

**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
MONDAY, 23 APRIL 2018**

SESSION FOUR

Members

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

Hearing commenced at 1.15 pm

Mr ROBERT PHELPS

Executive Director, Gene Ethics, sworn and examined:

Ms JESSICA HARRISON

GM Cropwatch Technician, Gene Ethics, sworn and examined:

The CHAIRMAN: I appreciate your attendance today. On behalf of the committee, I would like to welcome you to our meeting. Before we begin, I must ask you to take either the oath or the affirmation.

[Witnesses took the affirmation.]

The CHAIRMAN: Each of 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 and please be aware that you are appearing over the telephone and so could each of you make sure that you do not speak at the same time and ensure that you are not interfering with your microphones and things of that kind? 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 either of you like to make an opening statement to the committee?

[1.20 pm]

Mr PHELPS: Yes, we would. Thanks, Mr Chair; that would be very good. Thanks for the chance to address your inquiry and give evidence on your terms of reference. The present and future threats of GM—genetic manipulation—contamination are not fairly or fully reflected in past incidents, though my colleague Jessica Harrison, our GM Cropwatch coordinator, will explore some of the many incidents here and around the world and their impacts to date. We want to emphasise that this debate and solutions you may find are not just between organic and GM industries, but concern the whole community. We also ask that the committee focus on planning for the likely expansion of future uses of genetic manipulation techniques and their products in Western Australia. This will likely bring an increase in GM contamination. New GM techniques—for example, CRISPR, RNAi, ZFN et cetera—invented in just the past five years, and their living products, have no history of safe use and many off-target impacts are being discovered. If industry projections are correct, there may soon be a tsunami of GM organisms of all kinds—animals, plants and microorganisms, including things like insects, fish, trees and crop plants—released onto our farms and into our environment,

foods and other products. These new GM organisms will be used for reasons such as biological control, for industrial production, in environmental management, as well as in agriculture.

Western Australia's GM Roundup-tolerant canola has been managed till now only by the grains industry applying a 0.9 per cent threshold of allowable contamination. They downgrade shipments at many points in the supply chain at the slightest hint of any GM contamination in non-GM. All CBH growers bear the cost of downgrades when the premiums on non-GM canola are lost. Darren West, MP, reported this in *Hansard* in the Western Australian Parliament. In addition to that, his remarks were also officially recorded in the "Regulation of Australian Agriculture: Productivity Commission Inquiry Report No 79, 15 November 2016" in box 6.9, "Cross-contamination during processing". The key point there is that as a result of Mr West's experience at the silo, he estimated that the total cost of the reclassification of his canola was \$1 334. Of course, that is borne by all the CBH members, not just him personally, because of course he was paid the premium.

GM canola has only ever been a maximum of 30 per cent of the canola crop in Western Australia. If it were a much higher proportion, we suggest GM contamination would have been a much bigger problem with more impacts. Although CBH says it has no official position on GM and non-GM, the vast majority of CBH's 4 200 members have never grown GM canola, and they are all at risk—the conventional growers, as well as organic farmers. Nonetheless, several contamination incidents have occurred since 2009, showing that GM and GM-free segregation, supply chain coexistence, identity preservation and production systems often fail here and also around the world, as my colleague Jessica will explain later. Planning for a burgeoning GM future must include a fair, cheap and easy system of no-fault compensation for GM contamination not only for farmers, both organic and conventional, but also for other landholders, including the local councils, parks managers et cetera; and, we also say, the food industry; shoppers; and anyone else who is economically harmed by the GM contamination.

According to CSIRO's recent report published in December, Australia's European non-GM canola market earned \$1 billion extra in the past decade because of the premiums that Europe paid for our non-GM canola supply, yet Europe has zero tolerance for any GM contamination above this claimed 0.9 per cent threshold. That threshold is contested in Europe and could change and could particularly be lowered. So whether management of contamination will be able to continue is unclear.

