STANDING COMMITTEE ON ENVIRONMENT AND PUBLIC AFFAIRS

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

TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 11 APRIL 2018

SESSION ONE

Members

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

Hearing commenced at 9.30 am

Dr MARK SWEETINGHAM
Managing Director, Research, Development and Innovation, Department of Primary Industries and Regional Development, sworn and examined:

Mr JOHN VAN SCHAGEN
Manager, Plant Product Integrity, Department of Primary Industries and Regional Development, sworn and examined:

Ms KATY ASHFORTH
Legal Officer, Department of Primary Industries and Regional Development, sworn and examined:

Dr ROSALIE McCAULEY
Senior Development Officer, Department of Primary Industries and Regional Development, sworn and examined:

The CHAIRMAN: Good morning. I am the Chair of this committee. To my left is the advisory officer, Alex Hickman, and to his left is the Deputy chair, Hon Colin Holt, and to my right is Tim Clifford. Hon Dr Steve Thomas and Hon Samantha Rowe are running a little bit late, so they will probably make an appearance through the course of the hearing. We presently have a quorum so we are able to proceed without them here. On behalf of the committee, I would like to welcome you to the meeting. Before we begin, I must ask you each to take either the oath or the affirmation.

[Witnesses took the affirmation.]

The CHAIRMAN: You will have signed a document titled "Information for Witnesses". Have you read and understood that document?

The WITNESSES: Yes.

The CHAIRMAN: 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 refer to during the course of this hearing for the record. Please be aware of the microphones and try to talk into them; ensure that you do not cover them with paper or make noise near them, and can you please try to speak in turn rather than at once. 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.

Would you like to make an opening statement?

Dr SWEETINGHAM: I just make a comment that we were invited to table a written response to each of the questions that we were given.

The CHAIRMAN: Yes.

Dr SWEETINGHAM: We have copies of that and we would like to table a copy.

The CHAIRMAN: We did provide you with those questions in advance. It is our intention to go through those questions in the course of this hearing this morning.

Dr SWEETINGHAM: To a significant extent, we will be refining them.

The CHAIRMAN: That is okay. It may give rise to further questions and certainly questions from other members of the committee.

Dr SWEETINGHAM: Mr Chair, just on another matter, if a question is asked that we do not know the answer to, we would be happy to take the question on notice.

The CHAIRMAN: Yes, that is okay. We will deal with that. As I understand it, that is a fairly reasonable and consistent course of conduct for committees. I note the arrival of Hon Dr Steve Thomas.

If there are no opening statements, perhaps we will get to the first of our questions. The first question that we have given you is: please give the committee a general overview of how the supply chains work for GM and non-GM crops such as canola, including harvesting, transport, segregation practices, testing for GM in non-GM crops, taxes and levies payable, and markets. You have provided us with a comprehensive answer to that. Are there any additional points that you would like to add other than what you have provided to us in your written submission? Perhaps you can give us a summary.

Dr SWEETINGHAM: Maybe I will just talk you through the written submission. The department first of all acknowledges that we do not have absolute full and detailed knowledge of all the intricacies of the commercial supply chains involved, but our broad knowledge is clear that growers of canola in the first instance have the option of choosing whether they grow non-GM or GM canola seed; and, if they choose to grow GM canola, they are required to sign a licence and stewardship agreement with the licence holder or the technology provider to obtain access to that seed. By signing that licence and stewardship agreement, those growers are agreeing to comply with quite onerous licensing terms, what is referred to as a crop management plan that is about the sustainable use of the GM technology in the future, and all other regulatory requirements of the Australian Pesticides and Veterinary Medicines Authority and the Office of the Gene Technology Regulator. They are also, by signing this, agreeing to deliver the GM grain that they grow to an authorised grain handler and declare that grain as being a genetically modified canola variety.

The crop management plan includes recommended separation distances between non-GM and GM crops. Also, as I have stated before, the growers must declare when they deliver their canola to wherever they are delivering it to—usually in this state to Co-operative Bulk Handling—that it is either GM or not GM. From that point on, it is then the responsibility of the grain handler to maintain appropriate segregation to meet individual customer specifications. Industry members that are involved in bulk handling and marketing of grain would be in a better position to provide more detailed information about requirements on trucking and transport and coverage and storage on farm if you require that information, but the department does not have full details of that.

The CHAIRMAN: Yes; we will be hearing evidence from CBH later today, so I am sure it is a matter we will deal with then.

Dr SWEETINGHAM: Of course, once it has been accumulated and marketed, our broad understanding is that the majority of markets for canola are in the European Union, particularly Germany, Belgium and France, but also Japan is a significant —

The CHAIRMAN: Sorry to interrupt you, but do you have an idea about the size of those markets—what their value is to the Western Australian economy?

Dr SWEETINGHAM: Overall, the value of the canola industry to Western Australia varies from season to season depending on the rainfall et cetera, but also the international price varies. We are talking in the vicinity of an $800 million crop, of which, we understand, in the order of 30 per cent is genetically modified.

The CHAIRMAN: I was more interested in the non–genetically modified portion of that crop.

Dr SWEETINGHAM: I would say 70 or 75 per cent of that value would be non-GM.

The CHAIRMAN: Is that specifically marketed as non-GM, do you know?

Dr SWEETINGHAM: As we understand it, that would be the case, yes. You did mention levies and taxes. The only thing that came to mind for us is that all canola growers, whether they are GM or non-GM, are required to pay a research and development levy, which is administered through the commonwealth government, which supports research organisations such as the Grains Research and Development Corporation.

The CHAIRMAN: As you said, that is a commonwealth levy.

Dr SWEETINGHAM: Yes, it is a commonwealth levy.

The CHAIRMAN: There is no state levy?

Dr SWEETINGHAM: There is no state levy. That is correct, is it not, John? Yes.

