

**STANDING COMMITTEE ON
ENVIRONMENT AND PUBLIC AFFAIRS**

**INQUIRY INTO MECHANISMS FOR COMPENSATION FOR ECONOMIC LOSS TO
FARMERS IN WESTERN AUSTRALIA CAUSED BY CONTAMINATION
BY GENETICALLY MODIFIED MATERIAL**

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
FRIDAY, 31 AUGUST 2018**

SESSION TWO

Members

**Hon Matthew Swinbourn (Chair)
Hon Colin Holt (Deputy Chair)
Hon Tim Clifford
Hon Samantha Rowe
Hon Dr Steve Thomas**

Hearing commenced at 10.44 am

Mr KARL SULLIVAN

General Manager, Risk, Insurance Council of Australia, sworn and examined:

The CHAIR: Thank you, Mr Sullivan, for attending today. I am the chair of the committee and to my left is the advisory officer, Mr Alex Hickman. To his left is the deputy chair, Mr Colin Holt, and to his left is Hon Tim Clifford. To my right is Hon Samantha Rowe and to her right will be Hon Dr Steve Thomas, who has just stepped out to attend to some business. He may come in through the course of the meeting. On behalf of the committee, I would like to welcome you to the meeting. Before we begin, we must ask you to take either the oath or the affirmation.

[Witness took the oath.]

The CHAIR: You would have signed a document entitled “Information for Witnesses”. Have you read and understood that document?

Mr SULLIVAN: I have.

The CHAIR: These proceedings are being recorded by Hansard and broadcast on the internet. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you may refer to during the course of this hearing. Please be aware of the microphones and try to talk near them and please ensure that you do not make any unnecessary noise around them. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today’s proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

Mr Sullivan, would you like to make an opening statement to the committee?

Mr SULLIVAN: No, I do not.

The CHAIR: We provided in advance some written questions for you and what we would like to do is work our way through those questions. Obviously, if you need to take any on notice, please let us know. As you may know, because you were in the room earlier, other members of the committee may jump in with their questions as well, and new lines of inquiry may be opened up along the way which we may pursue as well.

I understand insurers must be able to quantify the likely number and cost of claims before they will make insurance products available. I also understand this may be a reason why, historically, insurance cover has not been offered to cover damage that is alleged to have been caused by a contamination of crops by genetically modified organisms or materials. Can you please expand on this, giving some background on this position and explain why it has been so difficult to quantify?

Mr SULLIVAN: It is in essence that there has been no body of evidence around claims that we would see coming through the courts that have ended in economic loss. On top of that, there is no statutory regime that imposes any kind of penalties that operators using GMO may need to go and

seek cover for; so no mandatory insurance provisions there. There is a broader context to this as well. Multi-peril crop insurance is still in its absolute infancy in Australia—Western Australia is obviously leading the pack on that—but GMO is a risk sitting outside of that in contemplation as well. Perhaps the hardest thing from an underwriting perspective for GMO is not the pure economic loss factors that might arise from this and the liability factors, it is that statutory regime and the potential issues that could come up at very short notice that might bring about a larger liability than initially thought or implied. While there is no economic loss to measure, it is very hard to set up a premium in essence to amortise that over how many GMO farmers there are and establish some kind of commercially viable product. Over time, I would imagine that that can be changed as the law starts to settle; more case law and common law gives us greater clarity about where the liabilities will sit, you would probably start to see—much like MTPI is coming in—potentially cover for GMO come in. This is a global issue. We are really at the behest of global reinsurers who have in large part written out general liability for GMO-related issues. There is still some reinsurance cover being made available for niche products however, like particular product recall liabilities and things like that.

[10.50 am]

Hon COLIN HOLT: You prompted something in my mind then. If multi-peril crop insurance covered for GM or let us say there was a specific instrument for it, you would see that it is the GM farmer who would be insuring to cover themselves for potential impacts on neighbours, or would you see an organic farmer taking out the insurance instrument to protect themselves from the surrounding farms on accidental incursions that put at risk their accreditation? There are kind of two sides to the argument in my mind. I am just interested in what the Insurance Council would think.

Mr SULLIVAN: Provided you could establish the losses that are potential on both sides, you could conceivably generate a product for both parties. You could start to see it become a general provision in most types of contract there. I have got to stress we are nowhere near that at the moment because there is no measurable loss or no history of loss.

Hon COLIN HOLT: No, no; I can see that. People will make their own decision about what cover they need. If you are a wheatbelt farmer with no organic farm around you and every neighbour grows GM and you do too, what is the point?