A no-fault compensation fund created with a small and affordable levy of, say, \$1 per kilo on the sale of all GM seeds would be a minor impost on this industry. CropLife in its submission claims GM directly benefited growers by \$16.37 million in 2015 alone, but the levy—assuming a two kilogram per hectare seeding rate—would have raised around \$670 000 in that year, just around about four per cent of the claimed benefit, sufficient to automatically recompense those who can prove negative economic impacts and harm from GM contamination. A GM compensation fund is a sensible and affordable application of the polluter-pays principle and it is a principle that is applied around the world. It is fair to everyone, so we ask the committee of inquiry to recommend a levy-based protection fund. It would ideally apply the principles that we have enunciated: a no-fault system; automatic compensation for proven economic loss, extra costs and other harms; compensation for all landholders, including public and other lands, supply chain managers and the food industry; independent management of the farmer protection fund so that it is not political; funding for the scheme through a small levy on all GM seeds; assess and set the levy annually, responding to the demand on the fund's resources; and incentives for the GM industry to minimise GM contamination. That would include, of course, that the Parliament should make the Western Australian Department of Primary Industries and Regional Development's voluntary GM

management guidelines mandatory and enforceable to provide incentives for the industry to improve segregation and to minimise GM contamination at every level. Thank you.

The CHAIRMAN: Thank you, Mr Phelps.

Mr PHELPS: Could Jessica just introduce her topic as well, please?

The CHAIRMAN: Sure.

Ms HARRISON: I will detail some of the GM contamination incidents that support our contention that a compensation fund is needed and justified. In the past decade, with commercial GM canola grown in three states, we have seen many instances of GM contamination. Despite this, landowners, land managers and supply chain managers have rarely sought or received any compensation as it is just too expensive and onerous to pursue even legitimate claims in court. If GM canola planting were more widespread, more problems with the supply chain contamination would no doubt occur. As Mr Phelps said, it is estimated to be 30 per cent of the total canola crop in WA. In New South Wales, it is estimated at 10 per cent and in Victoria 15 per cent, and that is an industry estimate.

Globally, GM contamination has seen grain shipments rejected, markets lost, land quarantined and food recalled. The biggest GM contamination bill so far was for unapproved StarLink corn, recalled in the USA in 1999. It cost the US food industry and farmers over \$1 billion and the company responsible, Aventis, went out of the GM business. Claims that GM and non-GM segregation is effective are not based on facts. I am just going to outline a few examples; a more comprehensive list is in my submission. I just point out that I have identified seven methods by which contamination occurs. One is spillages, one is human error, one is harvested windrowed canola left drying in paddocks spreading to nearby areas, another is contamination of seed before it is planted, the fifth is flood spreading seed, the sixth is insects spreading pollen, and the seventh is lax clean up. I will just go through two of these examples.

[1.30 pm]

In Tasmania, from the late 1990s to 2016, field trials of GM canola took place at 57 sites in the late 1990s. Aventis, which is now called Bayer CropScience, and Monsanto conducted the trials. The first audit of former sites was in spring 2001, and now the Tasmanian government audits approximately three times a year. So, in 2008, volunteer—in other words, weed—canola plants were found at 12 of 53 monitored sites, and there is a recent audit online, which I have a link here for, from 2016. That is the case of the Tasmanian government paying for the monitoring and removal of GM weeds.

I will just continue to the second example. In 2009, Western Australia allowed semi-commercial GM canola trials. Commercial-scale GM canola trials were planted on 850 hectares by 17 farmers across the agricultural region. It is documented in the paper *The West* that agriculture minister Terry Redman said that there were 11 minor incidents involving stray grain during the trials which were rectified. That is 11 incidents with 17 farmers growing this total of 850 hectares. That is a fairly high incidence. Although, as previously described in the other submissions, the bulk handlers have their own testing program to monitor their crops that are marketed, there are a couple of other areas where GM may affect people's ability to market their products. One is honey, where European markets have rejected Chilean honey due to the presence of GM pollen. Thirty-five per cent of the volume normally exported to Europe had to be diverted to alternative markets at lower prices. That is a reduction in the price that they were able to get for their honey due to contamination. Of course, if this was to occur in Western Australia, apiarists and packers would be able to apply to this proposed fund.

The last example is in 2015. It is documented that the Greens senator Lynn MacLaren raised the Japanese government's rejection of Western Australian hay. Exporters of the hay confirmed that

the presence of GM canola would be one of the reasons which would cause the hay to be discounted in countries which were sensitive to GM. That is just a little bit of an introduction of some of the examples of problems that have occurred for which we think a compensation fund is applicable.