Hon COLIN HOLT: Can I just ask a question around the licence and stewardship agreement? Is that consistent across Australia and other jurisdictions, do you know?

Mr VAN SCHAGEN: Yes, that would be correct, because GM canola is approved for all of Australia, and any grower that wishes to grow a GM variety of canola has to sign that licence and stewardship agreement with the seed company—with the licence holder.

Hon COLIN HOLT: What about in international jurisdictions? Is it the same? Do you have any knowledge of that?

Mr VAN SCHAGEN: I think the intent of the licence and stewardship agreement is for the companies to maintain their IP on the technology.

Hon COLIN HOLT: So you suspect that across, say, Canada, for example, it would be a very similar, if not the same, agreement?

Mr VAN SCHAGEN: Yes, indeed.

The CHAIRMAN: The next question we put to you was about the tolerance levels. I think the specific question was: what was the process by which the GM tolerance levels of 0.9, 0.5 and one per cent came about, including what consultation occurred with industry? And where do they apply and why? If we just deal with the first part of that question as to how we came about having the different tolerance levels.

Mr VAN SCHAGEN: The tolerance levels were agreed to by the then Primary Industries Ministerial Council in 2005. The 0.9 per cent level is based on the European tolerance standard for the presence of GM material in non-GM crops. It then was also adopted by the Australian grains industry and is now broadly recognised as an international standard.

The CHAIRMAN: When did the Australian grain industry adopt that?

Mr VAN SCHAGEN: It would have adopted that, I imagine, around about the same time; there would have been consultation with the industry. That is the normal procedure. I suspect that would have been around the same time, in preparation for any plantings.

Hon Dr STEVE THOMAS: Was it then adopted by anybody in the organic sector?

Mr VAN SCHAGEN: No, in their standards the organic sector do not have a clear threshold for the presence of GM products. They did not adopt that same standard.

Hon Dr STEVE THOMAS: I understand there are some varying organic standards; they are not all unified. Are there any of them that have adopted a tolerance version of the modified organisms?

Dr McCAULEY: I will just help John here. To answer your question about when the grains industry adopted the 0.9 and the 0.5, that was in 2007, because the industry was getting ready for the commercialisation of GM canola. They went through a long process of getting ready and consulting within the industry. You might be interested in the "Single Vision" document, which documents how they went through the process of getting ready. All the grains industry parties were happy with the tolerance level and also how GM canola was going to be managed within the Australian supply chain. In terms of the organic standard, in Australia there are two standards, as John mentioned. There is no threshold for GM presence, accidental or otherwise, in organic produce.

Hon Dr STEVE THOMAS: In either standard?

Dr McCAULEY: No. The other important thing is that this puts the Australian organic industry out of step with the international organic industry. For example, in the European union there is a threshold of 0.9 per cent. The United States actually has no threshold. Instead, its standard pretty much says that if the organic grower follows best practice for management and tries their utmost to keep GM presence out, there is no threshold.

Hon Dr STEVE THOMAS: Further to that, would it be a fair assumption to say that the government of Western Australia recognises the grain industry standard for adventitious contamination, but does not recognise the organic standards?

Dr SWEETINGHAM: My comment would be that the organic standards are a matter for the organic industry. This department has not been in a position to wish to legislate or encourage any sort of legislation on the organic industry other than to encourage them to set standards to enable them—and we are very supportive of the organic industry I might add. We want to see them flourish, but they need to develop their own standards, as has happened overseas, that are practical and workable so that they can fit in, whether they are GM, non-GM, conventional or organic producers.

Mr VAN SCHAGEN: My colleagues at the commonwealth Department of Agriculture and Water Resources have stated that these organic standards are merely guidelines for the industry and that any threshold in relation to market access or trade is negotiated by the commonwealth government.

Hon TIM CLIFFORD: Is there a standard for organic that the US has applied that is a set of guidelines that they have to abide by, or is it just best practice?

Dr McCAULEY: They definitely have a standard, but they do not actually specifically say that there is a threshold for GM presence in their standard. It is a bit interesting, but that is the way they do it.

The CHAIRMAN: The next part of that—perhaps we have dealt with it already—was where do they apply, and why. Is there anything additional you wanted to add in terms of those tolerance levels?

Mr VAN SCHAGEN: There are a number of different threshold levels. The 0.9 per cent that we have been referring to is mainly in relation to international trades. There is also a standard for commercial sale of seed, which is set at 0.5 per cent. There is also reference to a 1 per cent level, which is adopted by Food Standards Australia New Zealand. That is the maximum level per ingredient of an approved GM food present in non-GM food for the purpose of labelling.

The CHAIRMAN: Do you know why they are at those levels? What is significant about them being at 0.5, 0.9 or 1 per cent? Is there an evidence basis for that?

Mr VAN SCHAGEN: I do not know the origin. I imagine the difference between 0.9 and 1 per cent is not very great, but they are probably determined by different organisations for difference purposes.

The CHAIRMAN: Perhaps it reflects the market or growing realities that contamination —

Dr SWEETINGHAM: I think there is a lot of pragmatism in those standards, and I think the reason for the strictest tolerance level for seed as opposed to the product that is delivered, the 0.5 per cent is an attempt by the industry to keep great purity of the initial genetic material of the crop that is planted. I think that is highly appropriate.

The CHAIRMAN: Our next questions regard the location of GM and non-GM farmers in Western Australia. We obviously require a good understanding of the scale of the risk of any contamination by GM crops in Western Australia. You have already indicated that about 30 per cent of the $800 million crop—I suspect that is canola crop that you are referring to there—is genetically modified canola. As part of this, the committee requires the location of GM and non-GM farming properties, both conventional and organic, that boarder one another and that are in close proximity. The first question arising from that is: does the department possess a map or other information that contains those details of where the GM and non-GM canola farms are?

