

**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
THURSDAY, 3 MAY 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 9.28 am

Mr DUNCAN YOUNG

Grains Section President, WA Farmers Federation, sworn and examined.

Miss MADDISON McNEIL

Executive Officer, WA Farmers Federation, sworn and examined.

The DEPUTY CHAIRMAN: Good morning. My name is Colin Holt; I am the deputy chair of the committee. The members of the committee are Hon Tim Clifford and Hon Samantha Rowe. This is Alex Hickman, our principal policy adviser to the committee. On behalf of the committee I would like to welcome you to the meeting. Before we begin I must ask you to take the oath or the affirmation.

[Witnesses took the oath.]

The DEPUTY CHAIRMAN: Thank you. You will have signed a document entitled “Information for Witnesses”. Have you read and understood that document?

The WITNESSES: Yes.

The DEPUTY CHAIRMAN: The 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 referred to during the course of this hearing for the record, and please be aware of the microphones and try to talk into 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.

Would you like to make an opening statement for the committee?

Mr YOUNG: Yes.

Thank you for allowing us to come along. As you would be aware, WA Farmers is the largest advocating group in WA representing 1 200 businesses, or around about one-third of the state’s farming production. Probably just along the lines of our organisation supports the rights of farmers to choose whatever production they want to use, so long as that is a legal production method. We encourage our members to use whatever technology they see fit for their business. Probably one thing I would like to say is that we are probably a little bit disappointed at the fact that this inquiry is on, and the fact that there was already one done in 2005–06 federally. It was very wide-ranging finding or review into these sorts of areas. One of the areas they looked at was this, and they actually found that it is perfectly contained under common law. So that is probably one thing that we did put in our submission, and I would like to reiterate that one.

GM canola can be used, but it is not used everywhere. Not every farmer in this state grows GM, and that is for a number of reasons. There is quite a large area within the state that actually does not grow any canola at all, and that is mainly due to the environment so it is not actually feasible or makes a high enough return to actually grow it. Then there are others out there who are in a

marginal area to grow canola, so they will then decide they might only grow it one in five years. The GM just allows them another tool to actually rotate chemicals. A lot of our members will say that while they do not grow it every year, they will grow it maybe one in five years; sometimes three in five years. But it is just a tool to allow them to rotate chemicals and reduce the risk of resistance within their operation. I can talk later about my own personal growing of canola. I was lucky enough to be one of the original farmers that was allowed to grow it in 2009, and since then I have grown both GM and non-GM quite successfully on my farm. They are grown side by side, and I have had no issues with contamination in growing those crops.

Not only that, in WA since GM was allowed to be grown in 2010 you have seen the biggest uptake of GM plantings within the whole of Australia. Prior to that it was allowed in New South Wales, Victoria and Queensland in small plantings over there, but in WA you have seen a massive increase in uptake of the technology. I think that is mainly because of its fit over here, and it works well and people want to use it in the rotation. I would just like to say that we have had it for eight years, it has been out in the world environment for 20 years—I am talking about GM canola here—and there have not been issues. I will probably conclude at that for the opening statement, if that is all right.

The DEPUTY CHAIRMAN: Miss McNeil, would you like to make a statement?

Miss McNEIL: No.

The DEPUTY CHAIRMAN: Where do you farm, Mr Young?

Mr YOUNG: Beverley and York.

The DEPUTY CHAIRMAN: Thank you. Your personal experience will be useful with some of these questions, I would say. We have prepared some questions which you have had previous knowledge of.

Mr YOUNG: Yes.

The DEPUTY CHAIRMAN: I am going to go to 1.2. In your submission on page 2 you state —

The agricultural industry in WA has thus far successfully managed GM canola in the supply chain.

And that GM canola has been “successfully segregated from non-GM crops since commercial production began”. Would you like to expand on this, giving details of the methods used and how they contribute to the coexistence of GM and non-GM crops?

Mr YOUNG: Would you like to know about the farm, not post-gate?

The DEPUTY CHAIRMAN: I think it is the supply chain, but obviously you have a special perspective from a farm perspective.

