STANDING COMMITTEE ON ENVIRONMENT AND PUBLIC AFFAIRS

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

TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 29 AUGUST 2018

SESSION TWO

Members

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

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Hearing commenced at 10.32 am

Mr DAVID McFALL
Committee member, National Association for Sustainable Agriculture Western Australia, sworn and examined:

Mr IAN JAMES
Deputy Chair, National Association for Sustainable Agriculture Western Australia, sworn and examined:

The CHAIR: Good morning gentlemen, thank you for joining us this morning. On behalf of the committee, I would like to welcome you to the meeting. Before we begin you need to take either the oath or affirmation.

[Witnesses took the oath.]

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

The Witnesses: Yes.

The CHAIR: These proceedings are being recorded by Hansard and broadcast on the internet. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing for the record and please be aware of the microphones and try to talk into them and not cover them or make any unnecessary noise near 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 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 to the committee?

Mr McFall: I just want to note that there are papers that are being reproduced right now that need to be returned to me for me to satisfy that condition of referring. It is a document.

The CHAIR: That is fine, I think we are working on that now.

Mr McFall: Just bear that in mind please. Thank you. We welcome the opportunity to stand here in this chamber to provide context and testimony to our concerns over the introduction of GM technology under the memorial bearing the lion and unicorn, which is the royal coat of arms of Queen Elizabeth II, heirs and successors. In that respect, I have not seen nor am I aware of any acts or statutes including the Genetically Modified Crops Free Areas Act 2003 and the Gene Technology Act 2000, commonwealth, being passed in accordance with the Commonwealth of Australia Constitution Act 1900, UK, and its letters patent 1900 and orders 1(5)(a) of the commonwealth Statutory Rules 1901 to 1956 and carry the correct royal assent and the correct royal seals of Scotland and Australia and a proclamation certificate. It appears that genetically modified organisms are existing in WA unlawfully and fraudulently through misprision of treason as enacted within the walls of WA's Parliament, whose members have not, to our knowledge, sworn their oath of allegiance in accordance with section 42 —

The CHAIR: Sorry, Mr McFall, do you not recognise the authority of this committee?

Mr McFall: I do.

The CHAIR: You do recognise the authority?

Mr McFall: I recognise the authority that you —

The CHAIR: You just told us that each of us did not take our oaths according to the requirements.

Mr McFall: I am not aware. This is a matter obviously for the committee to correct me.

The CHAIR: Okay.

Mr McFall: I can continue? By oath of allegiance in accordance with section 42 of the Commonwealth of Australia Constitution Act 1900 UK. In Western Australia 2003, the removal of the Crown and sovereign lady, Queen Elizabeth II, her heirs and successors and royal arms was removed under sections 121 to 130 in the Acts Amendment and Repeal (Courts and Legal Practice Act) 2003—for reference, number 65 of 2003—without consent by referendum of the people as duly required under section 128 —

The CHAIR: Mr McFall, can I get you to get to the point of what you are trying to say here, because I am not sure how this is relevant to our inquiry? We have limited time, so if you can come to the point.

Mr McFall: The point, Chairman, is: where is your authority?

The CHAIR: You are here at our invitation; you are not required to be here.

Mr McFall: The point, Mr Chairman, is: where is the authority for the trading and growing of GM in this state because it has not been lawfully sanctioned by act?

The CHAIR: So what you are saying is that GM is not a lawful crop in Western Australia.

Mr McFall: Under the constitutional rules, it is not a lawful crop.

The CHAIR: And that is the position of your organisation.

Mr McFall: That is the position.

The CHAIR: We will take that as your position and, perhaps, if we can move onto the questions that we have prepared and provided to you in advance. The first of those questions was in relation —

Mr McFall: Mr Chairman —

The CHAIR: Yes.

Mr McFall: — in context of my opening statement, I would like to read it out in full. It is very brief.

The CHAIR: I think I have heard enough of your opening statement, Mr McFall; I think we have got to the point of which you want. The reason that you are here is to answer the questions that the committee has for you. As I say, you are here voluntarily and so from that point of view we need to get on because time is of the essence here and we do not have all day. I have a got a range of questions that were prepared and provided to your organisation in advance and we would like to get to those particular questions.

Mr McFall: I take that on board, and I do state there is related matters regarding to our submission that this matter is very significant. It needs ultimately a full investigation and ultimately a referendum of the people to decide whether this technology is or is not allowed.