The CHAIRMAN: Thank you, Ms Harrison. We have provided you with a list of questions in advance that we wish to work our way through, so I will work my way through those questions. There may be other questions that arise from committee members as a consequence of that and they will just jump in when they are able to do that.

Mr PHELPS: Mr Chair, could we just apologise in advance? I do not know why we did not see the questions. I think that Clair did send them to us, but in fact we just received them about half an hour ago, so we may have to take some of them on notice. That is not her fault.

The CHAIRMAN: That is fine. If you have to take them on notice, that is appropriate, so we will do that. But some of these things I am sure you will be able to answer without reference to other material.

In your submission on page 2, you state that WA's voluntary GM management guidelines should be mandated and made enforceable. Could you enlarge upon this? What features do you believe those guidelines must have to guarantee effective coexistence of GM and non-GM crops?

Mr PHELPS: Let us say first that we do not think that coexistence and segregation are 100 per cent manageable. That is the first thing. Secondly, I have just had a look around, because there were extensive guidelines on the DPIRD website and they do not appear to be there anymore, but they said things like "Talk to your neighbours", "Do not windrow when the weather is unsuitable", "Do be very careful when you are transporting canola", and a raft of guidelines which presumably were approved by the industry which were on the DPIRD website and which the industry appears to operate supposedly in compliance with. But the problem is that at the farmer level, and even at the transport level, we know that things do go wrong and that neighbours do not necessarily talk to each other. You mentioned in earlier questioning Terry Enright, for instance, who says that GM canola routinely comes over his fence, but it does not cause him any economic loss so he just does not worry about it. It may be okay for him. He might treat it like that, but certainly in the case of Steve Marsh, it did cost him a bag of money. I do not think that it should be dismissed just because one farmer says, "I don't care if GM comes onto my place."

The CHAIRMAN: On page 3 of your submission you state that the Marsh v Baxter case amply demonstrates the failure of the common law and existing laws to redress the economic losses and extra costs that GM-free farmers may sustain when their land or supply chains are GM contaminated. Some submitters have stated that the existing common law provides sufficient coverage for any damage by GMOs and that a single case is not sufficient to draw a conclusion that common law remedies are inadequate to compensate GM farmers. What is your response to these statements?

Mr PHELPS: First of all, in the Marsh v Baxter case, it was not all Baxter's way, as was often categorised. We would like to recall, and we mention it in our submission I believe, that Chief Justice Carmel McLure, who was the chief of the appeals court in Western Australia, in fact found in favour of the Marshes' claim. She found that the original judgement should be struck out and that the Marshes should be awarded the \$85 000 that they requested. She also concluded that NASAA was, if not justified, certainly forced by the organic standard to deregister 70 per cent of their farm. Unfortunately, she was outvoted by the two other judges who agreed with the original decision. But I think that we should not forget that her judgement is there. It is a very long, it is a very clear and it is a very sustained argument in favour of the Marshes' case. As to other people taking a case like this to court, they only need to hear the sorts of costs involved and the sort of vilification and other

pressure that not only the Marshes, but also the Baxters, came under in this case. Who would want to put themselves through that? Of course, everybody knows about the Percy Schmeiser case, when Monsanto sued him in Canada. Understandably, any potential claimant is risk averse to this kind of treatment. The cost is prohibitive and I think therefore it is reasonable to conclude that existing common law remedies are insufficient to really provide for coverage in these sorts of cases.

Ms HARRISON: Could I just add an example? We had an example in Victoria in March 2011 when a GM crop adjacent to a non-GM farmer was washed by a flood onto his land. He was very concerned. He spoke out at the time to the local rural media and he confirmed that he had the GM plants growing on his land, but he was certainly not happy at the idea of taking legal action because of the huge cost and the huge disruption to his business, which is, after all, farming.

The CHAIRMAN: Can you envisage there being possible factual scenarios which might have led to a different result in the Marsh v Baxter case?

[1.40 pm]

Mr PHELPS: Yes, we can. Of course, it is laid out, I think very well, in McLure's judgement that in fact she did not read the facts of this case as the other judges did. I think it is worth going back to that judgement and recognising that there are many interpretations of the situation and that she found in favour of the Marshes.

The CHAIRMAN: On page 5 of your submission, you raise the prospect of actions for unlicensed patent use in Australia and that this may deter GM-free farmers from making compensation claims. What would be your recommendation on overcoming this?