[9.50 am]

Mr VAN SCHAGEN: The short answer to the question is no. The department does not have a map or any information. Just to add to that, it would be difficult to keep tabs on that because most farmers go through a crop rotation process and also the fact that GM canola is a legal crop in Australia, the same as non-GM, barley, wheat or oat. We do not keep tabs on all the crops that all the farmers grow.

The CHAIRMAN: Do you have any other sources of information for where GM crops are being grown?

Mr VAN SCHAGEN: Every GM grower has to sign an agreement with the licence holder. I imagine the licence holder would be best placed to provide that information. I suspect that varies greatly from year to year, depending on markets, business and crop rotations.

Hon COLIN HOLT: And weather.

Hon Dr STEVE THOMAS: In relation to the co-existence, does the department have a set of recommendations for growers in relation to being either GM-free or non-GM versus GM? What information is provided then for a producer who wants to be GM-free or a GM producer who is adjacent to a producer who wants to be GM-free?

Dr McCAULEY: The department has a farm note called “On-farm segregation of canola varieties”. I have a copy of it for all of you.

The CHAIRMAN: And are you tabling that document for us?

Dr McCAULEY: Yes, and I will also table a supplementary one that was prepared by the department in collaboration with the Pastoralists and Graziers Association and the WA Farmers Federation, and GRDC. That was also provided to growers in 2010, and it does provide guidance on best practice coexistence.

The CHAIRMAN: Okay, and did you read the title of the additional one?

Dr McCAULEY: “GM canola: A weed management option”.

I will just take you through the details that are in this guidance document from the department. The document starts off with the Australian receival standards for canola, which is, they can deliver either GM canola which contains more than 0.9 per cent GM presence or non-GM canola that

contains less than 0.9 per cent presence. In both of those types of GM, I should have specified that it is Gene Technology Regulator–approved GM canola that is allowed. There is no allowance for anything that is not Gene Technology Regulator approved. Our document talks about really quite basic things that growers would be doing anyway—for example, the hygiene practices, like clean your harvester out before you use it, put it away, make sure you clean it. Also, particularly for canola, clean your equipment in the paddock where you harvest that particular variety, and that helps you stop spreading canola volunteers all around your property. It is not just headers. Clean your seed out as well before and after that you are using it for different varieties. In the case of seed, the department recommends that growers plant certified seed, because it contains less than 0.9 per cent presence of GM canola, if you want to deliver non-GM canola. In the case of farmer-saved seeds, we also recommend that if farmers save seed and want to plant that seed next year, they have it tested, because then they have the certainty that it is very likely to meet the receival standard. We also recommend that growers keep their seed where the rats cannot eat it, for obvious reasons, and that they keep a record of lot numbers of seed.

The CHAIRMAN: Just in relation to the rats, I am not an agricultural person, but is that on the basis that they might spread the seed, or just as good hygiene practice?

Dr McCAULEY: Good hygiene and also they might spread it, and also they make a big mess. We ask them to keep a record of the lots of seeds that they plant and where it ends up being planted, and that is really in many ways a biosecurity-related matter, because if necessary and we need to trace forward or trace back, if we have that information, it makes it much easier for us to do that. We also, in the on-farm segregation of canola varieties we remind the growers of the conditions of the licence and stewardship agreement and the buffer zones in those. In that licence and stewardship agreement, growers are recommended to comply with a five-metre gap between GM and non-GM canola that will be sold for grain, and a 400-metre gap if you are wanting to keep the seed for planting next year.

The CHAIRMAN: This is just a recommendation, though, is it not? It is not actually mandated that there must be a gap between two crops.

Dr McCAULEY: It is written in the licence and stewardship agreement.

The CHAIRMAN: As a recommendation or as a mandatory provision?

Dr McCAULEY: It is in the agreement, yes.

The CHAIRMAN: I think I have heard you use the word “recommendation” for gaps before, and my understanding of the word “recommendation” is that it would not be mandatory, so some clarity on that would be helpful.

Dr McCAULEY: As far as I understand, it is recommended, but when they sign the licence and stewardship agreement, they commit to complying with what is in the crop management plan.

The CHAIRMAN: Okay.

Dr McCAULEY: Our document also talks about other coexistence important practices. For example, they need to consider that wind or water can move plant material from their property onto other properties or into other areas on their farm, so we recommend that they think about floodwater, strong winds, and if they intend to swathe in boundary paddocks, we recommend that they leave one header width of unswathed crop along that boundary to minimise the risk of the material moving. Lastly, we remind them also that if they put stock in to graze their canola stubble, those stock can be excreting viable seeds for seven days. If you put a mob of sheep into that crop, and you want to move them somewhere else and not spread possible volunteers, we recommend that they

keep them in there after they have eaten all the stubble and feed them for seven days before they move off.

Hon Dr STEVE THOMAS: Can I just ask about the recommendations you have outlined? Is there a separate set of recommendations for a crop adjacent to someone who wants to be non-GM versus GM-free? Are basically the same set of guidelines recommended that allow adventitious contamination as for zero contamination?

Dr McCAULEY: We do not specify a separate set of recommendations for those, but we do have another farm note that is called "Coexistence of different production systems", and in that we recommend growers discuss their planting intentions with their neighbours.

The CHAIRMAN: Can we get a copy of that note, please?

Dr McCAULEY: I have not got it here.

The CHAIRMAN: We will take that on notice if you can.

Hon Dr STEVE THOMAS: Just to check on that, the recommendations do not necessarily plan for GM-free or zero contamination; the recommendations relate to under 0.9 per cent, effectively?

Dr McCAULEY: Yes, that is right.

Hon COLIN HOLT: I just want to clarify something you said a minute ago. If it is below 0.9 per cent, it is considered non-GM, but anything over 0.9 per cent, even if it is 1.2 per cent, is considered GM. Is that right?