The CHAIR: We have very narrow terms of reference for this inquiry and so we will be continuing to work within those terms of reference. You are, of course, entitled to put those positions to us in writing if you wish and the committee will give consideration to those. But as I say, for the purposes

of today's hearing, we have limited time and a number of questions we would like to get through and take it from there.

[10.40 am]

Mr McFall: I take it the committee does note that this is a serious matter and would respond to these questions.

The CHAIR: We will see what you put towards us. I am not going to make any indication to you how the committee may respond. We take most matters that come before us—in fact, I think we take all matters that come before us seriously, but as I said to you we have a narrow scope in terms of the terms of reference. We are not looking into constitutional questions.

Mr McFall: These questions must be presented to Parliament. Thank you.

Hon Dr STEVE THOMAS: Having said that, Mr Chairman, the committee is not here to investigate the constitutionality of legislation that has been passed and it is not here to investigate the constitutionality of the relationship to the Crown. I think we need to move onto specifics. I have been in those debates for some period of time and we will be here forever if we start to even consider them. I urge against us bogging down in a constitutional debate, which is outside of the authority of this committee to investigate.

The CHAIR: We are here to hear your evidence relating to the terms of reference and that is what we would like to get to. We have received your written submissions. Those other issues, as I say, you take them very seriously, but I agree with Hon Dr Steve Thomas that we need to not get bogged down on them for the purpose of today's hearing. If we can perhaps go to the questions that we provided to you in advance and there may be some additional questions and clarifications that arise from the committee, which will help us with our inquiry.

On page 2 of your submission, it is stated that mechanisms for redress for loss resulting from GM contamination under common law has proven inadequate. Some submitters have stated that the existing common law provides sufficient coverage for any damage by GMOs and that there has not been a single legitimate instance in Australia of non-GM or organic growers suffering pure economic loss directly resulting from the unintended presence of an approved GMO. From that, our question is: why do you believe that one litigated case is a sufficient indicator of this given the potential for different factual scenarios in other cases?

Mr McFall: Just quickly, in terms of the preamble and approved GMO, I have just stated I have serious grounds whether there is actually legal or lawful approval of that, but I will move on. Why do you believe one litigated case is a sufficient indicator? I think one litigated case when a flock of birds migrates from the northern hemisphere to the southern hemisphere, there is one leading bird in flight. Obviously, we have had one case. The Marsh versus Baxter case was a significant one because it did shine a light on a lot of the inadequacies of the legal system to address issues that GMO introduction—we state unlawful introduction of GMO to the state—is presenting for a number of farmers, not just organic farmers but also to those farmers and production systems that choose to be non-GMO for various reasons. We believe it is a legitimate case and that is the Marsh versus Baxter, so I am not sure why you are quoting it as there has not been a single legitimate.

The CHAIR: The committee is not putting that position to you as the committee's position. What we are saying to you is that other people who have made submissions to this inquiry have made that particular point saying that it is not sufficient to rely on one case to draw the conclusion that the common law is insufficient.

Mr McFall: It maybe an error in text in the way it reads. There is a legitimate case and we can use that case. As I say, it shines a light on the future needs and rights of the people of WA and those

who wish to control and produce product to their own benefit, what their future rights will be. I would just like to say that in the case of Marsh v Baxter, we also believe that there was a denial of justice in that, and particularly Marsh's rights under chapter III of the Constitution were not adhered to. I think that should be addressed.

Hon Dr STEVE THOMAS: So are you suggesting that the judgement was in error in the Marsh v Baxter case?

Mr McFall: For a start, the court was not sitting under the Crown.

Hon Dr STEVE THOMAS: Remove the constitutional arguments, because we are not going to agree on that.

Mr McFall: In context, this is very important, because a judgement has to be valid lawfully. You, as parliamentarians, have to swear an oath; it has to be lawful. We assert that the court may not have been in a lawful position to give that judgement. But also in respect to the rights of Marsh, chapter III gave him the right to have a jury hearing and not just a magistrate.

Hon Dr STEVE THOMAS: My question is quite specific: do you disagree with the judge's ruling in that particular case? If you could remove the constitutionality arguments from the evidence you give the committee today, because they are irrelevant to the debate of the committee, are you saying that you disagree with the judgement?