Mr YOUNG: Okay. I will probably talk first about the supply chain. Once it leaves the farm and goes to CBH, CBH segregate it, just as they would actually a malt barley versus any other malt barley. They have to be kept separate. It is not a hard thing to do, and rigorous testing is done in most of the sample sheds. Every load of GM canola and loads of non-GM canola, samples are taken and tested. So it is a pretty good segregation. To my knowledge there have been no issues with segregation within the state.

On a farm basis, I have not had any dramas. When we are harvesting, or prior to seeding we make sure we clean down all our machinery when we are changing varieties. So once we have finished seeding the GM and we go on to our non-GM canola the air seeder is cleaned down. We then load the non-GM. It is all recorded. Not only is it written, but it is all recorded on a tablet. That is normally best practice is most farms that I know of. That is recorded not only there, but also on GPS—logged—when you are doing your seeding. The paddocks that I grow, they are side by side. So we

are only talking two metres at the most between a non-GM and a GM crop. It is managed exactly the same as you would with a barley side by side with a canola crop. So you have to make sure when you are spraying you do not get any issues of drift either way because the chemicals will kill the other crops. So like we do with all crops, we take due care when we are spraying. Then when it comes to harvest time, depending on which one is harvested first on maturity, if we do GM first we harvest that. We then go on. We clean down the header and we then go into the non-GM crop. We normally take off two boxfuls of grain, and that is put in with the GM grain and it is delivered as GM to make sure that we have no issue of possible contamination. It is a bit of an overkill for the amount that is there, but that is what I do on my farm. I would say most people do a similar thing within the state.

The DEPUTY CHAIRMAN: Have you ever come across where farmers who think they are delivering non-GM have been found to deliver GM and have contaminated the non-GM at a receival point or at CBH? Have you ever heard of those?

[9.40 am]

Mr YOUNG: I have not personally. The only one I could think of was if a truck driver wrote down the wrong thing. But I find that hard because normally the farmer—I am talking about using a contractor truck driver; unless that was somebody who had written down the wrong thing on the actual form for CBH when delivering. But a lot of that is got over now. Most of it we use apps now for the CDF forms, so the farmer is actually doing that on his phone prior to the truck leaving the actual paddock. So that would be the only case I could think of, but I am not aware of any that I know of where that has actually happened.

The DEPUTY CHAIRMAN: Do you do you swath your canola?

Mr YOUNG: No, I do not swath my canola. There are areas within the state that do swath, especially down south. It is done for a variety of reasons, mainly where you have adverse weather conditions at ripening, so places down at Esperance and along the coast where sometimes it will not ripen evenly so they do swath to allow it to ripen evenly. Some areas will do it where they have major wind events. So if swathing is done correctly, the swaths actually do not blow or there is very minimal blow. But a lot of the rest of the state now—I would say the majority do not swath. That is through a variety of reasons, including not requiring it because they get even ripening. The other one would be, too, that a lot of the newer varieties, especially the hybrids, actually are not a very high crop, and they ripen very evenly when they do ripen. So there is actually no need to swath anymore. It depends where you are in the state and your preferred thing, but the majority of people these days do not swath.

The DEPUTY CHAIRMAN: If swathing is not done correctly is there a potential for increased contamination from the blowing of cut plants, in your opinion?

Mr YOUNG: I have not swathed for about 16 years. I have not had issues with swaths blowing to any great extent. If they do blow, we are only talking about three or four metres at the most that I have seen personally. But I suppose it would come back to how it was swathed. But if it is done correctly, then it is not an issue.

The DEPUTY CHAIRMAN: Moving to 1.3, could you provide details of current practices used by neighbouring farmers to reach agreement upon the existence of GM and non-GM if you think it is an issue, or whether there is a need for an agreement?

Mr YOUNG: I do not know of anybody who does an agreement. I do not personally think there is a requirement. I think most farmers—I will not say all—and certainly know with mine I have nine neighbours across three different farms and they ring me and tell me what they have on my

adjoining paddocks and I do the same. That is out of common courtesy and probably being a good neighbour. I think that happens a hell of a lot around the state. That does not just go back to GM canola or non-GM; it is for all crops. The last thing you want is if you have an emerging pulse crop that you have just sown near a neighbour and they have a wheat crop and they go and put a chemical on it that will kill it, the last thing you want is some drift. Most people, out of common courtesy actually, just ring their neighbours to say what you have in an adjoining paddock. Personally, I have two neighbours who do not grow GM, and both of them have not got an issue with me growing GM as long as I notify them. If it is next to one of their adjoining paddocks, I let them know but they have no qualms with that.

