

**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, 28 AUGUST 2018**

SESSION ONE

Members

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

Hearing commenced at 9.39 am**Mr PETER COCKS****Company Director, Biodynamic Wholefoods Pty Ltd, examined:**

The CHAIR: Good morning and thank you for coming in today. On behalf of the committee, I would like to welcome you to the meeting. Before we begin, I must ask you to take either the oath or the affirmation.

[Witness took the affirmation.]

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

Mr Cocks: 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. Ensure that you do not cover them with any papers or make noise near them other than your speaking noises. I remind you that your transcript will become a matter for the public record. If, for some reason, you wish to make a confidential statement during today’s proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege. Would you like to make an opening statement to the committee?

Mr Cocks: I would, if I could have a copy, thank you. Sorry, I did not get to print it myself. The Biodynamic Agricultural Association of Australia—BDAAA—is saying that our demeter biodynamic method of farming is best practice, pure, world-class, natural farming. We think it is the greatest development in agriculture, soil culture, plants and animals, and our food and fibre on earth, ever. We have included our basic training page for our members, which is the nuts and bolts of our method, for public information. It is the first page after the answers. Earlier, I gave you the paper on humus, which is the beginning of this page. I have also given you the putting out of our prepared 500, which is the end of this page.

The CHAIR: Yes. We do have your submissions. We have received those.

Mr Cocks: Great.

The CHAIR: Is that your opening statement?

Mr Cocks: That is really all the information I have provided regarding previous question 1, which asks what is the biodynamic method.

The CHAIR: We provided you with some questions in advance and you have provided written answers to us. We thank you for that. I note you have provided those written answers to some of the questions we sent you earlier this year and not to others. I assume, based on your advice, that your organisation is not a certifying body.

Mr Cocks: That is right.

The CHAIR: The questions I and other members ask at this hearing may include follow-up questions to written answers that you have provided, as well as some others on the original list that have not yet been answered. The first of my questions is: you state on page 3 of your written answers that a right-to-farm, legally enforceable process such as farmer protection legislation, is the most practical and cost-effective solution. A number of submitters have made reference to the principles of farmer-protection legislation during this inquiry, which refer to a requirement for GM seed merchants to pay a levy on seed sales into a fund. Arising from that, what rate do you believe any levy should be set at and why?

Mr Cocks: I have read the principles for the farmer protection legislation act and the right-to-farm legislation put up by Diane Evers. In that, they suggest that the administrator would set the levy in retrospect, if you like. The question you have just asked is the first question, is that right?

The CHAIR: Yes, the first question I am asking you is not the first question on your written answers.

Mr Cocks: Okay.

The CHAIR: We usually give the questions that we intend to ask in advance and some people such as yourself do provide written responses. Sometimes there are more questions that arise and sometimes you have not answered some of the questions specifically or we want further clarification from you. That is where we are going at the moment Mr Cocks. Generally speaking, that is what we are trying to achieve here. I take it from here that you do not have a specific rate in mind for a levy that you would be relying on, that being set by a body that administers such a mechanism.

Mr Cocks: Absolutely. I have no idea how you would determine the amount.

The CHAIR: Would you also support funding any proposed compensation scheme coming from the taxpayer rather than a levy so that there is no direct contribution from the GM industry?

Mr Cocks: I have answered that.

The CHAIR: If you can just come through. We are here for the oral hearing, but what is your view? Can you just expand on that?

Mr Cocks: I am going to find it difficult to expand on those sorts of questions. I thought I had answered it as best I could with—yes, I think it should be a user-pays system.

The CHAIR: So you do not support taxpayers' money being used to fund it.

Mr Cocks: Well, I do, maybe, if there is a top-up required during the year. But I would expect that to be paid back to the taxpayers by the users at the end of the period. I thought I had implied that in the—but, no, that is what I intended to say.

The CHAIR: Do you have an idea about the types of possible losses, both economic and otherwise, that a farmer might suffer as a result of GM contamination that you envision would be able to be covered by any compensation fund?

Mr Cocks: Yes, we have described that, and the National Standard for Organic and Bio-dynamic Produce v3.7 also describes measures that need to be taken to prevent GM contamination. We stick to those standards.

The CHAIR: But what kind of losses do you think should be compensated for—just economic losses or what other losses do you think any mechanism or scheme should compensate for?