The CHAIR: It would be fair to say, from the Insurance Council of Australia's position, that it is agnostic towards GM and organic as methods of farming, but really for an insurance body which is for profit, it is really about whether you can provide commercially viable insurance for those kind of risks and that sort of thing.

Mr SULLIVAN: Insurance—I like to picture it as coming at the very, very tail end of the entire risk management spectrum. In many respects we have to rely on all of the experts and even the boys and politicians who come before that to have done their part of the risk management chain by compressing it down to an acceptably low residual risk. That is the piece we can insure.

The CHAIR: Is GM contamination regarded as so high a risk as to be inevitable—this would be for contamination or incursion—rather than just a manageable risk from an insurance point of view?

Mr SULLIVAN: We are not seeing any evidence of that at the moment, but that is essentially because there is no product there to measure claims against. However, we have not seen this in the courts except in the one very public case where it has become an issue, and internationally there appears to be perhaps a high level of tolerance about contamination there. We think that the trend is positive that this will start to normalise over time and, particularly as more GMO product becomes the norm in many jurisdictions, we will start to see insurance products evolve to cover those risks.

The CHAIR: Just for my benefit, because I am not a farmer obviously and I am not an insurance expert, but this multi-peril crop insurance, what does it actually insure for generally? What are the losses that are insured for; not specifically for GM but just in general terms?

Mr SULLIVAN: There are not too many of these products here because we really are in the infancy at the moment, but it essentially works on the principle of compensating the cropper for loss in yield, loss in income. At the very, very minimum, it is targeted at compensating them for their input costs so that at least they can reseed and action again next year. It covers all of the normal perils including some products for drought conditions. Obviously, the pricing around that becomes incredibly complicated and that is why I referred to Western Australia starting to lead the way on that. By being able to provide better data over time here, insurers are able to really sharpen up their pricing methodology. It is an expensive product for some farmers to get into, particularly if they have not kept records over a long period of time. There can be a financial hurdle to get over to get into the product. That is because you have to have very good yield records going back some time, because an insurer rolling out a product for the very first time is, obviously, going to want to sell that product to people who are less likely to make a very expensive claim. One of the reasons this is a slow developing product is because at the moment people are able to cherry-pick when they are going to purchase the product. So it is only a one-year contract and farmers with the asymmetry of information that is available are able to predict, "I'm probably going to have a bad year next year; I'll buy that product now." If it looks like they are going to have a good year next year, they do not buy the product. There is a lot of thought being put into the industry about: how do you manage that cyclic nature of it? We are starting to talk about things like three-year contracts or seven-year contracts, so that you can even out the good and bad years.

The CHAIR: In terms of my understanding of the losses that some people might pursue in relation to GM incursions or contaminations, or the wording that you might want to use, it is generally that it does not affect the crop yields; it is as to whether or not they can continue to market their product as organic and the price that they might receive when they sell their produce. The yield might be identical and what they would be seeking to insure is the profit margin or the price difference between the GM and the non-GM. Is that what the MPCl would cover?

Mr SULLIVAN: No, it would not, because there is a general exclusion for any liability arising out of GMO-related claims. It is kept very, very simple.

The CHAIR: Let us think about what we are talking about in the future. If that was extended to GMO-type claims, would that kind of insurance product be possible to compensate for the difference between the price of what you would have got as opposed to what you actually got because your crop had GM contamination?

Mr SULLIVAN: In an entirely theoretical sense, absolutely, provided you can measure consistently what that difference between your premium price and your reduced value might be. Then you can start to set a price around the frequency and probability of that, essentially giving you a technical premium.

The CHAIR: Does that tend to only be for this season's crop or can it be for further seasons' crops? For example, because you have had GMO, you might get GMO incursions—I understand the product is not necessarily available in this instance—so you cannot use this particular field for organic anymore for the next five years because your certifier says you have got to be free from GM contaminants for five years. I suppose that comes down to an issue of cost for the insurance, does it not?

Mr SULLIVAN: Yes.

The CHAIR: As I understand it, you can get insurance for anything so long as you are prepared to pay the premium that is attached to the risk. I guess, practically, though, farmers are not going to be able to take out insurances that are so uneconomic because the risk is so high. I guess that is the other sort of thing: is this insurance going to be able to contemplate compensating for those sorts of time-type lags or is that going to be so unusual and so expensive that it is never going to be a product that is going to be available?

