

GENETICALLY MODIFIED CROPS MANAGEMENT BILL

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries) obtained leave and introduced a bill for an act to provide for the designation of areas of the state for the purposes of preserving for marketing purposes the identity of certain food crops according to whether they are genetically modified crops or non-genetically modified crops; to provide for the segregation of genetically modified food crops and their products in appropriate cases; to provide for associated regulatory powers; to provide certain protections with respect to the spread of genetically modified plant material; and for other purposes. Read a first time.

The Hon. P. HOLLOWAY: I move:

That this bill be now read a second time.

This bill will give effect to the government's commitment to ensure that genetically modified crops are regulated in South Australia. This is necessary to protect existing and future markets for farm produce until supply systems are developed to provide the necessary segregation and identity preservation of crops.

The bill implements the key recommendations of the report of the Select Committee on Genetically Modified Organisms tabled in another place in June 2003. The bill addresses negative market impacts that could arise as a result of inadequate segregation and identity preservation along the production and supply chain. The government's legislative strategy is shaped by three other important factors: first, this legislation needed to be consistent with the Commonwealth Gene Technology Act 2000, Section 109 of the

commonwealth constitution renders invalid and inoperative any state law to the extent that it is inconsistent with the commonwealth law. Some care was needed in ensuring that this bill worked in harmony with the Gene Technology Act 2000.

It was important for all states to agree to the adoption of the Gene Technology (Recognition of Designated Areas Principle) 2003, so that state law could operate within a national regulatory framework. This principle became operational in August 2003. Secondly, the legislation needed to be consistent with trading obligations under the World Trade Organisation Technical Barriers to Trade Agreement to which Australia is a signatory. Thirdly, the legislation needed to be compliant with national competition principles.

The Genetically Modified Crops Management Bill is the result of extensive consultation at the select committee stage and subsequently when a draft of the bill was made available or consultation in November-December 2003, when 266 people and organisations responded to the consultation process on the draft bill, with a total of 142 separate submissions. The bill has the primary purpose of permitting the regulation of genetically modified food crops in order to prevent adverse market outcomes that may otherwise occur from the unregulated introduction of GM crops into the state's agricultural production systems. In accordance with the commonwealth-state regulatory framework, the bill's purpose is not to regulate GM crops for reasons of human or environmental safety or as foods for human consumption.

The bill provides the power to make regulations that establish defined areas in which the cultivation of GM crops may be regulated to achieve market outcomes clearly related to product integrity. The regulations may: inhibit the cultivation of GM food within a zone; prohibit the cultivation of GM food crops within a zone, except any prescribed crops which may be grown; prohibit the cultivation of prescribed GM crops within a zone but permit non-prescribed GM crops to be cultivated; or prohibit the cultivation of a prescribed GM crop in any place other than a specified zone. The bill will apply only to the cultivation of food crops. This refers specifically to the cultivation of those crops directly consumed by humans, such as grains or oils and crops and includes pastures that are consumed by livestock, the products of which are then subsequently consumed by humans. This restriction is fully consistent with the objective of preventing adverse market impacts and also provides a measure of consistency across jurisdictions in that the New South Wales legislation also applies only to food crops, plus the legislation does not apply to non-food crops such as ornamental flowers.

The bill provides a mechanism in section 5 for granting blanket approval by ministerial notice to cultivate a prescribed GM crop or class of crop, but only under stringent conditions, enabling coexistence with non-GM crops to be maintained. Decisions to prescribe GM crops must be based on extensive public consultation and the recommendations of the GM Crop Advisory Committee, the establishment of which is also provided for in the bill. This independently chaired committee will be comprised mainly of supply chain experts and will be required to provide advice to the minister on matters relating to the declaration of areas and the prescription of GM crops. The composition and perceived neutrality of this committee was a major area of public comment.

The bill pursues the select committee's position that this is an expert committee and not a representative one. How-

ever, the public's comments will be taken into account in the final composition of the committee. The bill provides a mechanism (section 6) for ministerial exemption to be made to the limited scale cultivation of GM crops in specific circumstances and with the imposition of specific conditions. This will ensure that the cultivation is contained and kept completely separate from the production and supply chains of conventional produce. This mechanism is intended to apply to research and development trials.

The bill provides for the appointment of inspectors to enable monitoring and compliance to be undertaken. They will have powers to take certain actions in relation to preventing spreading or contamination by GM crop materials. The bill, while giving government the regulatory power to establish declared zones for various marketing purposes, does not specifically address the special cases of Kangaroo Island and Eyre Peninsula. The select committee recommended that these two areas had a greater chance of establishing themselves as GM free areas through a process of self determination.

It is the government's intention to introduce regulations under the bill's transitional provisions to prohibit the cultivation of GM food crops in both these areas due to potential market impacts. This will provide a three-year window of opportunity to undertake this determination. The transitional provisions provide for initial regulations to be made without the need for the otherwise stipulated public consultation process and examination by the GM crop advisory committee. The transitional provisions in this instance may apply for up to three years.