The DEPUTY CHAIRMAN: Do they grow canola?

Mr YOUNG: Yes, they do grow canola.

Hon SAMANTHA ROWE: What would the distance be, roughly, between the two crops?

Mr YOUNG: With a firebreak, probably four metres. We are not talking huge distances but you do not need to have a huge distance between a non-GM and a GM crop.

The DEPUTY CHAIRMAN: WAFF itself has not put forward any idea of agreements between non-GM and GM growing farmers as a policy position?

Miss McNEIL: We have worked with the department when in 2010 some notices were put out by the department. We were part of the development and promoted that out to our members but other than that we have not taken any steps to develop agreements.

Mr YOUNG: Probably have not seen the need for it, to be honest.

The DEPUTY CHAIRMAN: Can I just ask you a question around spray drift from neighbouring farmers. Do you experience or do you get reports of experience from spray drift causing problems with neighbouring crops?

Mr YOUNG: That does happen, yes. It happens for a number of reasons. The most common one is inversions, people spraying quite often —

The DEPUTY CHAIRMAN: Weather conditions?

Mr YOUNG: Yes. Inversions are quite hard because you can actually be spraying in quite good conditions and then the conditions change very quickly and become still and the actual chemical sits, basically, off the ground and then it can move later, but that is for all chemicals. It does not matter what you are spraying out, spray drift does occur—yes, definitely. Unfortunately, it is something that does happen. It does not happen a lot to my knowledge but it certainly does happen.

The DEPUTY CHAIRMAN: So it would result in some economic loss. How are those situations or potential disputes handled now between neighbours?

Mr YOUNG: If it is a minor issue with spray drift, they are normally just neighbour to neighbour. They get together and they work it out. That is the most common way. If it is a major spray drift issue, then it is done through insurance. They will normally, first, talk about it. If it cannot be resolved that way, then both farmers will have insurance policies because you will take out crop insurance and that is covered under your crop insurance as part of your thing. Then each crop insurance will send out an independent assessor to actually assess whether there has been damage and what the damage is.

The DEPUTY CHAIRMAN: It just goes through the normal claims process under an assessment?

Mr YOUNG: Yes; but I could not tell you how many there are or whatever they are but having been in a couple myself, a lot do not go any further because they are actually found to be not the cause.

The DEPUTY CHAIRMAN: After investigation by the insurance assessor?

Mr YOUNG: Yes.

The DEPUTY CHAIRMAN: Thank you.

1.4. In your submission on page 2, you state that on the one hand, a singular issue is an inappropriate catalyst and representative sample for the review of the adequacy of common law and then on the other there has been a precedent set through the WA legal system that has seen a satisfactory outcome. Could you explain this?

Miss McNEIL: Yes. Both statements were made in regard to separate issues in our introduction. The first statement is making reference to the Marsh–Baxter case and how that case, from our understanding, has been the main driver behind this actual inquiry. The second statement was more about, now that we have a court case we do have a precedent. How people like that precedent is a different issue. But that is now the precedent of how the court has considered an economic loss case of GM and non-GM.

Hon TIM CLIFFORD: Given you are aware of the Baxter–Marsh situation, did WAFF provide any assistance to either party?

Miss McNEIL: At the time of 2010, both parties were members of WA Farmers; however, because our position on GM is farmer choice, we did not engage in the court case.

Hon TIM CLIFFORD: Are they both still members?

Miss McNEIL: Not in my understanding, no.

Hon TIM CLIFFORD: Both are not members anymore?

Miss McNEIL: Yes.

The DEPUTY CHAIRMAN: I wonder whether you know of any other economic loss through agricultural systems that have gone to a court, not just GM but anything else that has been dealt with in such a way. Are you aware of any other precedents?

[9.50 am]

Miss McNEIL: Not that has come to our attention. We did some digging on this when it was raised at the hearings on 11 April. From our knowledge, there are no other precedents in any agricultural practices that have gone to court in the same way this has for economic loss.

The DEPUTY CHAIRMAN: We know that economic loss occurs because of incursions between farmers and all sorts of things but nothing has ever got to a court proceeding and it all gets dealt with before then through some sort of system.