Dr McCAULEY: Yes, that is the Western Australian receival standard.

Hon COLIN HOLT: So you could be growing a non-GM canola crop that gets contaminated with even 1.2 per cent of GM and you have got to deliver it as GM?

Dr McCAULEY: Correct.

Hon TIM CLIFFORD: Just with the safe distances—the 400 metres—seeing that they have signed an agreement, have there been any violations of those agreements; and, if so, how many? Do you keep a register of that?

Dr McCAULEY: No. They sign the licence agreement with the technology provider, and so it is not the department's business to monitor what happens between the technology provider and the grower.

Hon TIM CLIFFORD: So there is no mechanism or any report that you get so that you get a better idea of what is happening out there?

Dr McCAULEY: No; as I said, we do not monitor what happens in a contractual agreement between the licence holder and the grower.

[10.00 am]

Hon Dr STEVE THOMAS: This may be opinion, and feel free not to express one if you like, but in your view, is it possible the department could come up with a set of recommendations that effectively exclude GM contamination so that there would be a set of recommendations for a GM-free neighbour? Is that a deliverable outcome, or is there always likely to be some level of contamination?

Dr SWEETINGHAM: My opinion would be that if GM-free means absolutely zero tolerance, it is very hard to come up with anything that would guarantee that.

Hon Dr STEVE THOMAS: Good; thank you.

The CHAIRMAN: We will collect those documents from you, if you can.

The next area we were looking at was economic loss from contamination, and in your submission at page 2 the department states that, to DPIRD's knowledge, there has only been one litigated case in WA where a non-GM farmer has claimed alleged losses resulting from a GM crop. Some submissions to this inquiry have stated that there have been a number of incidences of economic loss due to contamination by GM crops. Is the department aware of other cases that have not reached the courts where an economic loss, or even just contamination, has been claimed?

I note the arrival of Hon Sam Rowe.

Mr VAN SCHAGEN: Just to answer the question, Mr Chairman, no, the department is not aware of any other such cases, other than the one that was brought before the court.

The CHAIRMAN: Would that be because, let us hazard to guess, that there were no other cases, or the department's lack of knowledge is because it has not been reported to the department? You might be guessing here.

Mr VAN SCHAGEN: If I am guessing, I guess that, given that the first case brought such broad media attention and was fairly well publicised, if there were another one, it would have been a similar scenario.

The CHAIRMAN: So you have no details from any other farming people that there has been contamination of their crops to the point of affecting their status as being non-GMO.

Mr VAN SCHAGEN: Not to the point where it became an issue of losses.

The CHAIRMAN: In the letter inviting the department to make a submission to this inquiry, there were a number of questions that were posed that we did not get feedback on. You may have provided additional feedback on those, but perhaps we can just go through each of those five questions one at a time now and get any comments from you. The first of those was: what were the reasons for the Gene Technology Western Australia Bill 2014 not being passed by the last Western Australian Parliament?

Ms ASHFORTH: We believe that was just a matter of the Parliament's priorities. There was not anything from the department's point of view that would have prevented it continuing its passage.

The CHAIRMAN: What were the regulatory consequences for gene technology in Western Australia as a result of the Gene Technology Act of 2016, the commonwealth act, remaining the governing legislation?

Ms ASHFORTH: Just a small correction there, I think the commonwealth act is actually 2000. It is the state act that is 2006.

The CHAIRMAN: Okay.

Ms ASHFORTH: There were not any regulatory consequences, as such, of that act remaining the governing legislation. That was not going to change. The problem with the non-passage of the WA bill 2014 was that the problem that existed was not remedied.

The CHAIRMAN: Can you perhaps elaborate what the problem is?

Ms ASHFORTH: The problem was that the WA legislation was not in keeping with the commonwealth legislation and the 2014 bill would have adopted the commonwealth legislation as legislation of the state, as opposed to trying to use the mirror technique where every separate amendment of the commonwealth act has to be made by the state act. That was how the original 2006 bill was made, and it passed, but the amendments were not made, so it was and remains out of step with the rest of the national system.

The CHAIRMAN: What is the practical effect of that?

Ms ASHFORTH: Luckily, it is none that I am aware of in that most of the actual dealings with gene technology are covered by the commonwealth act's constitutional reach, so it is all fine. But if there were some dealings in WA that were not so covered, then there would be an issue and the regulator at this point, until the legislation is fixed, would not be able to regulate them.

[10.10 am]

The CHAIRMAN: I think you have answered question 3, which is: what is the current regulatory status of the Gene Technology Act, the commonwealth act, with regard to regulation of gene technology in Western Australia in that that is the regulating act for gene technology in Western Australia?

Ms ASHFORTH: For the things that it covers?

The CHAIRMAN: Yes.

Ms ASHFORTH: Yes; the one that is in fact operating.

The CHAIRMAN: As the bill lapsed at the end of the previous Parliament, are you aware whether the current government intends to reintroduce the bill in the same or substantially the same form and content as the previous bill?

Ms ASHFORTH: I do not think the department is aware whether the government has made that decision or not yet. Probably that means it has not yet been made. That remains to be seen, but certainly a bill in those same terms would be the simplest and most effective way of dealing with the issue.

The CHAIRMAN: I picked up from your earlier comments that there is probably not much practical effect of there not being that complementary legislation at this point of time, in the sense that the Western Australian legislation is locked in time from when it was first made rather than reflecting the commonwealth legislation. But there has not been significant enough change in the commonwealth legislation to make that a practical difference, or the commonwealth legislation covers the field to the extent that it can and the gaps that exist at the state level for the statements.