Mr PHELPS: Monsanto did say that it would not be suing any Australian farmers. Given the hundreds of farmers that were sued or bullied into settling with Monsanto in the USA, I guess it is this sort of PR that has made them year after year the least likeable company in the world. I am not sure what situation might arise, but it is very clear in the Monsanto licences—I think we have provided you with a copy of one from 2008; we have not got a more recent one—that any infringement will be met with the force of the law, and that they retain the right always to enter anybody's property at any time to examine their bins to find out whether or not they are retaining seed or doing anything else. They also have a provision in their contract that if a GM farmer goes to sell land that has been used to grow GM crops, the new owner needs to also accept, I think, for four or five years the burden of responsibility of stewardship for any volunteers and that, again, Monsanto is at liberty to come onto the land at any time and confirm that seed is not being saved and that it is not germinating or not infringing their patent. That is uppermost in their mind.

The CHAIRMAN: Some submitters have stated there has not been a single legitimate instance in Australia of a non-GM or organic grower suffering a pure economic loss directly resulting from the unintended presence of an approved GMO, and that no shipments of grain have been rejected by export markets due to the unintended presence of GM canola. They have also stated that any compensation scheme is nothing but a solution looking for a problem. What is your position on these statements?

Mr PHELPS: CBH and, I presume, other grain handlers as well have certainly gone to great lengths to ensure that there is no infringement of the 0.9 per cent threshold, because we won the European market from Canada when they began growing GM canola in the early 2000s and by 2006 we had sole ownership of that market and have retained it ever since. In fact, we have been getting premiums from that market ever since, and CSIRO, as I mentioned, recently reported that in excess of \$1 billion in extra money as a result of those premiums has been earned in the last decade. The problem really is that, yes, CBH may successfully meet the 0.9 threshold, and at every step, including

the first step at delivery at the silo, which Darren West experienced, where they thought that a bucketload of GM canola may have landed on top of his GM-free shipment, he was told immediately, "Go around and dump your load in the GM bin and we'll pay you the premium anyway." What is happening is that the whole industry is paying its share of the loss of these premiums. He also reported that if a bin of GM and non-GM canola comes to the silo on the same truck, it all goes into the GM bin; he was informed by the operators of the silo where he delivered his crop of canola on that occasion.

Yes, they are making very good efforts, but I do not think the fact that nothing has been outright rejected indicates that there is no problem, because the problem is being worn by the whole of the canola and grains industry in Western Australia. It is being basically hidden by the stringent measures that are necessary to come in under the threshold. If the threshold is reduced—and Europe is having a huge debate about what the thresholds would be—the organic industry, of course, want zero tolerance. There are questions about the biofuels industry and what it will accept and what the animal feed industry will accept. Of course, we have access because our canola is used for biofuel and the remnants are then onsold to animal feedstock suppliers. At every step we are at risk. Many things are contended and I do not think this is a trouble-free system which is sustainable in the long run. I think that is why it would be prudent for this committee to recommend to Parliament that there be a compensation scheme. For instance, if the European market were lost, there would be huge suffering. Certainly, in excess of 80 per cent of all Western Australian canola goes to Europe. If that market is lost, there will be serious issues about compensation for all sorts of people that need to be dealt with now, rather than later, particularly as new GM techniques are also coming along, as I discussed in my opening remarks.

The CHAIRMAN: Some submitters have stated that because GM canola cannot cross-pollinate with other crops, farmers will not suffer economic loss because contamination is not possible. What is Gene Ethics' position on this statement?

Mr PHELPS: Cross-pollination is a relatively minor risk in comparison with other threats. However, because it is a brassica, it can out-cross and, as your witnesses this morning from ACO mentioned, I think the research shows it can go two and a half kilometres—most of it a rather shorter distance. That is why the buffer zones are so small: there are five-metre buffer zones. It is just incautious to assume that this is not going to be a problem, but it is certainly true that things like windrowed canola being picked up and thrown several kilometres by a willy-willy onto a neighbouring property and spilling literally millions of seed which are irretrievable is a bigger problem. There are problems at every step of this, including, as Jessica mentioned, from the supply of the seed in the first place. Is non-GM seed actually what it purports to be? That has been a problem for GM-free South Australia and Tasmania—to make sure that the seed coming into those states is actually squeaky clean.