Mr Cocks: We have a very strong market. It is going to be very difficult to determine losses in monetary terms. The amount of work required to keep GM off our farms is all on us at the moment. As the fellow that provided the quote, that is just standard procedure. He is having to double fence, and that is a loss of five metres on his boundary, which is a huge amount of property that goes out

of production, and there is all the time. He cannot scratch himself and yet he has this other thing happening to his business on the boundary. He is flat out and so are his wife and his siblings. They are full-time biodynamic farmers and they have this extra thing happening.

Hon COLIN HOLT: I think you just said then that it would be very hard to work out what the compensation should be, given the movable returns that they get from biodynamic produce. How do you think that could be sorted out if a compensation scheme was introduced?

Mr Cocks: There is a price for our product, and if we cannot sell it, like the compensation scheme in Carnarvon, where if there is a cyclone, they are never fully compensated, but they get an average income over the three years or whatever it is. The problem we have is that we quite often have a drought. Any farmer is quite often in drought for five years, so how you average there income is something again. Of course, when the farmer has a crop, then so does his neighbour. We are going to have this situation where for 10 years they did not get rain, then they break the drought, but at the same time all hell breaks loose with weeds and there is flood. It is all mixed up.

[9.50 am]

Hon COLIN HOLT: It is difficult.

Hon Dr STEVE THOMAS: You talked about an example of a farmer who is double fencing, accepting that there is a cost involved in that, but does your organisation have direct evidence of an economic loss because of a contamination event where a genetically modified organism has crossed a boundary and resulted in an economic loss to a producer—not necessarily the economic cost of meeting the standards and guidelines put forward by any organisation for qualification for a standard, but direct evidence of an economic loss due to the transfer of a genetically modified organism?

Mr Cocks: No, I do not have any reports or evidence of GM contamination on biodynamic farms.

Hon Dr STEVE THOMAS: Would it be fair to say that the cost involved is the cost of maintaining an accreditation for a standard set by an organisation at this point?

Mr Cocks: Yes. Our organisation, obviously, is part of the standard you are talking about. We wrote the initial standard, but it has since been taken up by different government departments and it is audited by the federal Department of Agriculture and the international — sorry, I do not know if that answers your question. I do not have any direct evidence of contamination

Hon COLIN HOLT: So you do not have direct evidence of GM contamination, but what about other sorts of contamination from neighbouring agricultural practices on biodynamic farms and economic loss?

Mr Cocks: On most farms with adjoining neighbours, neighbours these days are using Roundup for firebreaks. On my place, on both sides I have neighbours, and I know I get overspray onto my cultivated firebreaks. My, and I think most farmers', main problem with it is overspray. I know that organic farmers are blamed for weed incursions, or anything, actually. But I know for a fact that ergot, for instance, is not a problem on biodynamic farms or pure organic farms. Perhaps the microbial activity is not suitable for ergot to really flourish. A few years back, there was a statewide epidemic of ergot in the wheatbelt through WA, and none of our farms were affected by ergot. We are not really affected by red mite, which is often sprayed out. At the break of the season and also in spring, when red mite are flourishing, eating half the pasture, we can put out our prepared 500 at that point, which coincides with warming up after winter or coming into winter—the conditions are right for us to put out prepared 500—and red mite is then no longer a problem for the rest of that season. There are quite a few instances of the fact that with biodynamic methods there is little

or no run-off. So you are not going to get a weed incursion from run-off, apart from a flood, of course.

The CHAIR: Mr Cocks, you are a farmer; we have not really heard about your farm. Whereabouts do you farm?

Mr Cocks: It is in North Dandalup.

The CHAIR: How big is your farm?

Mr Cocks: I graze 200 acres and then I have 300 acres in the hills that I am not allowed to put my sheep up into yet.

The CHAIR: So you are a sheep farmer mostly?

Mr Cocks: Yes.

The CHAIR: Do you do any cropping at all?

Mr Cocks: No. My wife's arthritis has got the better of her, so we do not grow garlic anymore. But since I left the Canning Vale markets, I have been growing garlic.

The CHAIR: When you talked about overspray of Roundup Ready or just Roundup, is that Roundup for a GM crop, or is it just Roundup being used on a normal crop?

Mr Cocks: Sorry, I do not know anything about it really. I put that Roundup Ready in meaning that is where it really —

The CHAIR: You spoke earlier about overspray from your neighbours on the firebreaks.

Mr Cocks: I am talking about firebreaks in my area. I do not know about other farms.

Hon COLIN HOLT: It could be a pasture paddock or a cropping paddock; it does not really matter.

Mr Cocks: In our case it is pasture paddocks. We do not crop.