Mr McFall: I am noting the judgement; I do not have to give an opinion.

Mr James: I would like to answer.

The CHAIR: Mr James.

Mr James: Yes, we do disagree. NASAA WA passed a resolution at a meeting that we reject the outcome of that trial. We did not agree with it. We did not believe that it was a fair trial. We believe that the evidence was not correctly reflected in the outcome.

Hon Dr STEVE THOMAS: Thank you; I appreciate that straight answer.

The CHAIR: Do the farms of any of your members adjoin farms where GM products are being grown, in addition to you, Mr James?

Mr McFall: I was citing Ian James as an example of that, and obviously Steve Marsh. The ability to gather data on that is very difficult. Under the release of GM, we understood there would be a register of sites—that people would register their paddocks and we would freely be able to have a look. Not all farmers and not all neighbours tell you what they are doing. Mr Chairman, that is a very difficult question to answer. From a personal level, I have a neighbouring farm, as does Ian, that grows GM. We know that, because under our obligations to inform them, they have a reverse obligation to inform us of their production systems.

The CHAIR: Of your members, are you able to provide us with any contact details of farmers that farm under your organisation's rules that also have neighbouring GM farms next to them that may be affected by contamination?

Mr McFall: Some, although it may not be comprehensive.

The CHAIR: So you do have some details that you could provide to us about that?

Mr McFall: In a letter?

The CHAIR: Yes. If you could provide that to us. You can take that on notice.

Hon Dr STEVE THOMAS: If we could go further, Mr Chairman: can the organisation provide evidence of economic loss of farmers with neighbouring genetically modified organisms being grown that is

not necessarily economic loss relating to the meeting of an accreditation standard applied by an organisation, but an economic loss deliberately attributable to an incursion of genetically modified organisms? Do you have evidence that you could present to the committee?

Mr McFall: In the Marsh v Baxter case, there was no contesting of the fact of economic loss; it was contesting the process of recovering that.

The CHAIR: Outside of the Marsh v Baxter case.

Hon Dr STEVE THOMAS: Can your organisation present direct evidence of economic loss?

Mr McFall: Marsh v Baxter is direct evidence.

The CHAIR: Yes, but what we are looking for is the scale of the problem, in terms of what is there. Mr James, did you have something to add?

Mr James: Yes, I have something I would like to add. With regard to organic farming, it is general practice for an organic farmer to leave a buffer around the inside of their paddock, where they harvest the grain there and sell it and market it as conventional grain because it has the potential for contamination from a GM paddock. There is a loss directly on all paddocks, which we recognise, adjoining a GM crop. It is a fairly common thing, although I do not have the addresses and names of farmers who have that situation. All those non-GM farmers who are putting this buffer zone inside their paddocks are having a loss at that time, because they are not selling that grain as organic at a premium; they are selling it as conventional due to a risk being unacceptable.

Hon Dr STEVE THOMAS: Thank you; you raise a very good point and I appreciate that. My next question, therefore, is about that buffer being put in place to maintain an accreditation — presumably, to maintain a zero contamination level. If the organisation that does the accreditation accepted what the state government currently puts forward as a 0.7 per cent adventitious contamination level to be considered non-GM, would those buffer zones still be required to be the same size?

[10.50 am]

Mr James: I put it to you that in tort law, it is required that a property manager contain within their property the material that may cause loss, harm or injury to a neighbouring property. We are in a situation where the organic farmers are putting a buffer inside their property when we should be demanding and having a situation where the GM farmer is required, within his property, to have a buffer at his loss, and not at the loss of the organic farmer.

Mr McFall: The organic industry is a very disciplined industry. It is probably one of the most regulated agricultural industries in Australia, because it has to operate under a set of standards. Those questions are problematic because it is zero tolerance for GM. The standards have to be applied. As Mr Cocks stated, they are nationally based, they are administered by the commonwealth government and they relate internationally to the International Federation of Organic Agriculture Movements, so they are law and they are audited lawfully under those standards. If those standards change, the scenario changes in terms of what we can and cannot do. But it is a hypothetical situation at the moment. You can only operate on what you have. You are audited annually and if you do not pass your audit, you do not get a certificate and you cannot market under a logo.