Ms HARRISON: Can I just add on the number of ways that I have seen it spread? As Bob mentioned, the windrows being picked up is one thing. There is the fact that while monitoring a crop, I saw flocks of birds on the crop as it lay after being harvested. Another is the fact that the seed stays viable for 16 years, and so even if a farmer thinks that they have no canola weeds that may have come onto their property, they have to continue that checking for up to that number of years. There is also the fact that we are not just talking about farm to farm; we are also talking about public land such as roadsides. In my experience in Victoria, councils do not have any policy about how to deal with roadside GM canola weeds. In the case of our volunteer group GM Cropwatch, we have often had to remove the weeds ourselves because we do not want those viable seeds to germinate and then spread further.

[1.50 pm]

Mr PHELPS: Just to reference that, the Office of the Gene Technology Regulator has a very good document, “The Biology of *Brassica*” I believe it is called. It is available on its website. It confirms the longevity of canola seed and acknowledges some of the problems that Jessica has just outlined. We could also mention the Williams truck spill—a whole truck of GM canola spilled at Williams on the roadside, which was never apparently properly managed or cleaned up either. Again, who paid for the cost of doing that?

The CHAIRMAN: Organic export notice 2018–01, recently issued by the federal Department of Agriculture and Water Resources, recommends that where there has been 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 decertification of the relevant unit. What is Gene Ethics’ position on this?

Mr PHELPS: Well, as your witnesses said again, globally the organic industry is pretty clear that zero tolerance is their position. I believe that they explained why. It is fine for the federal Department of Agriculture and Water Resources to issue documents, but it is not actually the final arbiter of this; it is the industry itself which makes the rules. While OISCC, the relevant committee, may meet at the federal department, it is certainly not under its control. I think the export notice, which affects not domestic but overseas markets, is to be questioned and may not have the force that could be readily ascribed to it. There is a debate going on within the organic industry and everywhere else about this. Of course, organic is going to be even more at risk. The International Federation of Organic Agriculture Movements has very good documentation, which is available online as well, about the intrusion of the new genetic manipulation techniques and what they are going to mean to the organic industry globally. It is the fastest area of market acceptance and demand for food. It is a small but very fast growing industry and one that the WA government would do well to protect. I think there is a big question mark over this export notice as a result.

The CHAIRMAN: What is your feedback on the proposition that some submitters have made that if a compensation scheme was introduced for GM contamination, there should also be compensation for all sources of contamination, including weed intrusion, which they have submitted is a problem from organic farms due to a lack of proper weed control?

Mr PHELPS: This is already a matter covered by local government and by state government. I do not think that it affects the discussion about GM contamination at all. I presume there are remedies that local and state governments prescribe. You are required to control your weeds, or people come and spray them whether you like it or not and then charge you for doing so. I think this is another red herring from the industry, which has said, rightly, that it sees itself as the main loser in the idea of having a levy and a compensation fund. The global CropLife network, which is in 91 countries and which lobbies on behalf of its members, who are the transnational agrichemical and GM industry, put forward this idea simply just to raise another red herring across what should be a very straightforward matter. Yes, weeds are a big problem for everybody, yes, they are not easily dealt with, but they are not a matter for this discussion; they are a matter for better regulation, if necessary, by local and state government through other channels. I think it should be ignored.

The CHAIRMAN: What is your response to those submitters who have claimed that the introduction of a compensation scheme will stifle agricultural innovation?

Mr PHELPS: This is another huge red herring. At the moment, Bayer and Monsanto have almost coalesced into one entity. We have had Dow and DuPont coalesce into a single entity last year, and also Syngenta and ChemChina. These three entities are going to own and control, initially, 70 per cent of the world’s seed, including all GM varieties, and they are going to control 60 per cent