The bill also proposes that a review of the act be completed within three years. The three-year time frame has been chosen to provide the opportunity to understand and respond to two significant events. The commonwealth Gene Technology Act will have been reviewed during 2005-06 and implications of any changes to the national regulatory framework, including the potential for changes to the scope of the regulator's licensing powers, will have become known. The New South Wales Gene Technology (GM Moratorium) Act 2003 expires on 3 March 2006 and the implications of potentially unregulated GM grain production in the major grain producing state will also be understood and may need to be accommodated in changes to South Australia's legislation.

A matter widely raised by farmers and advocacy groups through the consultation process was the legal liability issues that might arise as a consequence of the cultivation of GM crops and the entry of GM products into the supply chain. Some protection is proposed for growers of non-GM crops regarding any legal risk of infringing a South Australian law through the inadvertent and unauthorised cultivation of any GM seeds present in non-GM seed. The bill now includes a section which provides some immunity from legal action. I commend the bill to honourable members and seek leave to have the explanation of clauses incorporated in *Hansard* without my reading it.

Leave granted.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

This clause sets out definitions of words and phrases for the purposes of this measure. In particular, *cultivate*, in relation to a genetically modified food crop, includes—

(a) to breed, germinate, propagate, grow, raise, culture, harvest or collect plants, or plant material, for, or as part of, that crop;

(b) to spread, disseminate, deal with or dispose of any plant or plant material that has formed part of that crop;

(c) to undertake any other activity brought within the ambit of this definition by the regulations, but does not include—

(d) the use of a product derived from a crop as feed in prescribed circumstances; or

(e) any other activity excluded from the ambit of this definition by the regulations.

A **food crop** means a crop which, or any part or product of which, may be used—

(a) for human consumption; or

(b) for livestock consumption,

whether or not after processing (and including as an ingredient for human consumption or livestock consumption).

A **genetically modified food crop** means a food crop that consists of or includes plants—

(a) that are genetically modified organisms; or

(b) that are derived or produced from genetically modified organisms; or

(c) that have inherited from other plants particular traits that occurred in those other plants because of gene technology.

A number of other definitions, such as the definitions of **genetically modified organism** or **GMO**, **gene technology** and **GMO licence** have the same meanings as in the *Gene Technology Act 2001*.

4—Declared thresholds

The Minister may, by notice published in the Gazette, declare a threshold relating to the presence of GMO in crops and, by further notice, vary or revoke such a declaration.

Part 2—Preservation of identity of crops

5—Designation of areas

Subclause (1) provides that the Governor may, by regulation—

(a) designate an area of the State as an area in which genetically modified food crops of a specified class may not be cultivated or where no genetically modified food crops at all may be cultivated;

(b) designate an area of the State as an area in which a genetically modified food crop may not be cultivated unless it is a genetically modified food crop of a specified class;

(c) designate an area of the State as the only part of the State in which genetically modified food crops of a specified class may be cultivated.

The Governor must not make such a regulation except on the recommendation of the Minister who must follow certain procedures (such as public consultation) before making any such recommendation.

If the Governor has designated an area under subclause (1)(b) or (c), the entitlement of a person to cultivate a genetically modified food crop within the area (as provided by the relevant regulation) is subject to the requirement that the cultivation must be within the ambit of a declaration of the Minister (and cultivation must not occur unless or until this requirement is satisfied).

The Minister may in relation to a specified class of genetically modified food crop, by notice published in the Gazette, make a declaration if the Minister is satisfied—

(a) that appropriate and effective systems have been developed to ensure the segregation of any genetically modified food crop of that class, or of any GM related material, from other crops, materials, products or things in order to preserve the identity of those other crops, materials, products or things; and

(b) that persons involved in the cultivation of a genetically modified food crop of that class, or in any process associated with such a crop or with any GM related material, can reasonably be expected to comply with the systems contemplated under paragraph (a); and

(c) that an assessment has been undertaken of the likely impact (if any) that the cultivation of crops of that class within the relevant designated area will have on relevant markets (including markets for other forms of crops, materials, products or things) and that, in the circumstances, it is reasonable for cultivation of crops of that class to proceed in that designated area.

The Minister must before making a recommendation or a declaration under this clause consult with the Advisory Commit-

tee and take into account any advice provided by the Advisory Committee in relation to the matter.

The Governor may, by regulation—

(a) designate criteria that the Advisory Committee must take into account for the purposes of giving advice to the Minister under this clause;

(b) prescribe requirements that must be complied with if a person is involved in the cultivation of a genetically modified food crop or in any process associated with any such crop or with any GM related material.

A person is guilty of an offence if—

(a) the person cultivates a crop in contravention of subclause (1) or (4); or

(b) the person contravenes, or fails to comply with, a requirement under subclause (11), the maximum penalty for which is \$100 000.

6—Exemptions

The Minister may, by notice published in the Gazette, confer exemptions from the operation of clause 5 for limited scale cultivation, which may be subject to conditions.

A person is guilty of an offence if the person contravenes, or fails to comply with, a condition of an exemption under this clause, the maximum penalty for which is \$100 000.