Hon Dr STEVE THOMAS: I will come back to Mr James, because you made some really good points. In relation to that, the judgement in the Marsh v Baxter case said that the issue was with the standards applied by the registering organisations as opposed to the contamination issue. The issue of the right to farm debate, which I have been involved with for 20-plus years, is somewhat in conflict with this; the right to farm does not involve everybody else requiring to keep their product

or their activities having zero impact. This was done in the south west many years ago with spray drift from departmental activities onto vineyards. It is not the case that bodies are required at this point to not allow any drift or contamination. I would like to come back to Mr James' point, which I think is quite critical. I bring you back to that original question. Acknowledging your point of view that the buffer zones should be on the genetically modified side of the fence and not the organic side of the fence, my original question was: if the rules were changed so that 0.7 per cent adventitious contamination was acceptable, do you think that a buffer zone would be required? That is, is it your view that you could maintain accreditation at a low level of 0.7 per cent? You are a farmer who I think is in the situation where you have to deal with that, by the sounds of things, so I would be interested in your opinion as to whether that would be dealable if there was a shift in the registration requirements.

Mr James: I do not believe so, from the quantity of contamination I have seen. If, say, I did not have the buffer in place and I harvested along the boundary, as I would if the GM farm had a buffer instead of me, I would be up against my fence. Say he does not have a buffer and I do not have a buffer, I believe that the 0.9 per cent strip test would pick up GM in my crop and it would be above that threshold.

Hon Dr STEVE THOMAS: But you have not been able to test that because you put your own buffer in place at the moment?

Mr James: The buffer is something I decide upon based on a risk analysis of the situation.

Mr McFall: But the buffer has not prohibited your crops from being contaminated.

Mr James: No, I crop up to the boundary and then I deselect an area along my boundary which I cannot include in my harvest, at a loss.

Hon Dr STEVE THOMAS: So your buffer zone is a separate harvest zone, not an area that you do not plant?

Mr James: Exactly.

Hon Dr STEVE THOMAS: Have you measured the contamination levels?

Mr James: I was going to bring this up in my private submission, but I can go ahead now; it is the same evidence.

The CHAIR: We will leave that for the moment.

Mr McFall: The question was about economic loss. The point I made is: that is taken on board, is it not? The issue of economic loss was not contestable in the Marsh v Baxter case. It was established that there was economic loss; it was just a process of getting recovery.

Hon Dr STEVE THOMAS: That is a separate debate again. I am happy to give someone else a go, Mr Chair.

The CHAIR: Hon Colin Holt?

Hon COLIN HOLT: I am happy to come back to it when we hear from Mr James.

The CHAIR: Okay. Can you just give us a description of the premiums that your members are able to obtain for their organic produce as opposed to their nonorganic produce?

Mr McFall: The premiums do vary. We are under contract law and there is some sensitivity about contract figures. There is an example of a blank contract there.

The CHAIR: Have you provided that to us or are you tabling that document?

Mr McFall: I will be tabling it.

The CHAIR: Can you just read out the description of the document for the purposes of Hansard?

Mr McFall: It is a purchase contract as an example. We operate under contract law. In terms of answering the question on the premiums, it is a market-based price. With market-based mechanisms, they do fluctuate from year to year. If you want context for it, generally, in terms of grains, it could be 100 per cent. In terms of some product like horticulture, it could be 400 per cent, depending on the market demands at a certain point in time and supply. It can obviously meet somewhere in between or under that. It is a highly fluctuating market. You cannot be specific. It is a premium. This premium, as part of our business structure, is very important in maintaining our viability as producers and meeting market demand, obviously.

The CHAIR: Mr James, you obviously crop, as you have said, the buffer zone, where you sell that canola at the non-GM —

Mr James: It is not a canola crop. I am cropping a different type of crop, but the canola is coming in from a neighbour. There is a foreign grain in my harvest.

The CHAIR: Is that a GM grain?

Mr James: Yes, it is.

The CHAIR: What are you cropping—wheat or barley?

Mr James: I am cropping oats. It has a significant premium; it is more than 300 per cent. That is why I crop it. I have other grains which have 150 per cent. I do not crop them because this is more lucrative for me. I have to pay my bills, so I choose the most lucrative premium I can. Obviously, I have to have a good, secure market that will last from planting time until harvest time. I do not want my market to disappear. That is another reason; it is not just to do with the premium.

