Dear Mr Anderson

The Committee has the following further questions which they were not able to ask, as well as some questions arising from its hearings with Co-operative Bulk Handling and the Department of Primary Industries and Regional Development on 11 April 2018 that it would appreciate your feedback on:

1. If a client suspects GM contamination, what are your expectations regarding what actions they should take? For instance, should they immediately act to mitigate the situation by clearing the GM crops from their land or leave them there for NASAA to inspect?

The NCO contract stipulates under Item 6.4 Licensee's Obligations:
' The licensee must notify NASAA in accordance with paragraph 18 of this contract if the Licensee's facility or the specified products or processes are contaminated or potentially contaminated by any substance or method not specifically allowed under the relevant Standard'.
The NCO contract further stipulates under Item 8.2 Procedures in the event of a possible non-compliance of the relevant standard:

1.1 Where NCO has reason to believe acting reasonably and in good faith that the Licensee's facilities or the specified products have been affected by chemicals, processes, practices and/or treatments not specifically allowed under the relevant Standard, NCO may take any one or more of the following measures:

i) suspend the Licensee's certification; and

ii) inspect the Licensee's facilities; and/or

iii) decide whether relevant testing is to be conducted.

8.2 The Licensee agrees that in the event of a possible non-compliance of the relevant Standard:

i) NCO may without prior notice but acting reasonably and in good faith inspect the Licensee's facilities, the specified products or any equipment, materials, consumables or farming methods or practices used on the Licensee's facilities, and any records relating to the same at any time;

ii) the Licensee will fully co-operate with such inspection, and will provide NCO's inspectors or agents with such information and access as they may reasonably request for the purposes of the inspection;

iii) where the specified products are not stored on the Licensee's facilities, the Licensee will do all things possible to allow NCO access to the place of storage for the purposes of the inspection; and

iv) in the course of an inspection, the Licensee will provide to NCO such soil, produce or other samples as NCO may reasonably request for the purposes of testing;

v) the Licensee will be responsible for payment to NCO of the reasonable costs of such inspection within 7 days of receipt of an invoice by NCO.

8.3 If in accordance with 8.2 above NCO decides to conduct laboratory testing:

i) NCO will make arrangements for such testing as it sees fit;

As such NCO would expect that the client would leave the contaminated area intact for inspection and sampling.

2. 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 a non-GM or organic grower suffering a pure economic loss directly resulting from the unintended presence of an approved GMO. Do you believe one litigated case is a sufficient indicator of this given the potential for different factual scenarios?

The issue is not about the suitability of common law but rather about the interpretation of 'loss'. Steve Marsh lost his certification and with it the margin he would normally get on sales of organic grain. The judge effectively ruled that this loss was arbitrary as it hinged on the action of the certification body and he had little understanding of the responsibility that certifying bodies have to the National Standard. The judge seemed to treat it all like a self-inflicted wound. In Australia GMO is restricted to a small number of crops – canola and cotton – and Organics only represents around 1.5% of agricultural activity. That the two will both continue to grow seems inevitable – and with that must come increased opportunity for unplanned interaction of the two systems leading to loss. This is already seen in Europe which is 'ahead' of Australia in both respects. The impetus for this legislation comes from an awareness of our own future as provided by observation of what is now happening in the rest of the world.

3. One submitter has stated: "The current implied zero tolerance by some Australian organic certifiers for the unintended presence of approved GMOs in organic and biodynamic production systems is scientifically and technically unenforceable. This is because even with a state of the art analytical laboratory, it is impossible to prove with a 100 per cent statistical confidence that a product contains 0.0 per cent GM without destroying the product (i.e. destroying every kernel of grain in a shipment). Even if every kernel of grain were to be destroyed, the current sensitivity of DNA analytical techniques cannot go as low as 0.00 per cent." What is NASAA's feedback on this statement?

Firstly the zero tolerance is not implied – it is stated quite clearly. Secondly the statement is not derived from 'some' 'all', or 'any' certifiers - but from the National Standards for Biodynamic and Organic Agriculture. These are the standards which all Australian certifiers adhere to as a minimum and they are co-managed between industry and the Department of Agriculture and Water Resources. Clearly if the presence of something is too low to measure then it can't be measured…I have no argument with that. The need to destroy every kernel of grain is a pertinent one. Even to detect the oft quoted 0.9% contamination to any degree of accuracy would require a very significant proportion of the grain to be destroyed every time a test was needed.

