IN THE SUPREME COURT OF WESTERN AUSTRALIA
COMMERCIAL AND MANAGED CASES LIST

No. CIV 1561 of 2012

B E T W E E N

STEPHEN WILLIAM MARSH

First Plaintiff

SUSAN GENEVIEVE MARSH

Second Plaintiff

and

MICHAEL OWEN BAXTER

Defendant

WITNESS STATEMENT OF ANDREW BISHOP

I, Andrew Bishop, of 41 Sorell Street, Devonport, Tasmania, 7310, public servant, state:

1. I have worked at the Tasmanian Department of Primary Industries, Parks, Water and Environment and its predecessor agencies ("**the Department**") since 1987. Since 2005, I held the position of Manager of Biosecurity Policy within the Department. My current position is Manager of the Plant Biosecurity and Diagnostics Branch of the Department. Since 2010, I have also held the position of Tasmanian Chief Plant Health Manager within the Biosecurity and Product Integrity Division of the Department.

2. By reason of holding these positions, I am responsible for high-level policy and technical advice to the Tasmanian Government on plant biosecurity issues relevant to Tasmania, including those arising from genetically modified ("**GM**") crops. In that regard, in the course of my work, I have been involved at a senior level in the development of Tasmanian Government policy in relation to GM agriculture, and I have overseen the audit of former GM crop trial sites in Tasmania.

THE GENE TECHNOLOGY POLICY

3. In or about July 2001, the Tasmanian Government released its Gene Technology Policy concerning the use of gene technology in Tasmanian primary industry ("**the Policy**"). I refer to the July 2001 *Gene Technology Policy* [TB 2565-2598].

4. The Policy was based on the recommendations of the Parliamentary Joint Select Committee on Gene Technology, which included among others the establishment of a two-year moratorium on the commercial release of GM crops in Tasmania. I refer to the *2001 Joint Select Committee Report on Gene Technology* [TB 2373-2564].

5. The Policy was reviewed in 2003 and the Government decided that it remained appropriate. Subsequently, the moratorium was extended until November 2009 under the *Genetically Modified Organisms Control Act 2004*. In July 2007, a second review was initiated and a new Joint Select Committee charged with enquiring into the policy for use of gene technology that would best serve

Tasmania's future market interests. The committee released its report on 28 August 2008. The report made 32 recommendations, including that the moratorium should be extended for another five years. I refer to the *2008 Joint Select Committee Report on Gene Technology in Primary Industries* [TB 2803-2892].

6. In or about May 2009, the Tasmanian Government released a further policy statement in response to the 2007/08 Joint Select Committee's findings, which reaffirmed and strengthened the Government's commitment to the existing position. I refer to the *Policy Statement: Gene Technology and Tasmanian Primary Industries 2009-2014* [TB 2893-2904].The Government plans to undertake a further review of the issue before November 2014, when the current moratorium expires.

7. The 2009 policy statement notes that the Tasmanian Government is "primarily concerned with enhancing and protecting Tasmania's GMO-free credentials in domestic and international markets", and that the Policy "will be implemented in a way that supports Tasmanian primary producers in guaranteeing to the global market that their product is uniquely and without qualification, GMO-free".

8. In relation to crops, the 2009 policy statement relevantly states as follows:

> Release to the environment
>
> 6.3 Importation, distribution, use or any other dealing that facilitates release of genetically modified plants, seeds or other propagules intended for use as food or feed to the Tasmanian environment is prohibited. The prohibition covers all dealings, including those with commercial purposes, and open-air research.

9. And in relation to contamination of non-GM plant stock with GM material, the 2009 policy statement relevantly states as follows:

> Zero tolerance
>
> 6.15 Zero tolerance for viable GMO contamination in imported canola seed and whole grain will continue to apply. The Tasmanian Government will accept as evidence of zero contamination, a negative result from a test capable of detecting one GM canola seed in 10 000 non-GM canola seeds with 95% confidence, or an alternative import proposal which achieves an equivalent level of assurance that GMOs are absent.
>
> The same zero tolerance approach may be applied to other imported seeds and whole grains if these are likely to be contaminated with viable GM material, for example, as a result of increased plantings by trading partners.

10. I assisted in the drafting of the original Policy in 2001. I also helped manage the process for obtaining the subsequent reviews of the policy, which were conducted independently.

11. The Tasmanian Government's policy in relation to gene technology, and GM crops in particular, is based only on perceived risks to the Tasmanian economy and particular markets for Tasmanian

products. In this regard, I refer in particular to the *February 2003 Gene Technology Policy Review Position Paper* [TB 2742-2764]. The Tasmanian Government has no philosophical objection to gene technology or GM crops.