of agrichemicals worldwide. There are hardly any players in this field, and this is who CropLife represents and why they are speaking like this. Agricultural innovation in Australia, yes, we would like to think that it is a great thing, but the actual fact of the matter is that at the moment, 98 per cent of all seed grown in Australia by gardeners, broadacre farmers, horticulture and the rest of it is imported; it is created elsewhere in the world and it is sent to Australia. There is a discussion at the moment, also relevant to the organic industry, which proposes that all brassica seed—I have said it is 98 per cent—should be treated with fungicides, which are prohibited in organic agriculture, before being brought into Australia, as a biosecurity measure. This global seed industry is not innovating in Australia. Yes, there are some small field trials. There are some small companies that are still holding out with heirloom seeds—Digger's Seeds, Eden Seeds, Greenpatch Organic Seeds, Phoenix Seeds and a few others. There is also, of course, the Seed Savers' Network, which deserves government and public support as well. To claim that agricultural innovation in Australia will be stifled is just absolute baloney, because it is those big players who absolutely control the markets here that are going to be the beneficiaries of not having a compensation scheme. This is their voice speaking. It should not be listened to. It is not satisfactory. They want inherent unfairness so they can benefit and things can remain as they are. Do you have a comment, Jessica?

Ms HARRISON: No. I think we should move along; there is quite a long list of questions.

The CHAIRMAN: Some submitters have raised the prospect of a compensation scheme giving rise to false claims to access compensation. I can presume that your response to this proposition will be similar to the last, which is that it is a red herring. What is your response to this?

Mr PHELPS: It was even claimed by one of your colleagues, Hon Jim Chown, MLC, in the media in the last couple of weeks that in fact Marsh's contamination was the result of unknown persons spreading GM contamination onto his land. No evidence whatsoever—a picture which purported to show that the wind-rowed crop had arrived intact without breaking or anything, as if that were evidence. Yes, of course, people can always make false claims, but any proper compensation fund would be independent, would assess the real evidence that you made an economic loss as a result of this incursion, and would be alive to the possibility of false claims and would meet such claims with rejection. That would be the appropriate response, of course. I just think, again, that it is a proposition that is being raised as a way of obfuscating the whole, and particularly your, process, with respect that a lot of the media coverage in the last couple of weeks has been particularly vicious and has tried to undermine your due process of consideration of the merits.

Ms HARRISON: Could I just add that we have to think about the farmers, who are just out there trying to grow food and raise stock et cetera. I remember being called by a Victorian farmer who was in a complete panic because he knew that his milk company would not accept any GM feed for his dairy cows. He just said, "Can you come here quickly and test these crops? I don't know where they've come from. These weeds are growing in my trucking area." It turned out they were not GM, but that is the kind of stress that primary producers are put under by the existence of GM crops, and that is why a compensation scheme is ultimately a fair thing for those people.

[2.00 pm]

Hon COLIN HOLT: Now might be an appropriate time to ask: you talked about an independent assessment to deal with true and false claims. What about, in your model, an appeals system or an appeals process? Have you thought about that?

Mr PHELPS: Sorry, I missed your question because I was having a cough.

Hon COLIN HOLT: You have put forward a compensation process legislative framework based on independent assessment. Any thought of an appeals process?

Mr PHELPS: Oh, appeals. So you envisage the independent administrator or manager of the fund rejecting somebody's application and then they need an appeal?

Hon COLIN HOLT: Yes.

Mr PHELPS: Do you have an administrative appeals tribunal or a VCAT like we have here in Victoria?

Hon COLIN HOLT: So you have not thought about it or —

Mr PHELPS: I beg your pardon.

Hon COLIN HOLT: Have you thought about it? Because you guys put forward the idea and the process, I am just wondering whether you have thought about it in terms of an appeals process.

Mr PHELPS: We have not. But I guess that initially one would appeal to the person who made the decision. That is what usually happens, does it not? And then, if that is still unsatisfactory, you go to the machinery of administrative appeal to find a remedy. In Victoria at least we have the Victorian Civil and Administrative Tribunal and people go there to challenge a whole variety of things, including administrative decisions. So, we would see the decisions of granting or not granting compensation in these cases as an administrative matter, and I assume you have a similar mechanism in Western Australia to which people could appeal. But you are quite right; we have not spent a lot of time thinking about it, but I am sure that the people, for instance, should not have to go, but still should have the right in the end run, to take the matter to court if they wish to. That right should remain to them.

The CHAIRMAN: We do have an administrative appeals tribunal here—it is called the SAT—just to put your mind at ease.

The committee has received evidence that agricultural crops are never 100 per cent pure and that coexistence means meeting agreed low-level thresholds of GM. What is your feedback on this statement regarding GM?