Mr YOUNG: Probably because it is dealt with over the farm fence, basically. I mean, it is a bit like a neighbour giving you lice in your sheep. I have had that a couple of times. Five years ago, about 10 or 12 of the sheep of a neighbour who trades in sheep got through a fence. They were a semi-exotic breed so they jump fence; they do not go through it.

The DEPUTY CHAIRMAN: They do not actually walk through it.

Mr YOUNG: Yes. I then got lice into two separate flocks or mobs of sheep and then through that, by the time we found them, basically, they were next to some other sheep, so I ended up with four mobs of sheep—almost 2 500 sheep—infected with lice and we came to an arrangement where he paid for the lice treatment. It was not a big issue but they are normally resolved, like a lot of those sorts of things.

The DEPUTY CHAIRMAN: In normal complementary farming systems, I can see that. What about when there is an organic farmer involved? Have you heard about any of those situations given the opening statement from WAFF was around, “We believe in farmers should adopt whatever system they like.”? Normally, that stuff gets sorted but you treated your sheep for lice but an organic sheep producer has the potential for those flocks of sheep to be deregistered for organic status. Have you heard of any of those sorts of situations?

Mr YOUNG: I have not. I do not know of too many organic farmers. There are certainly none around my immediate area that I know of that are organic farmers. I still think a lot of it would be resolved. Most people get on. I think the only times it would not be is if there is a situation when neighbours just do not get on. But the vice versa can be the same as well. What happens if weeds come off an organic farm and go onto a conventional farm? It has to be looked at both ways, especially because disease risks are quite high when it comes to that. I am not saying one system is better than the other, because I firmly believe you should be able to farm however you want. If you want to farm organically, then you should be entitled to farm organically, the same as if you want to farm conventionally, you should be entitled to farm conventionally.

Hon SAMANTHA ROWE: Have you heard of any case where the reverse has happened, such as an organic farm has weeds and it has upset the traditional farming? Has that happened?

Mr YOUNG: Yes; I think it has happened. I have heard anecdotal things from over east where they have had issues with organic farms. They are more along the disease issues because they are not treated with fungicides.

Miss McNEIL: There are also issues with farmers who farm up against crown land. Weed seeds are on crown land that then come onto the property, so it is a common agricultural —

Mr YOUNG: Feral animals, wild pigs and other things. It is not uncommon, but I think most times they are resolved.

The DEPUTY CHAIRMAN: Do you know of any documented cases of the vice versa situation—just hearsay?

Miss McNEIL: Just hearsay and farmers talking.

Mr YOUNG: I would say mainly hearsay and farmers talking about things.

The DEPUTY CHAIRMAN: Thank you. Can you explain your statement on page 2, that this inquiry and any subsequent legislation or regulations could be contradicting the separation of powers due to a legal precedent being set regarding how genetically modified crops are dealt with?

Miss McNEIL: From our general knowledge, there is no formal constitutional separation of powers, but the judiciary role is to interpret and apply laws. The legislator is to make laws and the executive is to enforce. Now that we have a precedent set with the Marsh–Baxter case and interpretation of application of the laws available has happened, but if there are changes in the laws, how that case could be interpreted in future cases would be potentially a conflict.

The DEPUTY CHAIRMAN: 1.6. You refer there being one incident of legal action as a result of a GM-crop production. Presumably that is the Western Australian Marsh v Baxter case. Do you believe there are any circumstances in which a non-GM farmer would be successful in common law action against a GM farmer for contamination of their crops, both intentionally or unintentionally? Could there be a different outcome?

No comment is okay.

Mr YOUNG: It is a hypothetical, so I do not really want to comment on a hypothetical because I do not know. It also depends on the standards for the organic industry. I probably would not make a comment because it is a hypothetical.

The DEPUTY CHAIRMAN: Has WA Farmers Federation received communication from any farmers in Western Australia raising their concerns about economic loss from a GM-crop contamination?

Miss McNEIL: Our communications and our records are not that great because we have upgraded our systems, but from our understanding we have not had any members contact us claiming they have had issues with economic loss and contamination. We do get a number of calls from people who are interested in GM raising concerns about a whole suite of issues but, from our understanding, we have never had a farmer call to claim that they have had an economic loss because of contamination of GM.

