing to act as insurer of last resort when it provided \$2 billion in cover for Air New Zealand in response to the withdrawal of coverage the airline faced following the September 11th attacks. This was put in place well before Government took a stake in the airline.

Contamination of ordinary foods by GMOs has already led to major damages claims overseas. Contamination by a form of GM corn (Starlink) was responsible for the most expensive food recall in US history, costing around US\$500 million.

A strict requirement that GM applicants are financially fit, and remain financially fit, is not only fundamental to providing compensation for accident victims; it is necessary to ensure GM developers have the incentive to take due care. Unless they are exposed to the full financial risks, they do not have the correct incentives to exercise precaution in their activities.

Strict liability and financial fitness ought to be central policy planks for a Government that has committed to “proceed with caution”. Instead, Government has avoided the issue of who is to be held liable when something goes wrong, and has not even required ERMA to ensure a developer has the means to compensate innocent parties harmed by its activities.

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Reference: *Insurability, Financial Fitness and GM Organisms*, by the Sustainability Council, September 2003.