Mr PHELPS: Yes. Well, that is a formulation, and it is not without some point, but it was originally formulated about a decade ago by the biotech industry organisation based in Washington DC that was trying to get it accepted internationally in trade discussions so that low-level presence was to be the norm. As to 100 per cent pure, I suppose nothing is ever absolutely pure, although making a GM-free claim, for instance, the ACCC says, "If you make a GM-free claim on any food product and you have been inadvertently contaminated or you are trying to mislead us, then we will have you in court immediately." So at least on GM free some people must believe that there is 100 per cent pure uncontaminated food or food ingredient. But there are practicalities. For instance, the South Australian government has allowed, unfortunately, under some exemptions from its ban on GM, Bayer, over a number of years—Jessica may be able to elucidate this more—to do bulking of approved varieties, which are then exported to Canada because there has been a problem there of getting pure GM seed in the sense that all the different varieties of GM are mixed up together and the companies are having trouble enforcing their patents because they have their competitors' genes in their seed as well as their own. So they were bulking here and exporting, and it was, of course, off-season, so it was very ideal from their perspective and for their needs.

However, I think for practical purposes we can still say that non-GM growers—and there are not any organic canola growers in WA anyway at this stage—are complying. They are trying to be non-GM at least—stay below the threshold—so they are compliant. Even if their seed for planting is not 100 per cent, they will certainly have new seed next year because Monsanto will not allow them to save it. Every year it is up to the seed suppliers to provide seed that is true to label as far as possible, and I do not know whether they make claims of zero tolerance, but it is up to the seed owners, the

seed distributors and the farmers to decide what they are prepared to accept. Anything from you, Jessica?

The CHAIRMAN: We might have to push on a bit, Mr Phelps, because we are running out of time.

Mr PHELPS: I am sorry.

The CHAIRMAN: You state on page 3 of your submission that the past decade has seen many instances of contamination, and on page 5 that uncompensated losses are now routinely imposed on GM farmers and that there have been many instances of GM contamination in the states in which GM canola has been introduced. The committee also notes that according to the map referred to in your submission, there are two published instances of contamination in WA—Steve Marsh and Ian James. Can you please share with the committee details of instances of economic losses claimed to have been caused by GM contamination, including the contact details of farmers and locations and dates? Given that this matter is currently being broadcast and we are in a public session, perhaps I can ask you to take that question on notice and to provide those details to us, and then, because some private information will be included, we will decide whether we will treat that as a private submission. Is it possible for you to do that?

Mr PHELPS: We can certainly do that. As far as our map is concerned, it only contains information that was published in other media. When we first put up the map, the industry threatened us with defamation and various other action, but we agreed with the federal government that if we only posted stuff that had been published already in other media, that would be okay. So that is all that is on our map at the moment and the references are there.

The CHAIRMAN: Who threatened you with defamation proceedings?

Mr PHELPS: I will have to go back and try to find out. I recall that a complaint was made to the commonwealth privacy commissioner. The commissioner mediated the situation with us and said, “Look, as long as you just publish stuff that has been published elsewhere on your map, that will be acceptable and you can get away with that because it is already in the public domain.” In fact, for the last decade we have only been able to do that even though, as Jessica has mentioned and she will submit to you, there have been other cases in which people have privately said that they got contaminated, they did not want to go public and they did nothing about it.

The CHAIRMAN: Can you please take on notice who it was that threatened you with defamation and privacy proceedings and/or talked to.

Mr PHELPS: We will try. I do not think the commissioner, if I remember correctly, told us who the complainants were, but if I can find out, I will.

The CHAIRMAN: If you can include those details, that would be helpful to us. In terms of questions on notice, just to let you know, we will put those to you in writing following the hearing, so it will be certain what we are asking you in relation to those things.

Ms HARRISON: I think there is a little bit of a complication here because there have been quite a few contamination instances which were not directly of another farmer, but they were a case of GM being spread into public land and the environment generally.

[2.10 pm]

The CHAIRMAN: Ms Harrison, we are happy for you to provide us with the details of those things as well. We are interested in specifics because many claims have been made about contamination and non-contamination, and we would like to be able to see some meat on the bones of that, if you catch my drift. Again, take that on notice and then provide it to us. If the information you provide is

of a confidential or private nature, please alert us to that and then the committee can make a decision as to how it treats that information in relation to keeping it private.