The DEPUTY CHAIRMAN: From within your membership base would be the most likely, would it not?

Miss McNEIL: Yes; or interested members of the public that call.

The DEPUTY CHAIRMAN: In your submission on page 3 you state that since the commercial production of GM canola in WA, there has been no issues with shipments of non-GM canola to any of Australia's trading partners. Why is this so and do you think it is because we have a tested level of 0.9 per cent or lower that are classified and sold as GM?

Mr YOUNG: I think the fact we have a strict regime and 0.9 is an international standard, so anything above that would be deemed to be GM and would be sold as GM. My understanding is it is segregated and shipped correctly by CBH or delivered to the port by CBH for other parties to actually transact the deal. But no I do not know of any issues. A lot of countries buy both non-GM and GM canola. Japan is a classic. It buys both and is quite happy to buy both. Probably the biggest canola producer in the world, which is Canada—it is 95 per cent GM and it basically dictates the price of canola worldwide—does not have an issue selling its canola.

[10.00 am]

The DEPUTY CHAIRMAN: So you think the systems that basically CBH has implemented have managed that export market interface where they are not being rejected because people know what they are buying at that point?

Mr YOUNG: Exactly, yes.

Miss McNEIL: They only offer two options. It is GM above 0.9 per cent and non-GM below 0.9 per cent, and they manage the system to that level. From our knowledge, there have been no issues with the farmer having issues or the market as well.

The DEPUTY CHAIRMAN: We have heard some evidence that people have delivered grain to CBH as non-GM, it has been contaminated in some way, either accidentally or intentionally, and CBH has picked it up, but they actually paid them for it being non-GM, at a non-GM level, even though it was classified as GM. We have had evidence that basically suggests that the whole of Western Australian farmers, or CBH members, are actually wearing that compensation. Do you have any comments on that or have you heard anything about that? What is the industry's view of the broadening of the compensation across all farmers basically, if you understand my comment?

Mr YOUNG: I understand where you are coming from. I have not personally heard of that happening. I know there have been some loads that may have been slightly above and they were dealt with. As far as I know, they were segregated and put in the GM stack. My understanding is that it is a bit like

barley and everything else. They work to the standard. But, no, I do not know anything about whether or not they were paid at the other price.

The DEPUTY CHAIRMAN: We have had evidence that they were, and their suggestion is that the industry itself is compensating for that contamination.

Miss McNEIL: Part of the CBH system that is offered is the fact that it is a grower cooperative. There are a number of things, not just with GM, but with all segregations and all varieties that they offer segregations for. There is a level of commingling and therefore some form of cross-subsidy, if that is the right word, where the system basically absorbs the cost because it is not an overall cost that would affect the industry, if that makes sense. Because of the scale of the WA supply chain and the production systems, that cost is basically just worn and absorbed by the overall system.

Hon TIM CLIFFORD: Do you see there might be an issue in the future if it increases from a certain percentage of GM now? If it tips the scales and it is more GM than non-GM, do you not see that as being an issue? If we have already heard evidence that CBH members are already wearing the cost, do you not think that will become more of an issue in the future if that happens?

Mr YOUNG: To answer your question, I do not. Even if it ended up being 60 per cent GM and 40 per cent non-GM, it is still segregated one way or the other, so you are not losing markets or gaining markets or anything like that. My question back would be: what percentage of that is the overall crop? I think you would find it would be absolutely minuscule. If you are talking about, let us say, three road train loads that hypothetically this happens in out of a 1.2 million tonne crop of canola coming out of this state, we are talking about pretty low numbers here. I think it really has to be put back in context. If it is a very small amount, I do not think there is an issue.

The DEPUTY CHAIRMAN: I am going to keep moving on. You state that one potential impact within the market of a compensation fund would be misuse and false declarations to enable access to funds. Could you describe how this risk would compare with risks of false claims in other compensation schemes or potentially insurance schemes? Can you please expand on that statement?

Miss McNEIL: Just because of the fact that there is no specific compensation scheme that we are looking at—it is a theoretical scheme—and just because of the complexities of the agricultural system. As we have said, some farmers do not grow canola at all, some grow GM, some grow non-GM, some grow them both and some alternate them. I am sure a compensation system would look at all of those, but because of the complexities of the production system in WA, that makes it, in our opinion, more likely that there would be some misuse or potentially mis-declaration or something of those types that would undermine the integrity of the scheme.