Ms ASHFORTH: It is more the second. It certainly is not the case that there have not been amendments to the commonwealth act—there have been—that have not been reflected in the WA legislation. The lack of practical problems arising is that the constitutional coverage of the commonwealth act actually takes in all the dealings with genetic modification, with genetically modified organisms, that are taking place currently, as far as we are aware.

The CHAIRMAN: My final question in this series is: if Western Australia did introduce legislation providing for a compensation scheme for non-GM farmers for economic loss caused by genetically modified contamination, would this be effective in applying to all farmers in Western Australia?

Ms ASHFORTH: It is really difficult, if not impossible, to comment on the effectiveness of potential legislation without knowing anything about its terms.

Hon Dr STEVE THOMAS: Would the introduction of a compensation scheme create a significant workload or significant issues for the department in the management of that? In particular, I guess, you would obviously have a fair role in defining then that contamination and I guess in the end, perhaps even being a part of a compensation scheme. What would be the impact on the department of the introduction of a scheme which effectively recognised the contamination of a GM free crop?

Dr SWEETINGHAM: I would be inclined to think that we would need give that some consideration. If you would like us to take that on notice, we could put some thought to that, because there are a number of elements to that that we have not put our mind to.

Hon Dr STEVE THOMAS: That may well be a significant issue. I am happy for us to come back to that. There is no rush, this is not going to be—

Ms ASHFORTH: Perhaps some indication of what kind of scheme it would be?

Hon Dr STEVE THOMAS: A simple reading might be that if you had a scheme that recognised any—effectively, the GM free model. If you had a GM-free model where 0.2 per cent contamination occurred, that stopped a sale under an organic's certification. It is a very small level of contamination; it is under what would be non-GM. I am not interested in the level of compensation as such—that would be something potentially for a government or a court to decide—but I suspect there is a fair workload attached in defining all of that for the department and a fair bit of work that would be involved in managing that whole process. I am interested in what sort of impact that might have on the department and how you might go about managing a process of what would be currently adventitious contamination which would shift from a non-GM reading at the moment to the loss of a GM free label. I suspect there is a fair bit of work involved in that.

The CHAIRMAN: We will review the transcript of this matter and we will put that question to you in writing, on notice. The committee has received some submissions that state that no jurisdiction can introduce arrangements under the national regulatory scheme to implement a compensation scheme unilaterally and that any proposals regarding compensation would need to be considered by the legislative and governance forum on gene technology and agreed to the commonwealth and all states and territories. What is the department's view on that statement?

Ms ASHFORTH: That statement seems to be correct. If a state introduced a scheme unilaterally then it automatically would not be part of the nationally agreed scheme. So, unless it went through that process, it would not be part of the nationally agreed scheme; it would be the state's own separate scheme.

The CHAIRMAN: I think here, though, the suggestion is that we are not able to legislate or to make that occur effectively without the agreement of the commonwealth and all the other states and territories. Is that your understanding of the limitation, effectively, on our sovereignty to make laws with regard to these matters?

Ms ASHFORTH: No, I do not think so, but I had not really considered that point of view.

The CHAIRMAN: Perhaps if you could take that on notice as well.

Mr VAN SCHAGEN: I can answer that, Mr Chairman. Any arrangement under the national scheme obviously has to be approved by the legislative and governance forum, which is a forum of state and commonwealth ministers. Anything that is approved under that scheme or a policy determination under that scheme needs unilateral approval of all ministers.

The CHAIRMAN: If it is under that scheme?

Mr VAN SCHAGEN: If it is under that scheme.

The CHAIRMAN: But if we were outside that scheme, the question here is whether the Western Australian Parliament has the power to make laws with regard to this matter on its own without the reference to the rest of the states and the commonwealth. I think the suggestion was that we simply did not have the power to do it and that we have given that power away at some point in time.

Ms ASHFORTH: I do not think that is correct.

The CHAIRMAN: We will get you to have a closer look at that. I am actually skipping question 7, because I think Dr McCauley dealt with that in some detail for us previously, in relation to a segregation system and departmental guidelines. If I go to question 8, which is that some submitters have called for the imposition of mandatory farming practices to manage GM and GM-free crop coexistence to ensure a GM-free food chain is preserved and protected, such as public GM growers map, no swathing of GM crops, the prohibition of GM crops in areas prone to flooding and trucks to be double-sealed when transporting GM seed. What is the department's position on such a call from those submitters regarding those practises?

Mr VAN SCHAGEN: If I may answer that, the departments cannot really see any basis to impose mandatory farming practises in relation to any legal farming activity. Seeing that approved GM canola is seen as a legal crop in Australia, we do not see a basis to treat it any differently from any other legal crop, such as wheat barley and whatever farmers choose to grow.

Hon Dr STEVE THOMAS: Can I then ask the question that is probably the elephant in the room? Noting in your submission you suggest that effective supply chain segregation and identity preservation systems are effective, does the department—are we still agriculture and food, or are we primary industries and regional development now; at least it is not as bad as biodiversity, conservation and attractions—hold the view as to the overall question of whether a compensation—I do not think you say so in black and white—mechanism for contamination, up to the point of non-GM, so 0.9 per cent, is required in Western Australia? My apologies for putting you on the spot, but I am not really sorry!

Dr SWEETINGHAM: I do not think we do. The elephant in the room, if you like, may be the organic industry or any other sector that wants to produce absolutely GM-free material for market advantage. We would be very happy to work with organisations or individual growers in that situation and try to help them manage the risk from their side rather than putting regulatory burden on conventional and GM cropping systems. Ultimately, what this department is about is trying to get the best value for all Western Australians from a progressive and productive agricultural sector. We will work with any people who have got a business model or a business plan, where we can help, to try to help them make as viable a living and create more value for the WA agricultural sector. I think we would turn it around and say that rather than using a regulatory approach or acquire difficult to regulate and potentially expensive to litigate processes, we would rather work proactively with people who have a special requirement for a GM-free product and provide what advice we could.

