

STANDING COMMITTEE ON ENVIRONMENT AND PUBLIC AFFAIRS

Forty-ninth Report — “Mechanisms for compensation for economic loss to farmers in Western Australia caused by contamination by genetically modified material” — Tabling

HON MATTHEW SWINBOURN (East Metropolitan) [10.10 am]: I am directed to present the forty-ninth report of the Standing Committee on Environment and Public Affairs, titled “Mechanisms for compensation for economic loss to farmers in Western Australia caused by contamination by genetically modified material”.

[See paper 2399.]

Hon MATTHEW SWINBOURN: The report I have just tabled advises the house of the findings of the Standing Committee on Environment and Public Affairs in its inquiry into mechanisms for compensation for economic loss to farmers in Western Australia caused by contamination by genetically modified material. This inquiry arose from a petition tabled in the Legislative Council on 13 June 2017 calling for the introduction of farmer protection legislation to compensate farmers who suffer economic loss from contamination by genetically modified crops. The decision of the Supreme Court of Western Australia and the Western Australian Court of Appeal in *Marsh v Baxter* drew attention to the issue of the coexistence of GM and non-GM crops and the potential for contamination. It also gave rise to debate on whether the common law provides an adequate remedy for economic loss or whether a separate compensation scheme or other mechanism is required owing to GM contamination.

During its inquiry, and in this report, the committee surveyed the approaches taken by other jurisdictions to compensation for economic loss to farmers caused by GM contamination. The committee has also assessed whether there is sufficient evidence of economic loss incurred by farmers in Western Australia caused by GM contamination to justify a departure from the current common-law mechanism for compensation. The committee notes the polarised views in evidence received in this inquiry. Many of the views appear intractable; some are driven by ideological concerns about GM and others by the economic necessity of farming in Western Australia. This has become a feature of the debate surrounding the use of gene technology in crops in Australia and other countries.

The committee recognises the challenges identified with the common law as a compensation mechanism, including the perception that it is inadequate. The committee concluded, however, that a single case, *Marsh v Baxter*, is not sufficient to conclude that the existing common-law compensation mechanism is inadequate to compensate non-GM farmers. The committee notes that GM canola has been grown commercially in Western Australia since 2010. This is, arguably, a sufficient period for any systemic GM contamination issue to arise. The committee found there is insufficient evidence to justify a departure from the common-law mechanism for compensation in Western Australia. This finding arose from a lack of significant evidence of GM contamination in Western Australia; evidence presented to the committee of actual economic loss to farmers caused by GM contamination; operational data on alternative compensation mechanisms in other jurisdictions to enable an assessment of their merits over existing common-law remedies; de-certifications of organic farms or other actions taken by organic certification bodies resulting from GM contamination, other than in *Marsh v Baxter*; and claims under insurance policies providing for cover against GM contamination.

Finally and importantly, the committee thanks the committee staff for the considerable work that has been put into this report, particularly our advisory officer, Mr Alex Hickman. I commend the report to the house.