The DEPUTY CHAIRMAN: Anything to add?

Mr YOUNG: No—pretty much the same. I could actually see where farmers who grow both technically could claim against themselves. I think there would be people out there who would do it. To be honest, I think the system would fail in that sense.

The DEPUTY CHAIRMAN: What about an insurance system, unless you guys know of any other compensation scheme running that you could claim against? We have complex farming systems in an insurance scheme. Why would this be any different in terms of sorting that out?

Mr YOUNG: Insurance normally only covers certain aspects. When you take out crop insurance, you have got overspray and it covers your seed in storage for next year's crop. It also covers the transport of that seed to your farm and between farms. Other than that, you normally find that they are normally pretty comprehensive in what they look at. Even with machinery insurance, some people only have it on fire. Some will have a comprehensive insurance policy on machinery. It is up to

individual farmers to decide what cover they take. There are myriad insurance things that they can take out. It is up to the individual which ones they choose to take out. It is a bit like fire and hail. There are a lot of people who take hail only or fire only. There are also a lot of people who take out no fire and hail insurance at all. Some people believe that they can basically cover it themselves. It possibly could be done, but I do not know whether the insurance company would look at it. I do not think it would be a big risk in their view, because it is actually a legal crop that has not had issues. I do not know whether there would be an issue there for insurance to look at.

Hon TIM CLIFFORD: Just with the question of self-contamination, if the farmer has organic and GM on their own property, would —

Mr YOUNG: You could not. I do not think you could have that, because one requires a chemical.

Hon TIM CLIFFORD: I am just saying from what you said before in regards to contamination on their own property —

Miss McNEIL: Did you mean GM and non-GM on the same farm?

Hon TIM CLIFFORD: Yes.

Mr YOUNG: If you are going to do that, you are going to have to segregate organic as totally separate. If you are growing non-GM, you do not have to be organic, but you could have non-GM and GM on the same farm and you could still claim an issue if something went ahead.

Hon TIM CLIFFORD: So there is no way, say, if they make a claim, of tracing back to say, “That’s from your own crop. You’re not eligible to be covered in that regard”?

Mr YOUNG: As we are talking about a hypothetical because we have not got anything on the table to look at, how would that be any different from a neighbour’s crop? That is where it becomes very hard, because you have got to set pretty strict rules. Why should a person who does get contamination on their own place be set aside from somebody who is against it? It becomes very hard. I do not think it is as easy as you think it is.

The DEPUTY CHAIRMAN: Just while we are talking about it, I will jump forward a little bit. We have talked about multi-peril crop insurance for a long time. There are some people offering it now. Do you know any of it where it is offering against GM contamination or other sorts of economic losses?

Miss McNEIL: Not from our knowledge or with any insurer that we have spoken to.

The DEPUTY CHAIRMAN: Any other jurisdictions—overseas or in the eastern states? Have you scanned or come across any of those multi-peril crop insurance schemes that cover it?

Miss McNEIL: Not that we are aware of in Australia. I am not too clear about how any other country that has multi-peril offers a GM cover.

The DEPUTY CHAIRMAN: You state on page 2 of your submission that any form of compensation fund would be a tax on GM farmers to solve an issue that does not exist and that it would penalise growers who choose to use GM crops. Would your position be different if the compensation fund was funded by consolidated revenue or some other source and not from the GM industry?

Miss McNEIL: From our understanding and from our discussion with government, and the budget situation and the messaging we are hearing about that, it is highly unlikely that any form of compensation scheme would not be funded in the majority by the GM industry, just because we are hearing very strongly from government that user pays. We do not think that that is a feasible option of how this could be funded. It is unlikely our position would change, because we do not consider GM contamination to be a significant enough issue to warrant a scheme.

[10.10 am]

The DEPUTY CHAIRMAN: Some submitters have expressed support for what are called the principles of farmer protection legislation developed by FOODwatch, the objective of which is to establish a publicly managed fund paid for by GM seed merchants in order to compensate non-GM landholders for contamination by GM seed or other GM material. It is an idea put forward by FOODwatch. Have you given any feedback to organisations such as FOODwatch and Gene Ethics on these principles; and, if so, please provide some details?