The CHAIR: So your neighbours are not doing GM around you?

Mr Cocks: No.

The CHAIR: So the issue of overspray would be an issue whether the GM is present or not. That is just the fact that they are choosing to use Roundup.

Mr Cocks: Sorry, I was just using it as an example of—you were asking really about weeds.

The CHAIR: That is fine; I just wanted to clarify it. I am just trying to understand whether or not the Roundup issue for you, as a biodynamic farmer, is associated with a GM neighbour or whether they have an alternative farming practice, which is to use chemicals to control weeds, and that affects your non-chemical approach.

Mr Cocks: Yes, it is just that. It is the overspray. It may already be legislated. I do not think you are allowed to overspray. Contractors certainly know, I think, more perhaps than farmers.

The CHAIR: You raised a question in your written responses regarding farmers who claim to grow GM and non-GM canola side by side. I think in your written response you doubt whether that is in fact being done legitimately. Let us put that aside and presume that they can farm GM and non-GM next to each other, do you think that they should be entitled to be included in any compensation fund or mechanism that may be created—to access the fund if one of their GM crops contaminates one of their non-GM crop?

Mr Cocks: I find this question incredible. What are they selling? Non-GM?

The CHAIR: They have made that claim that they are able to grow those two crops side by side without any significant GM contamination between the two of them. I do not want to get into the details.

Mr Cocks: I do not believe them.

The CHAIR: In the event that such a thing was possible, do you think that farmers who are engaging in both GM and non-GM cropping cycle should be entitled to access a compensation fund if such a fund was created?

Mr Cocks: No. I think they should cop the \$50 loss for GM canola, for instance, in this state.

The CHAIR: In your submission at paragraph 5, you state that if a farmer loses their biodynamic status due to GMO contamination on their farm, they are excluded for years from the premium price market for—correct me if I am wrong—demeter products, which has developed over a period of decades, while they restore their farm to be GMO free, and thereby suffer heavy losses. You also state on page 4 of your written answer that there are certified farmers who adjoin farms where GMO crops are grown and you include a quote from a farmer explaining the steps taken to inform neighbours about the consequences of the presence of GM crop material on their property as well as other steps. Are you able to identify to us which farmer provided you with that quote?

Mr Cocks: He does not want to be named and he is just practising what we are all having to do. They are talking to the neighbours. That is in the national standard. That whole section that he provided—that quote—is straight out of the national standards.

[10.00 am]

The CHAIR: How long have the GM crops been grown on properties adjoining your members' farms?

Mr Cocks: That I know—since GM canola was exempted from the act.

The CHAIR: Have you received any reports of GM contamination on these properties?

Mr Cocks: No.

The CHAIR: Do you anticipate that this may occur in the future; and, if so, why do you say that?

Mr Cocks: That is why I am here—because I think there is a problem developing and it is to do with the GM canola being so well supported by Monsanto that the likes of Steve Marsh are just bulldozed. We supported Steve Marsh—our organisation—along with Foodwatch and a whole lot of big organisations. The organic certifying organisations are much bigger than our association. They all supported Steve Marsh, but it was nothing like the support for Baxter.

The CHAIR: Some submitters have stated that a GM compensation scheme would be a deterrent to the advancement of future biotechnology options. What is your position on this statement?

Mr Cocks: I have written out, and it took me a while, a good answer to that.

The CHAIR: Can you give us a summary of it, because there will be people who do not have access to those written answers that will potentially be listening to this broadcast today. What is your response to that?

Mr Cocks: Can I read it?

The CHAIR: If you wish to—yes.

Mr Cocks: My position is that the developers of biotechnology, such as Monsanto, will not be even slightly deterred by a GM compensation scheme. It will probably encourage them and recognise the validity of their stuff. The recent USA court case in San Francisco against Monsanto demonstrates the steps they will take to promote their technology.

The CHAIR: You are referring there to the case regarding the gentleman who sued them because of, I think, Roundup?

Mr Cocks: Yes. Was it \$250 million or \$250 billion? I cannot remember and I do not think it matters to Monsanto.

The CHAIR: It was in the millions rather than the billions.

Mr Cocks: I do not think it matters to Monsanto, to be honest.

