

## Gene Technology (GM Crop Moratorium) Amendment Bill 2007

### Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

#### Overview of Bill

The object of this Bill is to amend the Gene Technology (GM Crop Moratorium) Act 2003 (the **Principal Act**):

- (a) to postpone the expiry of the Principal Act from 3 March 2008 to 1 July 2011, and
- (b) to restate the objects of the Principal Act, and
- (c) to replace provisions of the Principal Act relating to the making of moratorium orders to prohibit the cultivation of GM food plants with a blanket moratorium on the commercial cultivation of genetically modified food plants (**GM food plants**) except as permitted under the Principal Act, and
- (d) to establish a scheme for approving a GM food plant or class of GM food plant for commercial cultivation in New South Wales but only if:
  - (i) a GMO licence is in force under the *Gene Technology Act 2000* of the Commonwealth which authorises dealings of the kind necessary for the commercial cultivation of the GM food plant or GM food plants of that class, and
  - (ii) the industry or sector of the industry that deals with that GM food plant or class of GM food plants meets defined criteria, and
- (e) to provide for the establishment of an Expert Committee (in place of the Advisory Council presently established under the Principal Act) to provide advice on whether industries or sectors of industry dealing with GM food plants meet those defined criteria, and
- (f) to make various transitional and consequential provisions.

The Bill also amends the *Gene Technology (New South Wales) Act 2003* (the **NSW Act**). At present, section 5 of the NSW Act applies the *Gene Technology Act 2000* of the Commonwealth (the **Commonwealth Act**) and certain other Commonwealth gene technology laws as laws of New South Wales and automatically applies any amendments to those Commonwealth laws as laws of this State. Section 6 (1) of the NSW Act modifies the Commonwealth Act as applied to prohibit the Regulator from

granting a licence for a dealing that would involve an intentional release of a GMO into the New South Wales environment if the dealing is in contravention of a moratorium order made under the Principal Act. Section 6 (2) and (3) of the NSW Act enable regulations to be made modifying the Commonwealth laws as applied. The Bill omits section 6 (1) as a consequence of the proposed amendment of Division

1 of Part 2 of the Principal Act described above. It also omits section 6 (2) and (3) so that New South Wales will no longer be able to modify by regulations the Commonwealth gene technology laws as automatically applied. It also makes consequential amendments to sections 4 and 5 of the NSW Act.

#### Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act (other than Schedule 1 [16] which is to commence on the date of assent), on a day or days to be proclaimed.

**Clause 3** is a formal provision that gives effect to the amendments to the *Gene*

*Technology (GM Crop Moratorium) Act 2003* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to the *Gene Technology (New South Wales) Act 2003* set out in Schedule 2.

**Clause 5** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

## **Schedule 1 Amendment of Gene Technology (GM Crop Moratorium) Act 2003 No 12**

### **Objects of Principal Act**

**Schedule 1 [1]** replaces section 3 of the Principal Act so as to restate the objects of that Act.

### **Moratorium on commercial cultivation of licensed GM food plants**

Section 6 of the Principal Act currently enables the Minister to make moratorium orders prohibiting the cultivation in New South Wales of a specified GM food plant or class of GM food plants. Section 7 makes it an offence to contravene such an order. Section 8 enables the Minister to make orders conferring exemptions from the operation of moratorium orders.

**Schedule 1 [6]** replaces sections 6 and 7 of the Principal Act with proposed sections 6–7A.

Proposed section 6 imposes a blanket moratorium prohibiting the cultivation in New South Wales of certain GM food plants that are licensed to be dealt with by the *Gene Technology Act 2000* of the Commonwealth unless the GM food plants have been approved for commercial cultivation by the Minister for Primary Industries, or cultivation of the GM food plants for the principal purpose of conducting experiments is permitted by an exemption, under the Principal Act. Proposed section

7 makes it an offence to contravene this blanket prohibition.

Proposed section 7A sets out a scheme for the Minister to approve the commercial cultivation of a licensed GM food plant in all or part of New South Wales by an order published in the Gazette made on the application by a representative of the relevant industry involved in or proposing to be involved in the commercial cultivation of the GM food plant. An order may only be made if certain criteria set out in proposed section 7A (3) are met by the relevant industry and the Minister must take into account whether or not the GM food plant is authorised or permitted to be cultivated in another State or Territory. The criteria must be addressed in the application for the making of the order and the Minister may only make the order if satisfied, on the advice of an Expert Committee, that the industry meets the requirements.

**Schedule 1 [2]–[5], [7]–[9] and [11]–[15]** make consequential amendments.

### **Expert Committee**

Section 13 of the Principal Act currently establishes and makes provision for a New South Wales Agricultural Advisory Council on Gene Technology (the **Advisory Council**). The Advisory Council has various functions, including giving the Minister advice on various matters relating to GM food plants and making recommendations as to whether the Minister should make exemption orders.

**Schedule 1 [10]** omits section 13 and replaces it with proposed section 13 which establishes the New South Wales Expert Committee on Gene Technology (the **Expert Committee**) in place of the Advisory Council. The Expert Committee has such functions as are conferred or imposed on it by or under the Principal Act or by the Minister and, in particular, has the function of evaluating and providing advice to

the Minister as to whether an industry meets the criteria that must be met before an order approving the commercial cultivation of a licensed GM food plant is made. The Expert Committee is to consist of persons appointed by the Minister to represent food plant industries or who have appropriate expertise, qualifications and experience that will enable them to make a valuable contribution to the Expert Committee.

**Schedule 1 [10]** also inserts proposed sections 13A and 13B to provide for confidentiality of information obtained by the Expert Committee and for disclosure by Committee members of direct or indirect pecuniary interests in matters considered or about to be considered at meetings of the Committee that may raise conflicts of interest.

#### **Expiry of Principal Act**

**Schedule 1 [16]** amends section 43 of the Principal Act to postpone the expiry of that Act from 3 March 2008 to 1 July 2011.

#### **Savings, transitional and other provisions**

**Schedule 1 [17]** enables the making of regulations of a savings and transitional nature.

**Schedule 1 [18]** provides for the existing members and independent chairperson of the Advisory Council to continue in office as members and chairperson of the Expert Committee.

#### **Schedule 2 Amendment of Gene Technology (New South Wales) Act 2003 No 11**

**Schedule 2** makes the amendments to the *Gene Technology (New South Wales) Act 2003* described in the Overview.