Western Australia court ruling highlights need for law reform to include ‘biotrespass’

The supreme court of Western Australia handed down a landmark decision yesterday, on genetically modified crop liability. The ruling in Marsh v Baxter is an enormous win for the agricultural biotechnology industry, and has disappointed organic farmers and their advocates.

The decision in Marsh v Baxter will no doubt reignite the debate over GM crop liability. A number of scholars have argued that there is a need to revise liability regimes in respect of biotechnology. Professor Jeremy de Beer from the University of Ottawa has argued that there is a need to adapt the legal principles of trespass to accommodate recent developments in biotechnology, nanotechnology, and synthetic biology. He has called for the creation of a cause of action for “biotrespass”.

No doubt the agricultural biotechnology industry would resist such efforts at law reform. From their perspective, GM crops should be subject to the same liability regimes as other forms of farming and agriculture.

At an international level, there will be further debate over the position of GM crops in the sweeping regional agreements under negotiation – including the Trans-Pacific Partnership. There is an intense struggle between organic farmers and the biotechnology industry at a number of levels in these international agreements – including in respect of intellectual property, GM crop liability, GM crop labelling, and regulation of biotechnology. It remains to be seen whether such international agreements will harmonise the regulation of agricultural biotechnology in the Pacific Rim, and across the Atlantic.

Read the full, original article: Does Australia need laws for ‘biotrespass’ to protect organic farms?