Hon Dr STEVE THOMAS: Thank you for a very good, if perhaps a little brave, response.

The CHAIRMAN: The next area that I wish to take you to is in relation to the 2010 audit program. The committee refers to a document titled "Genetically Modified Canola Audit Program in Western Australia: Department of Agriculture and Food" tabled in Parliament on 11 April 2011. We note that in 2010, the department carried out an audit program of GM canola growers who chose to grow GM canola following the issue of the exemption order under the Genetically Modified Crops Free Areas Act 2003, to enable the commercial cultivation of GM canola in WA. Compliance of growers and conditions of the Roundup Ready licence and stewardship agreement with technology provider Monsanto Australia was assessed under that audit. There were no identified major or minor nonconformities with the Roundup Ready licence and stewardship agreement. The committee also notes that the document states that the information gathered as part of the audit program would be a useful tool in the decision-making process and future oversight of the GM canola production system in Western Australia. Were there follow-up audits of GM canola crop growers following the initial audits in 2011; and, if so, please give some details; and, if not, can you explain why not?

Dr McCAULEY: The department carried out the audits because in 2010, this was the first time that growers were permitted to grow GM canola in a widespread manner. In the year before, there were 817 hectares planted in what we called limited size commercial trials. After that, then Minister Redman issued the extension order of that and enabled commercial growing across Western Australia. In that year, in 2010, there were, I think, 317 growers that chose to grow GM canola and it was over 75 000 hectares. Because it was the first time for the state, the department decided to carry out an audit—the compliance of the growers with the licence and stewardship agreement. We did that. We audited a third of the growers and we found that, yes, they did comply with the licence and stewardship agreement. You are correct in that the department concluded or recommended that what we found would be useful in future decision-making. We also recommended that the grains industry consider adopting or auditing growers' compliance in the licence and stewardship agreement in the future, but to take that extra auditing responsibilities on board with the auditing programs that already exist in the grains industry. Really, in short, the department shepherded the first year of commercial planting of GM canola, and then, after the grains industry demonstrated that it could segregate and the growers did comply with the licence and stewardship agreement, we really backed out of that space. I think that would be the right way to say it. Does that cover it?

[10.20 am]

The CHAIRMAN: I think so. I think you have essentially confirmed that there were no audits following the 2010 audit, and I think you have explained the reason why. Were the practices described in the document as mandatory, as well as industry best practice by GM canola growers, subsequently monitored and enforced? I think perhaps you may have even answered that question with your previous answer that there was no further audit, so there was no monitoring and enforcement.

Dr McCAULEY: No, and I think as we said before, the department does not play a role in monitoring contractual agreements between growers and licence holders.

The CHAIRMAN: We are thinking perhaps more about the relationship between neighbouring farmers or whether there is a dispute or an action that arises with regard to that.

Dr McCAULEY: I guess my answer to that would be that we do not have a legislative responsibility in that area.

The CHAIRMAN: I am just keeping a watch on the time of course. We will just need to keep ploughing on here. The committee understands that the department produced a fact sheet in 2010 titled "Genetically Modified Crops and Farmer Liability." I am not sure whether you provided a copy of that to us with the materials that you have handed up.

Mr VAN SCHAGEN: I have tabled that.

The CHAIRMAN: You have tabled that?

Mr VAN SCHAGEN: Yes.

The CHAIRMAN: So that is the document that has been tabled.

Hon COLIN HOLT: It is about to be tabled, I think.

The CHAIRMAN: It is about to be tabled—excellent. The two questions that arise are: is it available to the public; and, if so, has it been updated since 2010?

Dr McCAULEY: The answer is no, the fact sheet is not still publicly available. It was available in 2010 and we provided it in 2010, even though no-one actually asked us for that information and since

then, as the department did not receive any requests for this information, the fact sheet was not considered necessary.

The CHAIRMAN: Do you know when it was last updated or was it only produced in 2010 and then what we have is from there?

Dr McCAULEY: As far as I know, it was last updated in 2010, and you will have the most recent version.

Hon Dr STEVE THOMAS: Can I just check now that it refers to damage to the non-GM farmer? I presume it again does not make reference to GM-free.

Dr McCAULEY: That is right.

The CHAIRMAN: On export and domestic markets, the department states in its submission at page 2 that since 2010, when GM canola was first planted in WA, no shipments of grain have been rejected by our export markets due to the unintended presence of GM canola in grain. We have received a submission that states —

> Any WA GM-free canola that is even remotely suspected of being exposed to GM contamination is downgraded and discounted.

Could it be that the reason there have been no losses of export markets due to the unintended presence of GMOs, as asserted by some submissions, is that any contamination has been detected before export and the crop is sold by the producer as non-GM and is subsequently categorised as GM, potentially attracting a lower price? I suppose the nub of that question is that the department has made the point that no shipments have been rejected, but is it possible that it is because at the point of sale or through the collection, it is identified as contaminated and it is then no longer dealt with as a non–genetically modified affected crop and is in fact dealt with as a GM crop?

Mr VAN SCHAGEN: Once grain is handed to the grain handlers—we do not play a role in the sale and marketing of grain whether it is GM canola or non-GM canola, so we are not in a position to answer that question. All we know is that the feedback we had from our industry colleagues is that the segregation practices they adopt seem to be effective. They do not only segregate non-GM canola from GM canola but they segregate varieties of wheat and barley for various different markets' requirements.

The CHAIRMAN: If it was the case that a crop that was initially treated as non-GM was subsequently found to have a higher contamination rate of 0.9 per cent, would the department be notified of that?

Mr VAN SCHAGEN: Not necessarily.

The CHAIRMAN: Are you aware of whether any shipments have been rejected within the domestic markets due to GM contamination? If you are aware could you provide details of that?