The CHAIR: On page 3 of the NASAA WA submission it stated that —

> Growing and containing GMO technology is an **abnormally dangerous activity** as the organism and its altered genome can freely express itself in the ecosystem. Hence the introduction of strict **liability laws** relevant to GM is justified and required akin to protecting many other sensitive industries.

A statutory review of the national gene technology scheme found, amongst other things, that a strict liability system would not remove the need for court action, as the plaintiff would still need to prove a causal link between the GMO and the damage incurred, as well as the extent of the loss, in order to receive damages. In other jurisdictions, strict liability schemes relate to super-hazardous goods and it is contradictory to treat a product found to be safe by the federal regulator as super hazardous. Applying the strict liability scheme to the licensee of the technology could remove the incentive for growers to take steps to avoid the unintended presence of GM in a neighbour's field, and this would not be a reasonable solution. Some submitters have made similar points to the above. Could you please address these points in expanding upon your submission that strict liability laws should apply to GM contamination of crops?

[11.00 am]

Mr McFall: The document I tabled for the benefit of the committee is from Griffith University and titled, "Legal Liability, Intellectual Property and Genetically Modified Crops: Their Impact on World Agriculture". It is a great document of reference for the committee to determine the relevance of this matter and it also gives guidance in terms of those issues legally. Now I am not a lawyer, but in terms of reading those documents, it is interesting to note a few passages —

> Strict liability arises:

> When someone engages in an abnormally dangerous activity; in such cases, a person harmed by the abnormally dangerous activity can recover damages from the person who engaged in the activity, without having to prove that the person who did the activity was reckless or negligent.

This gets to the capacity to have another mechanism of recovering loss, because we have had the experience of Marsh v Baxter. The tort law is very problematic for many farmers, not just organic but those who wish to stay GM-free, in establishing and recovering that economic loss. You have to prove nuisance, you have to prove trespass and you have to prove a whole pile of other things, which is very difficult. The judgement came down against Marsh on those grounds, so there is a need to elevate the discipline of growing this particular product because it is abnormally dangerous. We cannot dismiss that. It is an altered genome. It is a mutagenesis product. It has no boundaries, it freely expresses itself in the ecosystem and we are at the starting days. We have a lot of unknowns with regard to this technology, so the precautionary principle must be strongly adhered to, and those who wish to endeavour to grow it and manage it must be on the highest level of discipline in order to not cause any further harm to neighbours or the broader community.

This document goes through a whole process of those limitations and things like that. I do not want to take up too much time, obviously you have an agenda here, but there are a number of products— I cite the history of asbestos, tobacco, DDT, the release of thalidomide, chlorofluorocarbons and now the emerging evidence against glyphosate, which once again shines a light on the fact that these products are entering the food chain and have to be taken note of with the utmost significance.

The CHAIR: So your organisation holds that genetically modified canola is in the same category as asbestos and those sorts of things.

Mr McFall: Genetically modified organisms per se, bearing in mind that under the current regulations, if lawful, the release of other genetically modified organisms such as rye-grass, wheat, barley, lupins, white clover can be adopted in this state once the —

The CHAIR: But the specific question is: do you include genetically modified canola, the only GM crop currently available in Western Australia—

Mr McFall: Apart from cotton, and there is an application for cotton to be used in the food chain.

The CHAIR: Sorry, the question was: do you put GM canola into the same category as asbestos and those other related matters?

Mr McFall: Yes, it is. If you look at alcohol, it is a legally permitted substance but alcohol foetal syndrome is a rather emerging issue for community to deal with. There is a connectivity that we cannot dismiss. We have to take the extreme precautionary approach, and if you establish that mantle, and through science, good study, experience and time there needs to be a lowering of that precautionary standard, then well and good. But it would be foolish for this community and our legislators and the people of WA to think that we should let this colt bolt without having a sufficiently long lead so we can pull it back and have another fresh look at it on those grounds.

Hon COLIN HOLT: Do you grow barley?

Mr McFall: We personally do not know barley. Our operations grow wheat, oats and lupins, and we dabble in other specialist products like triticale. We have rye-grass and we have clovers, so this is a direct threat to production systems that me, Ian and our other members have—the carte blanche introduction of this technology.

Hon COLIN HOLT: I am not sure you can make a link though between GM canola to infant alcohol spectrum syndrome, given that you cannot make a link between growing barley and someone drinking too much beer when they are pregnant, really.