Miss McNEIL: We have not been involved in the development of these principles. We most likely have seen them at another point, but we do not have records of when we first knew about them. We do not consider those principles to be necessary because GM is a legal, approved crop by the federal regulator and, as well as through the state legislation, it is legally able to be grown. They are proposing a levy on seed merchants, but any levy that is being paid for by the seed merchants will be paid for by the farmers who buy GM seed. We do not have a definition. It is no-fault. As you were saying, how do you protect against people claiming against themselves if you do not have to prove fault? There are some concerns that we have with it.

Mr YOUNG: That probably covers it overall.

The DEPUTY CHAIRMAN: Those organisations have not approached you formally for any feedback on such an idea?

Mr YOUNG: No.

The DEPUTY CHAIRMAN: Another submitter, Dr John Paull from the University of Tasmania, has recommended a compulsory third party GMO incident scheme where premiums could be collected from GM seed sales or coupled with another payment, like your motor accident insurance. He states it could be overseen by the Insurance Commission of WA and that remedies could be implemented promptly and legal fees kept to a minimum. It is probably answered to some degree, but would you like to add your views on such a scheme?

Miss McNEIL: Yes. Just to clarify, the no-fault third party insurance was developed because there were a number of people in no-fault incidents; for example, they were driving along, hit a kangaroo, then hit a tree, were catastrophically injured and had long-term health effects. They were not being covered by the insurance industry or they did not have any form of compensation for their lifelong care. That is why this was developed. There was a known cost with a known benefit for a wide number of people over a wide number of years. It makes sense that the Insurance Commission would probably be the best person for any kind of scheme. However, there is no known cost of what contamination of GM versus non-GM is in WA or Australia or, from our understanding, in the world. There is an unknown cost of a compensation scheme. There is an unknown amount of people who would claim against it. There is an unknown set of parameters. We are not quite sure how the proposal would work, but I just wanted to clarify that the no-fault motor insurance is a very different issue that was dealt with and has been successfully dealt with because it was a known failure within the market.

Mr YOUNG: I think they are two separate issues and should not be blurred together. It probably opens up bigger things too, because where would you go with feral animal inclusions, pest inclusions or weed inclusions? I think, really, it is not just one thing; you would be opening up a big can of worms and where do you stop at that?

The DEPUTY CHAIRMAN: So, no-fault economic loss from feral animals or no-fault economic loss from weeds —

Miss McNEIL: Spray drift, lice, disease, weeds —

Mr YOUNG: Everything. Once you open one of those things up, it is Pandora's box, because it does incur everything. Probably the biggest losers, to be honest, would be the organic industry.

The DEPUTY CHAIRMAN: The organic export notice 2018–01 recently issued by the federal Department of Agriculture and Water Resources titled "Guideline for responding to contamination by prohibited substances or materials in the organic export supply chain" recommends that where there has been an accidental introduction of a prohibited substance, including GMOs, the appropriate sanction by the certification body should be the issuing of a corrective action request only, not a suspension or de-certification of the relevant unit. I note this sanction applies in instances of minor severity and that the organic export notice also provides that in cases of accidental introduction of GMOs that are of moderate severity, it is open for the organic certifier to suspend the unit and, in cases of major severity, the organic production system should be de-certified.

Can you envisage scenarios where there has been accidental introduction of GMOs of moderate or major severity and where suspension or decertification would be justified which may lead to a claim for compensation—obviously, organics?

Miss McNEIL: From our understanding and our information, there has been one instance of decertification because of GM, which was *Marsh v Baxter*. The notice was issued late last year. The determination of the court, as well as the scenarios, are all hypothetical. Hypothetically, there could be scenarios where decertification happens for a number of reasons, not just for genetically modified crops but for all the other systems that the organic industry uses. There are a number of parameters around that. There are scenarios that would exist that would lead to decertification, but I am not clear on how that system works.

The DEPUTY CHAIRMAN: Would not a legislated compensation system provide a possible solution which avoids the cost and time arising from legal proceedings?