Mr VAN SCHAGEN: No, we are not aware of any.

The CHAIRMAN: The next area we are looking at is the Agricultural Practices (Disputes) Act 1995. We note that that act, which provided for a board to determine disputes between neighbouring landholders, was appealed in 2011 because according to the second reading speech there was no need for the act because it was only very rarely used. Does the department believe a non-litigious dispute resolution mechanism designed to settle disagreements between neighbouring farmers may be appropriate for any disputes regarding matters such as GM contamination?

Ms ASHFORTH: The department, as probably most people would, believes that non-litigious dispute resolution is better than having recourse to the courts, but the department has not identified any

need for a specific dispute resolution; indeed, as I think previous answers have said, we are not aware of any of those kind of disputes having arisen, apart from the well-known one that was in the courts.

Hon COLIN HOLT: It is not directly related to this section, but this is an obvious point from my view to ask about. Other agricultural products would be contaminated from time to time and result in economic loss, I would hazard a guess. I think about merino sheep or stud cattle or whatever it might be. Are you aware of any litigious actions or compensation on losses around those sort of agricultural products? I am just trying to bring the discussion beyond GM canola, which we have been talking about, because contamination occurs on all sorts of levels in agriculture—rockmelons, sheep, cattle; quite a lot. Are you aware of any economic loss from contamination like that and where it has gone to in terms of seeking compensation?

Dr SWEETINGHAM: I suggest we would actually need to take that on notice. I think you are right. It clearly is the example of where that has happened. Unless anyone on the panel can give a good example?

Hon COLIN HOLT: I am happy for you to take it on notice. You may just have an example that comes to mind, but in my mind there are lots of agricultural production, products and activities that could cause contamination resulting in economic loss. It would be nice to know what that is and if you have got any handle on it.

The CHAIRMAN: We will take that question on notice and we will write to you regarding that question. The next question I have is: does the department believe it is likely other GM crops will be approved for commercial use in Western Australia in the future, such as genetically modified wheat?

[10.30 am]

Dr SWEETINGHAM: Perhaps I can answer that. I mean, the department is not aware of any imminent new releases of crops, particularly not grain crops and wheat, as you suggest. It is not to suggest that that might not happen in the future. I would note that we are not necessarily in a position to have full knowledge of these things, but from where we are, there is certainly no intent imminently to release a genetically modified wheat in this state.

The CHAIRMAN: Perhaps if you could explain what the department's role would be in the introduction of any new genetically modified crops like wheat. Would the department be consulted regarding that, or would they have a regulatory role with regard to that?

Mr VAN SCHAGEN: Any application for the release of a genetically modified organism or even trial work on it has to be approved by the OGTR and the OGTR goes through a fairly wide consultation process and a rigorous assessment process. The consultation will involve all states and territories, commonwealth government, technical experts and community groups. It is fairly widely—

The CHAIRMAN: That is the Office of the Gene Technology Regulator, the commonwealth agency?

Mr VAN SCHAGEN: That is correct,

The CHAIRMAN: And I suspect Western Australia is represented on—do we have representation through that process?

Mr VAN SCHAGEN: The legislative and governance forum on gene technology has membership of all states and territories and all the ministers. Below that sits a gene technology consultative committee.

The CHAIRMAN: Okay. If that is approved, is it approved on a state or territory jurisdictional basis? For example, if there was a farmer in New South Wales who wished to introduce a genetically modified crop, would that mean that that would be permissible for the whole of Australia if that

was approved, following through its natural course and process, or would that only specially apply to the state of New South Wales?

Mr VAN SCHAGEN: They are assessed on a case-by-case basis, but, if something is deemed safe for human health and the environment, that is ultimately what the assessment is based on, and the risk assessment and risk management plan that is produced is deemed as an acceptable crop or product. It is very different—not all this applies to crops. Then in the case of canola, it is Australia wide.

The CHAIRMAN: If, for example, a genetically modified wheat came into our agricultural region here, would the department have measures in place or guidelines to manage the co-existence and segregation from conventional wheat, or would it deal with it in perhaps the same way that it has been dealt with in regard to genetically modified canola in that they would be both legal crops?

Mr VAN SCHAGEN: In the case where there is a wheat variety that is genetically modified and has been approved for commercial release, then we treat it exactly the same way as any other legal crop.

The CHAIRMAN: What is the department's position on "Organic Notice 2018-1", recently released by the federal government, in particular the statement that where there has been accidental introduction of GMO to an organic production unit and such presence is determined to be minor, non-persistent and effective treatment can be applied, the sanction is to issue a corrective action request only, not suspend or de-certify the unit?

Mr VAN SCHAGEN: My understanding is that this organic notice is a guideline to assist growers to adopt measures in the support of co-existence. We do not have a specific position on that notice; however, we, as my colleague already indicated before, support any measure that assist growers, whether they are organic, non-organic, conventional or GM—to assist any grower in achieving a good outcome on their business and growth of the industry.

The CHAIRMAN: Can you envisage scenarios where there has been accidental introduction of genetically modified organisms of moderate or major severity where suspension or decertification would be justified, which may lead to a claim for compensation?

Dr McCAULEY: There might be scenarios where there is accidental introduction of GM material, of moderate or major severity, but we are not in a position to comment on whether or to what extent that might lead to decertification or claims for compensation.

Hon COLIN HOLT: Where would we go for that information?

Dr McCAULEY: I think you should ask the people that actually do the certification. I think there are seven or eight organic certifiers in Australia. Ultimately, it is their decision.

Hon COLIN HOLT: Do you guys keep a registry of organic growers or anything like that at the department?

Dr McCAULEY: We have sensitive sites, which is a map published on our website that shows where there are organic production systems, but it also includes viticulture and any other areas that are sensitive. We do not specifically have a list of organic growers that I know of.