GM TRIAL SITE AUDITS

12. In the late 1990s and in 2000, before gene technology was regulated in Tasmania, 57 field trials of GM canola were conducted at different locations in Tasmania. The trials were conducted by Monsanto Australia ("**Monsanto**") and Aventis, now Bayer CropScience ("**Bayer**"). The Department did not oversee these trials.

13. I was not involved in the conduct of the Monsanto and Bayer GM trials but I was a member of one of the experts groups that reviewed and assessed similar trials conducted concurrently by the Department.

14. At or shortly after the time when the Policy was announced, the Office of the Gene Technology Regulator ("**OGTR**"), Monsanto and Bayer jointly established an audit program of the former GM trial sites in Tasmania. The purposes of the audit program was to collect information about the existence of GM canola volunteers ("**volunteers**") at and around former trial sites, and to eradicate those volunteers, in accordance with the Policy.

15. At that time, I was working as a Team Leader of the Clean Products Team in the Vegetable and Associated Industries Branch of the Food, Agriculture, and Fisheries Division of the Department. As a senior officer, I managed a team of people including scientists and technical staff who focused on the development and testing of integrated systems of crop management. I also provided technical advice in relation to GMOs.

16. It was my job to oversee the audits and to review and approve the audit reports prepared by the audit field staff. On occasion, I travelled to sites and observed the audits take place, but I was not personally responsible for identifying and collecting information on volunteers. In performing my job I:
    a. developed the first methodologies that were used to inspect and audit crops;
    b. gathered and collated information as to the location and history of the trial sites;
    c. liaised directly with the relevant industry stakeholders (including farmers) and government agencies;
    d. provided technical advice and information on GM; and
    e. assisted in preparing briefs to the Government and advice to industry stakeholders; and
    f. drafted the first guidelines for clearance of a trial site.

17. The Department conducted an initial survey all 57 sites to determine the size and spread of the volunteer population. The audit program revealed the volunteer population to be extensive. I refer to the *February 2004 Audit Report* [TB 2765-2771]. In some areas, the volunteer population was so extensive that the entire crop produced in the area in which the volunteers had grown had to be destroyed. I refer to the *October 2006 Audit Report* [TB 2798-2802].

18. In my current role, I continue to oversee regular audits of all sites that have not been "signed-off" (which process I explain below). The audits occur three times a year.

INSPECTION

19. During an audit, a former trial site and its surrounding area (immediate headlands and fencelines) is inspected for volunteers. That is done by an auditor performing a visual examination of the whole area by walking across it, back and forth in a zig-zag pattern. The auditor records the number of volunteers identified, and whether or not they are flowering. When volunteers are found, the eradication process outlined below is carried out.

ERADICATION

20. If an auditor finds a volunteer during an audit, then he or she generally pulls it out by hand, with assistance from additional personnel if the population of volunteers is sizeable. The removed volunteers are then stored securely until an appropriate quantity is amassed, before the Audit team leader arranges for them to be disposed of as quarantine material at a depth of three metres.

21. The Department has also developed a specific site management plan in conjunction with affected farmers/landowners of each former trial sites and surrounding areas for the purpose of eradicating the remaining population of GM canola volunteers. Each of these management plans include strategies to promote germination of canola seed, and then to destroy the canola seedlings before they reach maturity. The management plans also contain strategies designed to prevent GM canola from spreading beyond to nearby roadsides and neighbouring fields. I refer to the *October/November 2005 Audit Report* [PD267].

22. However, more than 10 years after the GM canola was planted on the former trial sites, auditors continue to identify populations of GM canola volunteers in and around many of the former trial sites. I refer to the *March 2012 Audit Report* [TB 2908-2910].

TRIAL SITE SIGN-OFF

23. When the Department is satisfied that a site has been cleared of GM canola volunteers, the site is signed-off. The Department will no longer audit the site, and conditions on the permitted use of the land by the farmer/landowner may be lifted.

24. Sign-off is generally given if, over a period of two years and after a minimum of two cultivations, there is no appearance of any brassica species. The two-year period was chosen on the basis of agronomy advice that indicated that two good cultivations, along with normal cropping, will provide opportunity for any seed near the surface to germinate.

25. The process of signing-off the former trial sites and surrounding areas has taken a long time, and is not yet close to completion. Only 4 of the 57 sites have been signed-off, the most recent being in February 2008, more than 8 years after GM canola was planted on the site. . It took approximately four years for the first site to be signed-off in May 2004.

26. It is not possible to guarantee that all sites will ever be totally clear of all GM canola plants. In part, this is due to the different management practices adopted in relation to the various sites. At some sites, volunteers have been identified where GM canola had not been identified for a number of years. Given the seed longevity of canola seed, it is likely that some sites will not be signed off for several decades.

I have read the contents of this my witness statement and the documents referred to in it and I am satisfied that it is correct and that this is the evidence-in-chief which I wish to give at the trial of the proceeding.

Andrew Bishop

Dated: 13 February 2013