4. The same submitter has stated "The perceived zero tolerance for the unintended presence of approved GMOs erroneously applied by some certifiers in the Australian National Standards undermines the capacity for different, approved cropping systems to coexist within the same farming region in the Australian grains value chain." What is NASAA's feedback on these statements?

There is no ambiguity in the Standard about zero tolerance to GMO's and there is therefore no 'erroneous' application of the rules by certifiers. Standards re GMO operate worldwide and there are many examples of GM and Non-GM agricultural practices co-existing within the same landscape. There are some precautions that should be taken to minimize the risk of cross contamination. All we ask is that, where these precautions are ineffective, and a farmer suffers a loss as a result, then there should be a no fault compensation scheme available as a first option.

5. In its hearing with the Committee on 11 April 2018 the Department of Primary Industry and Regional Development stated that in the two Australian organic standards there is no threshold for GM presence, accidental or otherwise, in organic produce and that this puts the Australian organic industry out of step with the international organic industry. What is your response?

There is no Organic standard in the world that allows for intentional inclusion of GM products. There is one example of an organic standard that includes an allowance for accidental GM contamination and that is the EU Standard. The EU standard allows for 0.9% adventitious GM contamination in products. This can only be measured in a finished product and obviously does not and cannot be applied to a silo of grain or a certified landscape. It is set at 0.9% because at the time of developing the standard this was the lowest level at which GM could be detected. The EU is looking at lowering it to 0.5% as the technology for measuring GM contamination has improved. Being set at the lowest level at which GM can be measured effectively meant that, at the time, if any GM contamination is detected the product can no longer be sold as Organic. The reason that this adventitious rule was developed is essentially because in an environment where GM has had more opportunity to work its way into the food chain it is impossible to state that something contains no GM at all. You can only make a claim that it contains less than the lowest horizon of our current ability to measure it.

6. The Department also stated that, in its opinion, it would be wise to adopt some threshold level because it is very difficult to achieve a zero level in anything. Even in biosecurity there is a certain level of risk that we need to accept because zero is virtually non-achievable. What is your response?

The more GMO materials proliferate in agricultural processes then clearly the more difficult it is to keep them out of the food chain. There will always be an issue of 'measureable limits' for two reasons – firstly the technology to measure GM's in a product will always have a lower limit of some sort and secondly some production processes do not lend themselves to this kind of measurement. If one grain of wheat in a bushel is GM then how can it be measured without destroying the whole bag. If one canola plant in a 100 ha field is GM and the rest are not then how can you find it. Measurement has its limits which is why Organics has mainly adopted a 'process' methodology rather than a measurement one. We don't measure vegetables to see if they contain pesticides…instead we promote and police agricultural systems that do not use artificial pesticides in the first place. A tolerance for GM canola in a field is a nonsense. If the plants can be detected then contamination is present. A percentage rule would need to mean that the size of the farm is taken into account.

7. The Department also stated that a study conducted in 2002 found the highest amount of cross-pollination between adjacent canola crops was 0.07%, which is very much less than the low level tolerance of 0.9%. What is your feedback on this and what do you think this says about the potential for contamination of non-GM canola?

Firstly the 0.9% is for products not fields. Secondly 0.9% contamination of a field can only be determined relative to the size of the field. In a one hectare field 0.9% contamination means 3,600 GMO plants. If the same plants were in the same place but the field was re-fenced to two hectares then contamination percentage would be .045% - etc. In this situation there is only the option of 100% contamination where the GMO plant is detected.

8. In its hearing Co-operative Bulk Handling confirmed there has been no financial impact on a producer that has supplied canola to them arising out of the presence of GM. They also stated they have not had any instances where a stack of grain has had a GM presence of greater than the low level tolerance threshold of 0.9% that has required them to downgrade the stack. What is your feedback on this?

Finding a handful of GMO grain in a stack is simply not likely to be possible – for reasons stated earlier. You would need to be prepared to destroy the entire stack through testing in order to get an accurate figure. I would need to look at their methodology. In the first instance it seems to me that they would need to have some very thorough statistics if they are relying on sampling that does not require destruction of the entire stack. If 0.9% was detected however – or thereabouts – it would not be contamination but rather fraud. This would mean that for every 100 hectares of non GMO canola their customer is growing and substituting almost 1 hectare of GMO seed. This would hardly be accidental, adventitious nor go unnoticed.