Mr VAN SCHAGEN: That list that Rosalie refers to is a voluntary list. It is not compulsory for growers to register their production sites as organic. It is just to provide information to the broader industry on the location of sensitive organic farms, biodynamic farms or viticulture so that the neighbours can easily access them and take it into consideration with their farming practices.

Hon COLIN HOLT: You would not necessarily know if someone has been decertified, would you?

Mr VAN SCHAGEN: No.

Hon Dr STEVE THOMAS: Can I just check—again, it is a bit repetitive. The federal departments are getting notice, as I understand it, targeted at those organic farmers who have gone beyond the 0.9 tolerance level and beyond the non-GM level. Are you aware if there is any activity on the GM free component, which is zero to 0.9 contamination. Is that going to be caught up in any of this activity?

Mr VAN SCHAGEN: I am not sure we know.

Hon Dr STEVE THOMAS: I am not sure either.

Dr McCAULEY: I think that the organic notice does not actually talk about thresholds in it. You are talking about specific numbers, and it does not do that.

Hon Dr STEVE THOMAS: Federally, they basically operate on the system that you are recommending, which is 0.9 for non-GM. We might have to check and make sure that the federal notice is targeted at those that go from 0.9 to 1.1, for example, and how you might drop that back rather than zero to 0.01.

The CHAIRMAN: In its submission the department states at page 2 that two key standards in Australia govern the production, processing and labelling of organic food do not clearly define the tolerance level for unintended presence of GM material. The committee noted that 1.3.1 of the National Standard for Organic and Bio-Dynamic Produce states —

> The use of genetically modified organisms or their derivatives is prohibited. This includes but is not limited to, animals, seed and farm inputs such as fertilisers, soil conditioners, vaccines, crop production materials, food additives or processing aids.

Similarly, clause 1.7.3 provides —

> The use of genetically modified/engineered seed and transgenic plants or the application of GMO derived substances for treating plants is prohibited in organic and bio-dynamic farming.

Could the department clarify why there would need to be a tolerance level set out in the standards for a substance that has been identified as prohibited?

Mr VAN SCHAGEN: We touched on this a little bit earlier. It is not uncommon for any agricultural system to be contaminated by something or have, as we call it in the case of GM canola, unintended presence. There are many examples. We touched on a few of those earlier. I also need to emphasise that these organic standards, according to the commonwealth, our guidelines and that any level of contamination or unwanted material it is up to the commonwealth to negotiate whether it is acceptable for international markets. The 0.9 per cent has been accepted as the international threshold standard. In our opinion it would be wise to adopt some threshold level because it is very difficult to achieve a zero level in anything. Even in biosecurity there is a certain level of risk that we need to accept because zero is virtually non-achievable. Also, by not clearly defining a threshold it seems that it is inconsistent with the international standard, which clearly states 0.9 per cent.

[10.40 am]

Hon Dr STEVE THOMAS: Could I infer then, as we did a little bravely earlier on—my interpretation is that the capacity to be wholly GM-free these days is now gone and therefore some level of contamination is now going to have to be adopted because the capacity for zero is no longer on the table?

Mr VAN SCHAGEN: If growers can achieve a zero per cent pure non-GM product, that is fantastic.

Hon Dr STEVE THOMAS: But it cannot be guaranteed, is the question.

Mr VAN SCHAGEN: It can never be guaranteed. Things get spread by wind or get spread by insects. There are all sorts of possibilities and situations. But from a marketing perspective anything up to 0.9 per cent can be marketed as non-GM.

Hon Dr STEVE THOMAS: That is a fair point, but the capacity for Western Australia generally to be GM free—that horse is probably well out of that barn.

Mr VAN SCHAGEN: Thirty per cent of the canola market is now GM.

The CHAIRMAN: The committee has received claims that GM canola cannot cross pollinate with crops other than crops from the same family as canola. From a technical level, is that actually correct?

Dr McCAULEY: Yes. GM canola cannot cross-pollinate with other non-canola crops.

The CHAIRMAN: Non-GM canola crops?

Dr McCAULEY: No. Basically, canola only pollinates canola. I think that is where you are heading, is it not?

The CHAIRMAN: No. I think the claim was that GM canola cannot, essentially, pollinate non-GM canola.

Dr McCAULEY: No, that is not correct. GM canola can definitely pollinate—if you have a GM canola plant to a non-GM canola plant, they can cross-pollinate very happily. The grains industry look that this matter before 2007. The data and research that was done has led to the buffer zones that are included in the crop management plan. In particular, there was a large study carried out by Rieger and her colleagues in 2002, where she looked at the amount of cross-pollination between adjacent paddocks of canola. They found the highest amount of cross-pollination between adjacent canola crops was 0.07, which, of course, is very much less than 0.09—0.9 sorry. I am getting my decimal points in the wrong place.

The CHAIRMAN: It is quite critical that we get the decimal points right.

Dr McCAULEY: The tolerance level for non-GM canola is 0.9. The maximum level of cross-pollination between adjacent canola crops is 0.07.

The CHAIRMAN: I think it is fair to say that GM canola cannot cross-pollinate with wheat or any of these other plants. I think that is self-evident.

Thank you for attending today. A transcript of this hearing will be forwarded to you for correction. If you believe that any correction should be made because of a typographical or transcription error, please indicate these corrections on the transcript. We have had some interruption with noise so it is possible that the poor Hansard people may have missed things. We have given you a number of questions to be taken on notice. The committee request that you provide your answers to questions taken on notice when you return your corrected transcript of evidence. We will provide this questions on notice to you in writing so it is clear what we are asking you. If you want to provide additional information or elaborate on particular points, you may provide supplementary evidence for the committee's consideration when you return your corrected transcript of evidence. Thank you for your time today.

Hearing concluded at 10.44 am

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