Miss McNEIL: Potentially. However, it is an unknown that we are talking about here—it is a theoretical. We are concerned that there has been, to our knowledge, one instance of economic loss, which was the *Marsh v Baxter* case. We are asking what other evidence is there that we need to have this scheme because there have been cases of economic loss.

Mr YOUNG: If there were 50 or 60 cases across the state or the country, then you might have something like this. There has been one, and it was resolved in the courts. That is not a systemic problem. It is one problem. Over eight years in this state and probably 13 in Victoria, there has been one issue.

Miss McNEIL: We do not consider that there is systemic failure within the GM and non-GM coexistence in Australia.

Mr YOUNG: The segregation works. I think, probably, we are a shining light in the world, to be honest, when it comes to GM. We do things right. It works well in Canada. They have all production systems there, and the majority are GM. The organisations there can quite happily coexist.

The DEPUTY CHAIRMAN: Do you think the cost of litigation in potential cases, and the case that we know of, means that people want to try to solve it in a different way because it is just too expensive to go to court; therefore, we potentially have underreporting, or fewer cases are known because they just never get to court?

Miss McNEIL: Most likely, yes, just because any person who has needed any form of compensation because of the actions of someone else would try to settle it between themselves, and then potentially get an arbitrator in, as opposed to trying to take someone to court, just because of the time process and the cost associated with that. In all circumstances, in everything that everyone

does in business, most people would try to settle between themselves as opposed to going straight to court.

The DEPUTY CHAIRMAN: Is there an arbitrator in the agricultural industry who sorts some of that stuff out—at that minor dispute level, or major disputes—without going to court?

Miss McNEIL: By arbitrator, I meant an independent person.

The DEPUTY CHAIRMAN: Do you know of anyone, or do you know how it works, or any situations or examples in Western Australia or in any other jurisdictions?

Miss McNEIL: No.

Mr YOUNG: Not to my knowledge. But most of them are resolved, that I know of—the small minor ones are resolved quickly. There are other issues, like I said, lice, and issues with cattle and other things. There are other issues even with the commonwealth and the state where farmers have land adjoining them and they have issues. Most of them get resolved and do not go to court.

The DEPUTY CHAIRMAN: I agree with you—the majority do. We talk about minority in legislation terms, too, though. How do you solve the minority of cases that do potentially go to court or need arbitration? We have other systems that help with arbitration. I just wondered if you knew of any in the agricultural system or industry.

Miss McNEIL: No.

Mr YOUNG: Not to my knowledge.

[10.20 am]

The DEPUTY CHAIRMAN: Before we close the hearing, would you like to add anything that we may not have covered? I know I have skipped over a few of the questions, given what some of the answers were.

Mr YOUNG: No. Thank you for the opportunity.

Hon TIM CLIFFORD: Do you know how many organic farmers are in your membership versus GM?

Miss McNEIL: That is not something we ask our members to declare. We are getting that information but we have never had the capacity within our database to record that type of information. However, we have recently upgraded, and it is something that we are trying to get more information on, just to clarify the systems that our members use. The majority of our farmers would be conventional farming and do not have organic certification.

Hon TIM CLIFFORD: Do you know whether WAF has any indirect or direct interest in GM technology?

Miss McNEIL: We do not have any conflicts of interest with any providers. The organisation itself has had sponsorship for events from companies that have interests in GM technology, but the policy of WAFarmers is set through our membership structure. Our grains council, which Duncan is the president of, has 17 farmers from around the state that sit as elected representatives from their zones, and they set the policy of our position on issues such as GM.

The DEPUTY CHAIRMAN: If the committee was going to undertake some regional travel to look at some of the potential contamination issues, are there any suggested regions where we would be best served to go?

Mr YOUNG: To?

The DEPUTY CHAIRMAN: To look at how the interface between —

Miss McNEIL: To look at the production systems?

The DEPUTY CHAIRMAN: Yes, and segregation.

Miss McNEIL: I am sure we have members that have properties that align next door to it, so if that is something you are interested in, we could potentially help out with areas or farmers.

The DEPUTY CHAIRMAN: Can you take that on notice and get back to us? We will write to you about that anyway.

Miss McNEIL: Yes.

The DEPUTY CHAIRMAN: 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. 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 attendance today.

Miss McNEIL: Thank you.

Mr YOUNG: Thank you.

Hearing concluded at 10.23 am