Mr SULLIVAN: I would not classify it as never available, but this will take some time to develop and it will be critically dependent on the amount of information that can be provided into the public domain to really estimate those losses. Right now, going and getting an MPCI product requires a farmer to go through quite an application process and submitting data and working with the insurers before they can even get to the point of offering a product. If you added on top of that right now the additional burden of understanding what the GMO implications are from neighbours around the district, that adds another level of technical assessment that needs to go on. That could well push it into the unfeasible or unaffordable sort of area. However, as that information becomes more openly available, you would expect that insurers would get better at being able to calculate that.

Hon COLIN HOLT: It would also depend on the accreditation requirements. If there is an incursion, an accreditor might go, "Go and clean it up," and that is just one year that you lost. Or they might say, "Sorry, mate, that is out of production now for five years." That is going to affect how any insurance company rates a potential payout versus a risk and the premium.

Mr SULLIVAN: There is nothing insurers dislike more than uncertainty.

The CHAIR: Absolutely. It is your business, is it not —

Mr SULLIVAN: Yes.

The CHAIR: — risk and uncertainty. Would it be fair to say that the refusal to provide cover presently constitutes an acknowledgement that there may be a solid rational basis for such claims? Sorry, we have lost the context. Sorry, do not worry about that question; I think we might have covered it.

One submitter has stated that there are products available to cover loss but they have not been taken up because there is no genuine real risk of economic loss caused by any GM contamination. Do you have a view on this?

Mr SULLIVAN: There are products that relate to GMO or will provide GMO, but they tend to be at the highly specialised end of the spectrum. They would not be written as a normal part of a farm pack or anything like that. You will be sitting down with a very large, very experienced broker who would be placing your business with multiple insurers for different aspects of the risk through what we would call an industrial special risks policy. In saying that, it is not a product that you could consider right now as being generally available or accessible to the average farmer who has got part of his yield coming from GMO. However, we do see that new products in the market tend to follow that trajectory. They enter at the niche end of it. Insurers start to get some experience with it and they will start to then broaden their application of it out, provided they can determine that the market will continue to purchase that product. But that does take some time.

[11.00 am]

The CHAIR: You would not necessarily agree with the proposition of the submitter that there is no genuine real risk of economic loss caused by any GM contamination and that is not the reason why there is not insurance in these areas and people are not taking them up; it is really just that the products are not actually quite available to suit the needs for those sorts of things at this point in time.

Mr SULLIVAN: Without being clichéd, it is a little bit of column A and column B there. We have not seen through the courts many losses manifest. Generally, if we had seen that or if the government had started to step in and say, “You now mandatorily must have cover to protect your neighbour”, for example, to be overly simplistic about it, you might find that a market starts to develop from that—might. It is a little bit that the losses are not there or are not visible at the moment. It is also that there are broader concerns about rushing in and providing a product like that in an uncertain regulatory environment; what that could do to your probable maximum loss.

The CHAIR: You were here for most, I think, or all of the evidence that was given by the people before.

Mr SULLIVAN: Yes.

The CHAIR: And you have talked about there not being enough court cases, but you heard that evidence about the significant barriers to even commencing legal actions in tort or nuisance. I take it that it is not just legal proceedings and outcomes that would drive insurance companies towards offering products. Is there other demand out there that you are aware of for, say, organic farmers to insure their crops against the possibility of GM contamination? Are they driving any demand that you are aware of?

Mr SULLIVAN: Not that we are aware of, no.

Hon COLIN HOLT: Can I ask, and you may not be able to answer this: organic farmers generally, what sort of stuff do they insure against, or insure for?

Mr SULLIVAN: I do not have the numbers with me, but they potentially insure to a lesser extent than traditional farming, if I can separate it in that way. But where they are insuring, they are insuring for the same types of loss that a traditional farmer is. I would say that the sector is generally not the best insurance customer in the country. They tend to manage their risks very closely and tightly themselves. One of my favourite sayings that I hear over here in the rural sector is, “If you can afford to buy the insurance, you don’t need it”, because you are already doing all right and able to manage your own risks.

The CHAIR: I take it you would not agree with that saying?

Mr SULLIVAN: I am required not to agree with that saying! There is some commonsense in the background of that.

Hon COLIN HOLT: Most organic farmers would insure for fire, hail, potentially if there was a product around frost and multi-peril—if they took out multi-peril—and things like drought. Anything else?

Mr SULLIVAN: They are taking it out perhaps just a little bit less in terms of the percentage of take-up than traditional farmers, which overall is not a great rate. But they are not insuring for any particular different issues and they are not out there in the market seeking insurance for different issues. I think that is the bit that we are obviously watching very closely through broker networks to see what else is being requested in terms of protection, because when that request gets to a sufficient critical mass, you will find that products break out from the niche space into a more generally available space.