I will push on. On page 3 of your submission, you state that in WA —

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

Are you able to provide us with further details of this practice as well as examples, including any differences in prices received by growers? Can any such canola then be subsequently sold as GM; and, if so, would there also be a price discount? I also propose to put that question on notice, given that there may be some detail. And given that you have not had any prior notice, I doubt you will be able to provide those particular details. Again, we will put that to you on notice.

Mr PHELPS: We could just say that we rely primarily on people like your colleague Darren West and his *Hansard* testimony to this, but we will find other examples for you.

The CHAIRMAN: That would be great. You also state on page 3 of your submission that as a result of downgrading and discounting there is a loss of GM-free premium. There appear to be some differences of opinion expressed in submissions to the committee about the value of GM and non-GM canola. One point of view is that non-GM canola obtains a premium and another is that the oil content is the biggest determinant of value not whether it is GM or non-GM. What is your feedback on that assertion?

Mr PHELPS: It depends which part of the supply chain you are talking about—access to the European market is extraordinarily valuable. As I said, the researcher from CSIRO—I will find her name in a moment—who was reported in December, was very clear that the Australian industry as a whole has benefited hugely from having access to Europe. In another story, in Wagga Wagga there is now a GM-free canola oil industry that is being built—that is now exporting to the USA and to India—by an Australian–Indian entrepreneur and is highly successful. We can provide information and evidence about that as well.

Ms HARRISON: I would just like to add that the difference between GM and non-GM canola on a weekly basis is on the public record in the rural media. That is what we based our understanding of the fact that GM attracts less money per tonne. That is something that is very easy to confirm.

Mr PHELPS: I would also draw attention to an excellent graphic in the evidence of John Paull from Tasmania, who will be giving evidence to you tomorrow I believe. The graph in there shows GM and non-GM tracking for a decade, I think, or for several years certainly, shows premiums very, very consistently and is reliable evidence as well.

The CHAIRMAN: You state in your submission your support for the principles for farmer protection legislation. I note that the principles refer to a requirement for GM seed merchants to pay a levy on seed sales into a fund. Is it your position that the state government has constitutional power to charge GM seed merchants a levy on seed sales into any proposed fund and that it does not constitute an excise duty, which only the commonwealth has the power to raise?

Mr PHELPS: Yes. Others have pointed out to you, I think, that state government already does that. I think that is John Paull's submission again, if I recall correctly, that you already collect, for example, an insurance premium on cars automatically when people register their vehicles. So, yes, there are plenty of mechanisms for raising money within the state and this would be quite fair. When I did a little bit of arithmetic on the proposal, as mentioned in my opening remarks, if it was just a dollar and you assume that the seeding rate, which is what Monsanto says it is, is two kilos per hectare of seed, you would have raised \$675 000 in 2015, which would have been four per cent of the benefit they claim for farmers in Western Australia. It seems to us that this impost on a huge global industry

is just pocket money, but for the farmers and the landholders and the food industry that will be affected when things go wrong—again, we want to look to the future. That if this industry grows as the proponents are saying, the chances of contamination in the future will be much larger than they are now or have been in the past—that somebody has to pay. This fits in with the principle accepted everywhere that the polluter pays. I do not see why they are squealing really. I think they should be very happy that we just ask for a dollar a kilo, which is a small impost on their gravy train.

The CHAIRMAN: We have run out of time and we still have a number of questions we wish to put you, so we will put those questions to you on notice and then you will be able to provide some written feedback to us. You should have those questions in front of you in any event.

Mr PHELPS: Is this questions 15 to 19?

The CHAIRMAN: That is right, yes. There may be some other questions that have arisen out of the evidence that was given on 11 April that we wish additionally to put to you as well.

Thank you, Mr Phelps and Ms Harrison. We appreciate your time today. Thank you for attending today by telephone. It was probably more effective than some of the Skype calls that we have had today. We appreciate your forbearance in terms of this process. 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 those corrections on the transcript. The committee requests that you provide your answers to questions taken on notice when you return your corrected transcript of evidence. If you want to provide 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 appearance today. All the best.

Mr PHELPS: Thank you very much for hearing us out.

Ms HARRISON: Thank you.

Hearing concluded at 2.18 pm