The CHAIR: A statutory review of the national gene technology scheme found 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 their loss in order to receive damages. In other jurisdictions strict liability schemes relate to super hazardous goods. It is contradictory to treat a product found to be safe by the federal regulator as super hazardous. Applying a 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. This would not be a reasonable solution. This is what was found in the statutory review of the national gene technology scheme. This is not my argument to you. Some submitters have made similar points to the above and have also stated that the existing common law provides sufficient coverage for any damage by GMOs and that a single case—*Marsh v Baxter*—is not sufficient to draw a conclusion about common law remedies are inadequate to compensate GM farmers. Excuse the long intro to that question, but what is your position on these statements? I know you have given us written responses and you are free to read them if you wish and expand on them.

Mr Cocks: I do not think it is correct. The compensation scheme I thought we were looking at should establish an administration body that does not need a court case to decide compensation. It should be automatic. I think the whole thing is false. These goods may have been found to be safe, but there is a vast community demand for products without GM. As far as the federal regulator goes, it is early stages. Can he get it right? To question the ethical honesty of BD farmers is fraught with danger. No incentive scheme will ever fully compensate that BD farmer. It is the type of logic used by Monsanto. If the existing common law provides sufficient protection then according to the facts in that case in common law, it did not. I think the *Marsh v Baxter* case has sort of been done to death. He did not win; he lost. As far as I know he has taken it to The Hague and wherever else he can go. We all wish him well.

The CHAIR: It would be fair to say that you do not believe the common law can provide an adequate remedy in cases of economic loss caused by GM contamination?

Mr Cocks: It has not so far.

The CHAIR: Some submitters have asked, if a compensation scheme was introduced for GM contamination, whether there should also be compensation for all sources of contamination including weed intrusion, which some have submitted is a problem from organic farms due to a lack of weed control. What is your feedback on this position? I think I can probably guess, but —

Mr Cocks: Well, we have talked about it.

The CHAIR: I take, from what you have said previously, you dispute that weed control from biodynamic farms is not an issue for non-biodynamic farmers that neighbour there.

Mr Cocks: We are satisfied that we are quite good at weed control, fungus control, red mite, ergot—we are quite comfortable with all these pests and parasites and so on that come onto farms. We are quite happy with our management techniques in that regard.

Hon COLIN HOLT: You will be unaware of any economic loss from farms neighbouring biodynamic farms in those instances—where there has been a problem?

Mr Cocks: That is not only biodynamic and conventional farms. That is a problem that everyone has. Everyone's method is slightly different.

Hon COLIN HOLT: And impacts their neighbours in certain ways.

Mr Cocks: I have noticed that the conversations that are happening on the fence these days sometimes are not nice. A GM farmer, for instance, might blame a biodynamic farmer for ergot, yet it is just pure ignorance of each other's methods, if you like.

Hon COLIN HOLT: That is a challenge of farmers next door to each other with a number of different systems.

Mr Cocks: Yes, and it has been that way.

Hon COLIN HOLT: Either being cropping or livestock and pasture—it throws up different things.

Mr Cocks: My neighbour grows pasture for hay. He uses his sheep as lawnmowers. He grows the hay for his horses. I do not ever get to talk to him. I just talk to his manager. Really, it is the same on the other side. He is looking at retirement. He gets a contractor in each year to do his firebreaks. He hardly visits the place. His cattle look after it more than him.

Hon COLIN HOLT: There is a big issue down your way with cotton bush and how that gets controlled between neighbours and all sorts of stuff. There is a whole heap of economic loss around that.

Mr Cocks: Absolutely! We did have this 300 acres, which at one stage was certified biodynamic because we were ranging sheep up there but we have called in a contractor for weed control. We have a perennial creek with blackberry. My sister-in-law next door wants me to help her with her cotton bush. We have called in the contractor. He is very good. He does a lot of work with shires and so on with weed control. We are paying him \$1000 a visit for a day's work.

[10.10 am]

Hon COLIN HOLT: Is that why that 300 acres is not part of your biodynamic farming?

Mr Cocks: That is the easy solution. I could fence off areas and so on but it is really hard to do that. There is nothing in the hills anyway for my sheep and my missus is quite happy that they are not up there. I have enough to do on 200 acres.

The CHAIR: What is your response to the Australian Farm Institute, that said that if this inquiry finds that there should be economic compensation mechanisms for GM contamination other than those available under common law it sets a precedent that WA government would not want to establish—that is, market-based arbitrary accreditation standards taking priority over legal best practice farming methods?

Mr Cocks: We think we have the best farming practice. This thing they keep putting in about arbitrary—there is nothing arbitrary about our standards. Being market-based—well, that is true. Consumers are driving this whole thing. We are just pawns doing what our consumers want us to do. We wrote the national standard for export and the consumers insisted that their wholesalers adopt the export standard. We adopted the export standard long before it was a domestic standard for, perhaps, 20 years. To say that standards are taking priority over legal best-practice farming methods—what part of their operation is best practice? What have they said that makes them able to say they have best practice?