Hon COLIN HOLT: What about some of the associations like—we had NASAA; what do they stand for? National Association for Sustainable Agriculture, I think.

The CHAIR: Australia—or WA was the one we saw.

Hon COLIN HOLT: WA was the one we saw. But those sorts of associations; are even accreditation bodies themselves exploring these options with insurance companies or the overarching body?

Mr SULLIVAN: Quite possibly with insurance companies, with the larger reinsurers, but not through the industry association.

The CHAIR: Would there be a way for you to find out for us whether your members are having those conversations?

Mr SULLIVAN: I can take that on notice and come back to you.

The CHAIR: If you could, please, yes. That will be question on notice 1.

Hon COLIN HOLT: It would be nice to see what proactively is coming from the organic industry in response to a growing risk, I would have thought. It would have been interesting if they had taken it up.

The CHAIR: A number of submissions to this inquiry have pointed out that most insurers will not offer cover for economic loss caused by GM contamination, and have provided wording of disclaimers appearing in policies. We note your submission states that recently some insurers have included cover for this type of damage under the multi-peril crop insurance. We also note that MPCl Australia offers this type of insurance. You have already provided details regarding that—I am sorry, I am getting to the second part of my question; we might have already covered this. Just in terms of GM insurance, are you able to detail the terms and conditions that this cover is contingent upon, including any limits and exclusions?

Mr SULLIVAN: I cannot quantify that for you. I could come back to you.

The CHAIR: If you could.

Mr SULLIVAN: That is at the highly specialised end of the market with very large clients and around industrial and special risks policy, where they may have divided liability amongst multiple insurers. So, as a consequence, these are highly specialised contracts and they are very, very difficult to obtain and break out, but I can do some research on that and come back to you.

The CHAIR: If you could, because it would be good for us. We do not need the details of the parties concerned, but the substance of them is what we are interested in. If you could take that as question on notice 2. We will put the transcript to you—you will have access to these things; you do not have to recall it all off the top of your head. Then we can get some of that detail about those terms and conditions to get an idea about what is actually available in the market. Do you think with multi-peril crop insurance cover that there will be a continuing take-up in the growth of that?

Mr SULLIVAN: I think the product has some very significant challenges to take up. Where it has been successful, measured purely by take-up in other jurisdictions globally, it has been by virtue of very significant government subsidies and backing. That is not being done here and it is certainly not something that the industry is arguing for either. Some of the key challenges that will prevent widespread take-up are the moral hazard aspect of farmers making a different decision about how they are going to manage the crop going forward because they have a particular instrument in place, and the short contract term that we are seeing, where a farmer is able to purchase a product at the start of the season with a fairly good idea, knowing more about the land parcel than the insurer does, that he is going to have a poor yield and poor income. There is a lot of work going on by some very specialised insurers around this, so we might start to see longer term contracts offered at better prices to enable farmers to ride out the highs and lows, which would give the insurer greater confidence. I think in summary, I am saying that nobody is walking away from this as a product at the moment. It is still embryonic, though; it is still a very, very small portion of the market. Only a very small number of farmers are actually purchasing the product at the moment. I think when it first came out a couple of years ago, the number of claims made in a year almost equalled the number of policies sold. You do not have to be Warren Buffett to work out that is not a great way

to run an insurance company, but the insurers involved in this are taking a longer term view of its benefit for the community and its commercial foundation.

Hon COLIN HOLT: I just want to seek clarification. I think I heard what you said, and I will paraphrase: the take-up of an insurance instrument potentially changes a grower's behaviour; that is, "Because I'm insured now, I can take a greater risk." Is that a real thing?

Mr SULLIVAN: Moral hazard is a real thing. It is not to say that every farmer thinks like this. As most of you would know, it is a surprisingly complex business bringing a crop to fruition at a suitable price. Many of the factors that can influence the outcome are well beyond the control of a farmer. For example, if commodity prices do dip for a particular crop, there may be less incentive for the farmer to risk-manage the crop going forward if he has an instrument there where the insurance price or payout starts to be higher than he might be getting as a commodity. Again, this is not to suggest that farmers are the mafia, but it is an issue that insurers have to think about: what is the behavioural impact of their product on a person, where you are expecting them to manage a lot of the risks?

[11.10 am]

Hon COLIN HOLT: Yes, which is why some of the multi-peril stuff is restricted to input costs only.

Mr SULLIVAN: Yes.