7—Related matters

The Minister may, before taking any action under this proposed Part seek advice or submissions from any person or body or take such other action or initiate such other investigations as the Minister thinks fit.

The regulations may prescribe fees or charges in relation to the assessment of applications, proposals or submissions furnished or made to the Minister with respect to the taking of any action (whether by the Governor or the Minister) under this Part.

The Minister may require that any application, proposal or submission made for the purposes of this Part be made in a manner and form determined by the Minister.

Part 3—Administration

Division 1—GM Crop Advisory Committee

8—Establishment The of Advisory Committee

It is proposed to establish the GM Advisory Committee (the *Committee*.)

9—Membership of Advisory Committee

The Committee is to consist of between 9 and 11 members appointed by the Governor.

10—Terms and conditions of membership

11—Remuneration

Clauses 10 and 11 contain the usual provisions relating to terms and conditions of membership and remuneration etc.

12—Disclosure of interest

A member of the Advisory Committee is exempt from the application of section 6L of the *Public Sector Management Act 1995* in respect of an interest in a matter shared in common with the public or persons engaged in or associated with the industry in which the member works generally, or a substantial section of the public or such persons.

13—Validity of acts

An act or proceeding of the Advisory Committee is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

14—Procedures

This is the usual clause providing for committee procedures.

15—Expert and other assistance

The Committee may seek expert or other advice in connection with the performance of its functions.

Division 2—Inspectors and powers of inspection

16—Appointment of inspectors

The Minister may appoint persons to be inspectors for the purposes of this Act.

17—Powers of inspectors and related matters

This measure is to be read as if Part 11 Divisions 3 to 5 (inclusive) and 7 to 11 (inclusive) of the *Gene Technology Act 2001* were incorporated into this measure, subject to any modifications, additions or exclusions prescribed by regulation, together with any definitions contained in the *Gene Technology Act 2001* of terms used in those provisions.

Part 4—Miscellaneous

18—Orders for destruction of crops or material

The Minister may, by instrument in writing—

(a) order the destruction of a crop if the Minister is satisfied that the crop has been cultivated or dealt with in contravention of this measure;

(b) order the destruction of any GM related material if the Minister is satisfied that the material has been produced, used or dealt with in contravention of this measure, or is associated with any crop that has been cultivated or dealt with in contravention of this measure.

19—Power of delegation

The Minister may delegate to a body or person (including a person for the time being holding or acting in a specified office or position) a function or power of the Minister under this measure.

20—False or misleading information

It is an offence (attracting a maximum penalty of \$10 000) if a person furnishes information for the purposes of this measure that is false or misleading in a material particular.

21—Proceedings for offences

Proceedings for an offence against this Act may only be commenced by the Minister, the Chief Executive of the Department, an inspector or a person acting under the authority of the Minister.

22—Offences by bodies corporate

If a body corporate commits an offence, each member of the governing body, and the manager, of the body corporate are guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless it is proved that the principal offence did not result from failure on his or her part to take reasonable and practicable measures to prevent the commission of the offence.

A person may be prosecuted and convicted of an offence under this section whether or not the body corporate has been prosecuted or convicted of the offence committed by the body corporate.

23—Continuing offence

This clause provides for a continuing penalty to be incurred in relation to a continuing offence against this measure.

24—Orders on conviction for an offence

This clause provides for the orders that a court can make against a person who is convicted for an offence against this measure that are in addition to the imposition of a penalty for the offence.

25—Evidentiary provision

This clause provides that, in any proceedings, a certificate executed by the Minister as to certain events will be proof of the matters so certified in the absence of any proof to the contrary.

26—Immunity from liability

This provides for immunity from liability for actions taken under this measure in the administration of this measure if they are done (or omitted to be done) in good faith. Any liability instead attaches to the Crown.

27—Special protection from liability for the spread of genetically modified plant material

If—

(a) genetically modified plant material is present on any land; and

(b) the existence of the material on the land is attributable to the spread, dissemination or persistence of the material; and

(c) the original introduction of such material to the land was not knowingly undertaken by or on behalf of any person who is, or who has been, an owner or occupier of the land, then no action may be brought in a South Australian court or under South Australian law against a person who is an owner or occupier of the land on account of the fact—

(d) that the material is present on the land; or

(e) that the person has dealt with the material.

That does not apply if the relevant court is satisfied—

(a) that a person who is an owner or occupier of the relevant land has deliberately dealt with a crop knowing that genetically modified plant material was present in order to gain a commercial benefit; and

(b) that, in the interests of justice, another person's rights with respect to that material should be recognised or protected.

This clause extends to any case where genetically modified plant material was present on land before the commencement of this Act.

28—Regulations

Regulations may be made for the purposes of this measure.

29—Review of Act

A review of this measure must be undertaken within 3 years of its commencement and a report on the review be laid before Parliament.

Schedule 1—Transitional provisions

The Schedule provides for transitional matters consequent on the passage of this measure.

The Hon. IAN GILFILLAN secured the adjournment of the debate.