Hon COLIN HOLT: Other than the one case we know of where GM contamination meant that someone lost their accreditation, are you aware of any other instances?

Mr Cocks: No, but I know that the certifying bodies are worried. Every time a farmer gets certified to the national standard they have to produce all the vaccines that they have used for that year. It is quite common for a GM organism to be in these vaccines. We have to contact the supplier—the manufacturer. We have to show documents to say there is no GM in it. If there was GM present in any of those vaccines, those animals would never be sold as organic or biodynamic.

Hon COLIN HOLT: Besides GM, what other things could trigger a non-accreditation—weed control, pesticide use—anything else?

Mr Cocks: Using water-soluble fertilisers that was not incorporated—that would show up. We are the most heavily regulated sector in the industry.

Hon COLIN HOLT: Once people have it, they want to hold onto it pretty tightly, do they not?

Mr Cocks: Absolutely! If we have a market to protect. We are getting desperate here. You do not often find farmers sitting in front of a parliamentary committee unless they are pretty desperate.

The CHAIR: Some submitters have raised the prospect of a compensation scheme giving rise to false claims to access compensation. Do you have a response to that claim?

Mr Cocks: Not really—not other than what I have written.

The CHAIR: Would you like to make a closing statement at all?

<004> R/2 [10:14:33 AM](#)

Mr Cocks: If I can use the second half of my opening as a closing, that would be perfect. On the last page I have included something that was sent to me by Liz Louw, our compliance person at the Bio-Dynamic Research Institute. It is to do with a paragraph that the minister and I think the agriculture department has provided this committee with, and it is to do with paragraph 3, the national standard. There seems to be some idea that there are two standards and this short email from Liz Louw confirms that there is only one standard. I tried to get through to the minister's adviser on that but we were not able to. If I can just finish by saying that we receive premium prices for what we produce and our consumers have created a stronger demand every year for the last 30 years, in WA. Consumers pay a premium price because our product is guaranteed to be free of artificial contaminants. In the case of GM zero tolerance: none, zip. Together we expect this Parliament to protect our method of farming and the supply of our food to you and your voters. The scope of the statewide exemption granted under the repealed act for GM canola completely eliminated all positive effects of the act for biodynamic farmers. This is because any contamination to any part of a BD farm with GM product results in the farmer losing their certification and not remaining eligible to supply BD produce. It is not too late to roll back the act without the statewide exemption bit that wrecked it. This act served us well for 15 years. It goes hand in glove with a compensation scheme—any compensation scheme. We think the one put up by Diane Evers is the best so far.

Hon COLIN HOLT: Sorry, I know we were going to close the hearing, but I have one more question just prompted from what you just said. Would it be fair to say that Biodynamic Australia sees that there is a real and growing risk from GM canola and its increasing use in growing—because you are going to have basically all around every farm, potentially? There is a real risk in that, given that you have zero tolerance, none, zip, in terms of contamination as part of your accreditation standards. Do you think it will ever come to a situation in which those accreditation standards would have a tolerance above zero in terms of—I mean, we hear that from CBH that some of the international standards are 0.09 per cent. Do you ever see where the accreditation bodies would change that zero tolerance?

Mr Cocks: As I said before, it was law for export before it was law for domestic, because we are driven by Europe. We are following Europe the whole way through this. If we want to export in the future, we in Australia will not be changing the standards; they are an international standard .

Hon COLIN HOLT: The international could be driven, because we export our canola at 0.9 per cent tolerance to Europe as well and other countries. That is the canola, of course. Okay, so driven by international standards rather than —

Mr Cocks: Yes. We are not in a position to change the standards, nor do we want to. We have been living with these regulations for so long that we are very good at it. BD farmers do not lose their certification. That is their livelihood. And we are not about to rewrite the standards. We have been writing them for 40 years, or helping.

Hon COLIN HOLT: To meet your customers' demands. Thank you.

The CHAIR: We thank you for attending today. A transcript of this hearing will be forwarded to you for correction. If you believe that any corrections should be made because of typographical or transcription errors, please indicate these corrections on the transcript. If you want to provide additional information or elaborate on any particular points, you may provide supplementary evidence for the committee's consideration when you return your corrected transcript of evidence. Thank you very much for your time.

Mr Cocks: Thank you very much.

Hearing concluded at 10.20 am