Mr McFall: I think we can in that respect.

Hon COLIN HOLT: Really?

Mr McFall: I think we can, because canola is a composite of chemicals and one of the chemicals in that canola is glyphosate. There is emerging evidence that glyphosate has serious detrimental health effects on the human body.

Hon COLIN HOLT: What is the linkage to infant alcohol —

Mr McFall: It is in context to what we know now, if we knew before—obviously alcohol has been around for a few generations and it is a very hard one to manage. A substance that enters the food chain or is consumed can throw up a whole pile of adverse health effects. I presented that as an example. Foetal alcohol syndrome is an example of a legal substance, in certain circumstances, throwing up a health issue that needs to be managed by the community. I am certain that canola and other GM products are on the same pathway, and that is why, as legislators and also regulators, we have to have utmost diligence to —

Hon COLIN HOLT: Should we not be growing barley then, given that link that you have just described?

Mr McFall: Barley could be a GM product down the track —

Hon COLIN HOLT: No, currently, because we have infant spectrum syndrome now, should we not grow barley, given that example?

Mr James: I grow barley.

Hon COLIN HOLT: Do you take responsibility for the syndrome that occurs because of it?

Mr James: I do not know if my barley is going to be made into a beer or bread or fed to pigs. I produce the barley under the organic standards and supply it to the market.

Mr McFall: We are talking about a probable plausible link. It is a problematic question to answer because we are trying to regulate an unknown, and this —

Hon COLIN HOLT: It is a problematic example you raised.

Mr McFall: It is, and this is the conundrum. It is an enormously dangerous activity in that context because we are trying to regulate and justify the release of a product that is unknown.

Hon SAMANTHA ROWE: Is that NASAA's opinion or is that yours?

Mr McFall: That is the NASAA (WA) submission.

The CHAIR: The farm institute has recently stated that if this inquiry finds that there should be economic compensation mechanisms for GM contamination other than those that are currently available under the common law, it will set a precedent that the WA government would not want to establish, and that is that a market-based, arbitrary accreditation standard is taking priority over legal best practice farming methods. What is NASAA's response to that?

Mr McFall: We question "arbitrarily accredited" because it is factually accredited and we have not seen proof that one system is best practice over another. We just think it is the right of our system to have a place in the value chain, and that is well recognised in the department of agriculture, which just recently came out with a great growth prospect for this state, which is organic, biodynamic and Wagyu beef. Under IFOAM and, once again, under commonwealth legislation, we are bound and

the economic compensation matters that may come about because of disruptions to that production are warranted.

The CHAIR: In your submission at page 5, could you expand on the point that you made about how controls over GM-type technology should be in separate legislation aligned with the powers and duties under the Biosecurity and Agriculture Management Act 2007?

Mr McFall: Absolutely. The technology, as mentioned, is abnormally hazardous, has the potential of a lot of unknowns and therefore needs to be highly regulated. In terms of that being stated, that was at best a mechanism of management that pre-existed in this state—the Biosecurity and Agriculture Management Act—because it recognises an organism and it goes beyond the office of gene technology's limitations, which only looks at health and the environment. However, the agriculture management act looks at other related issues in terms of market positioning, which is a great need for this state to be at the forefront of capitalising market opportunities, and it also could embrace things like cultural needs and cultural rights because the technology can cross a number of cultural rights—Indigenous and also established farming protocols, non-GM. The act has a number of legal mechanisms to put a regulatory framework around the allowability of an organism to be released, grown, and managed. It also has the capacity to infringe if there is any great deviation from that. So it has some teeth and at the moment there is no legislation in WA on behalf of the people of WA that has any teeth, because it has been abdicated to the federal, commonwealth government. It is put in there as a guide to this committee to study further because it is a legislative framework in operation, it operates reasonably well, and it is a great model to base further study on. Obviously it is not going to cover all the sensitivities of GM technology, but it goes down the track a long way from where we are at the moment.

[11.10 am]

The CHAIR: How would you see that interacting with the commonwealth Gene Technology Act?

Mr McFall: Which may not be lawful. Assuming it is lawful, the act sits beside that and operates freely as it is. I do not see any complications with that. A state and its people have the right to enact legislation and to manage things as they see fit among themselves. I do not see a problem with that.

The CHAIR: Are you familiar are the recently released organic export notice 2018-01?