Hon COLIN HOLT: Because you only recover that, so you do not get above what you have not put in.

Mr SULLIVAN: Yes.

The CHAIR: A lot of those policies are aimed at things like hail, frost and stuff that—I mean, there is not much you can do about hail, obviously. Things like fire, though, I suspect would be an issue in that you could see them not managing those risks to a satisfactory level if they were not going to get the return that they were looking for off their yields. Sorry, I do not think you need to respond to that.

Some submitters have drawn attention to what they regard as drawbacks of insurance as a model of compensation, such as requiring claimants to identify neighbouring farms or operators they allege are at fault for GMO contamination, creating divisiveness through the placing of blame in the source of contamination, if the source of contamination can be identified; delays in any payouts; unfairness in requiring non-GM growers to pay premiums, given they are not creating the alleged harm; and the potential cost of premiums. Are you able to address any of these perceived drawbacks? I mean, they do sound like common drawbacks of insurance generally, but do you have a specific response to those things?

Mr SULLIVAN: I might classify them more as common perceptions of drawbacks of insurance. If you look at insurance more broadly, there are in the vicinity of five million claims a year across most classes. On average, about one per cent of claims end up in front of an ombudsman, and about half of those end up in the insurer's favour and half in the claimant's. Sometimes I feel like I have met everybody in the half a per cent that has had a bad run!

Hon COLIN HOLT: We do, too!

Mr SULLIVAN: Flipping it around, there are 99.5 per cent of people who get compensated quickly and walk away the better for the insurance transaction. It is very easy for some stakeholders to characterise any use of insurance as ultimately resulting in a bad experience for the user, but that is certainly not what we see in 99 per cent of cases. There are any number of mechanisms that can be put in place to improve the claims handling process, and that is a big part of MPCI—how do you do it quickly and efficiently? It is certainly not in the insurer's interest to hold back on payment, but

you do need to satisfy yourself that it is a legitimate claim and what payment should be made at what speed and for what processes.

The CHAIR: Thank you for that. A submission by Dr John Paull of the University of Tasmania has proposed a compulsory third-party GMO incident scheme whereby, according to his submissions, it would operate on a no-fault basis just like motor vehicle accident schemes. Premiums would be collected from the potentially harming parties. Legal fees would be minimised in claims settled quickly and amicably, and the scheme could be outsourced to existing insurance companies or assigned to a government business enterprise such as the Insurance Commission of Western Australia. What are your thoughts, from the Insurance Council of Australia's perspective, on such a proposition?

Mr SULLIVAN: We have not looked into that in any great detail, so I can only give the broadest brushstrokes. It is certainly one model that could be pursued to look at covering the risks and the losses, which brings me back full circle: what are those losses that are out there that such a scheme would seek to compensate people for? It is a little chicken and egg in that perspective. I think the last witnesses spoke about issues coming from the non-GM farmer impacting the GM farmer. If you were to broaden out that scheme to look at all kinds of other issues that could occur—if you broadened the scheme to look at all cross-fence issues that cause economic loss on a no-fault basis—perhaps there is something economically viable there. But any such scheme would obviously have to go through fairly rigorous business case work to work out whether this could be sustainable.

The CHAIR: I think most people make reference to the third-party motor vehicle stuff, but would you anticipate a scheme more along the lines of workers' compensation where the private insurers are involved in this space to sell insurance products, rather than having a government agency like the Insurance Commission of Western Australia? I suspect from your members' perspective they would love an opportunity to get involved in an insurance scheme like that, but workers' comp-type systems are managed reasonably well through those private insurers. Is it something you think government should do or do you think there is a space that private insurers could get into if the government set the framework for the scheme?

Mr SULLIVAN: It should absolutely be competitively underwritten if you went down that path, rather than keeping it on the government balance sheet.

The CHAIR: Mr Sullivan, thank you for coming in today. Would you like to make a closing statement at all?

Mr SULLIVAN: No.

The CHAIR: Excellent. Thank you for coming all the way from Sydney. I hope you have other business here in WA!

Mr SULLIVAN: I do!

The CHAIR: Excellent.

Thank you for attending today. A transcript of this hearing will be forwarded to you for correction. If you believe that any corrections should be made because of typographical or transcription errors, please indicate these corrections on the transcript. The committee requests that you provide your answers to questions taken on notice when you return your corrected transcript of evidence. If you want to provide any additional information or elaborate on any of the particular points you made during today's hearing or provide supplementary evidence, you can provide that at the same time you return your corrected transcript. Thank you for coming in today.

Hearing concluded at 11.16 am