Mr McFall: Not greatly familiar, but I have a comment.

The CHAIR: The question we have with respect to that is about the position that was put forward where it recommended that where there is an accidental introduction of a prohibited substance including GMOs, the appropriate sanction should be the issuing of a corrective action request only and not a suspension or decertification of the relevant units. What is your position?

Mr McFall: If that is in the standards, then it is a risk management and an operational matter that we can consider, but at the moment it is outside the standards—it is a hypothetical—so we cannot really go any further on that

The CHAIR: The committee has received evidence that a zero tolerance for organic standards is unreasonable, it is driving confrontation over the mixture of GM and non-GM crops, and it is pointing to the maximum permitted levels of other substances in food. Also, some submitters have stated that they believe the issue of GM contamination in Australia has become a contentious issues due to the organic standards being too tight. How would you suggest the issue of these divergent views on tolerance levels is overcome and a consensus reached to enable a clear way forward on determining what constitutes reasonable economic loss due to GM contamination?

Mr McFall: I think the fact that there is a fudge factor indicates there is a system failure with the technology. The point of difference of organic growers is that we market to a consumer demand. That consumer demands zero tolerance and we have to respond to that because they are our masters, as most agricultural producers are masters to the market—the market is the master to them, I correct that. That is our point of difference. We are meeting the market. It is a problematic one because, obviously, those fudge factors, for operational reasons, are encouraged by certain sectors of the production chain, particularly those who wish to adopt the technology, and those factors can change. It is 0.9 per cent now. It could be five per cent in 10 years' time, and you see these kind of arbitrary standards start somewhere and end somewhere else in terms of chemicals, exposure and things like that. It is problematic. We acknowledge that and we have no easy answer to that, but with respect to the organic product, we operate under a standard that is legally applied to us and which we have to meet, and at the moment internationally and at the commonwealth government level, that is zero. We cannot diverge from that.

The CHAIR: Some submissions have pointed out the fact that there are low-level tolerances for other contaminants as well as food processing aids in food. The question is: why should GM be any different?

Mr McFall: Why should GM be any different?

The CHAIR: Why is it that we can have other low-level tolerances in our food, but with respect to GM in organics, it has to be zero?

Mr McFall: In respect of our standard it has to be. Do you have any comment on that? I do not see the need to answer this question.

Mr James: I liken the situation a little to the peanut material being deadly to certain people who have allergies to that. In that situation, there is a zero tolerance required because even trace elements of the material can cause people to asphyxiate. We are directed by the standards, and the standards are zero tolerance. That is consumers' choice that they have a product which is 100 per cent free of a certain material. That is their choice to choose that. The market is built around that certainty and the quality of that statement that we are able to provide what they wish to buy. To diminish that certainty by allowing higher contamination would destroy the market, and therefore would destroy our industry. The industry will not perform or function in an environment where there is not zero tolerance.

Mr McFall: Sorry, I am just getting my head around the context of this question. If it relates to GM in organic food, it is obviously a zero tolerance level that we have to meet. But GM in GM food—well, you set your own level; make it 20 per cent, if you wish, and let the consumer decide if they want to swallow that product or not. At this stage, we are not saying, and our submission does not say, that GM tolerance levels should be limited in GM foods.

The CHAIR: That is not what was meant by the question, so perhaps it was not put clearly. The question is: in organic food, as in other foods, should there be some level at which contamination is tolerated? That was the point, but I think you answered the question from your point of view, so we do not need to go on there.

I guess we are running out of time—I have been reliably informed. Mr James, we have some questions for you specifically regarding your personal circumstances and some of which I believe you wish to provide to us in private, but we have run out of time. I think it is open to you to provide written answers to those questions for us—I think you may have done that—and we will consider those.

Mr James: Does that mean that I will not be given an opportunity now to answer some of the questions, even if briefly?

The CHAIR: What we have to do is to end this part of the hearing and go into private session. In terms of the NASAA hearing, this will bring it to an end, and then we can quickly go into private session with you, Mr James. I am getting my wires crossed a little bit here.

This is perhaps directed more at you, Mr McFall, because you represent NASAA. 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. We did put to you a question regarding the contact details of any of your members who may have been affected by GM contamination, and you said that you would try to get that material to us. 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 time, Mr McFall and Mr James. The committee will now move into private session.

[The committee took evidence in private]