NSW Legislative Assembly Hansard

Gene Technology (GM Crop Moratorium) Amendment Bill

Extract from NSW Legislative Assembly Hansard and Papers Tuesday 7 December 2004.

Second Reading

Miss CHERIE BURTON (Kogarah—Parliamentary Secretary) [8.10 p.m.], on behalf of Mr Kerry Hickey: I move:

That this bill be now read a second time.

This bill introduces introduces some important changes to the Gene Technology (GM Crop Moratorium) Act of 2003. It brings a small, but much needed modification to the process of issuing exemptions to grow GM crops, and it clarifies the types of conditions that can be included in exemptions. The bill is the result of 12 months practical experience with the GM Crop Moratorium legislation, and it will greatly improve that legislation. All proposed releases of genetically modified material in Australia require the approval of the Commonwealth Gene Technology Regulator. The role of the Gene Technology Regulator was established under the Commonwealth's Gene Technology Act 2000. That Act has been adopted to implement a nationally consistent approach to the regulation of gene technology in this country. The Gene Technology Regulator is currently assessing applications for trials of a number of GM crops with the potential to address a range of environmental and human health issues.

Of particular interest are recent applications for field trials of GM wheat with increased tolerance of saline conditions or altered starch composition. These are important developments. The adoption of salinity tolerant crops has the potential to allow the reclamation of productive land from the ongoing threat of dry land salinity. It could also contribute to production practices that would minimise the problem. The potential to alter the accumulation of starch in core cereal species represents a significant scientific breakthrough in the area of nutritional enhancement of staple foodstuffs that may provide significant human health benefits. These are developments that could significantly improve agriculture in this State. But the developments are not occurring without regard for the environment or human health. As I have noted, all GM crops require a licence from the Gene Technology Regulator. The Commonwealth's Gene Technology Act requires the regulator to consider risks to the environment, as well as the health and safety of people, before issuing a licence to grow GM crops.

As a result of this legislative requirement, when the Gene Technology Regulator considers an application for commercial release or field trials, it undertakes a scientific evaluation of the possible risks that genetically modified organisms could pose to the Australian environment and the health of Australian people. However, the regulator does not consider the impact that the release of genetically modified organisms could have on the access of Australian agricultural products to overseas markets or other trade-related issues. This is where the New South Wales Gene Technology (GM Crop Moratorium) Act comes into the picture. That legislation was passed by this Parliament in 2003. It implements the Premier's announcement of 3 March 2003 that the Government would ban the commercial production of certain GM crops in New South Wales for three years whilst trade issues are addressed.

Honourable members might recall that during debate last year in the other place, the Minister for Primary Industries gave an undertaking that he would make an order imposing a moratorium on the commercial cultivation of GM canola. He has honoured that pledge, placing moratoriums on the cultivation of GM InVigor canola on 25 July 2003, and on GM Roundup Ready canola on 24 December 2003. An important aspect of the New South Wales GM Crop Moratorium legislation is that it allows the Minister for Primary Industries to issue exemptions from the moratoria for the purpose of conducting research trials. However, these exemptions can only be granted if certain criteria are met. Importantly, section 8 of the legislation requires the Minister to seek the written recommendation of the Agricultural Advisory Council on Gene Technology as to whether a proposed exemption should be made. Honourable members will recall that the legislation specifies the membership of the Council appointed by the Minister.

This includes an Independent Chair and representatives from various stakeholder groups such as the New South Wales Farmers Association, Grain Corp, the AWB, CSIRO and the Nature Conservation Council amongst others. To date, the Minister has sought the recommendations of the advisory council in regard to exemptions to allow the continuation of research trials of InVigor canola planted under the auspices of the OGTR. The Minister has also sought the recommendations of the council following applications for exemptions from Bayer CropScience and Monsanto for research trials of GM canola in 2004, as well as the application to conduct a co-existence trial to test segregation protocols in conjunction with the Australian Oilseeds Federation, also to occur in 2004. The applications for trials of GM canola in 2004 have identified some issues with the process. This brings me to the first of the amendments contained in the bill currently before the House.

At present, the legislation imposes a drawn-out, excessively bureaucratic process for obtaining a recommendation from the council. Under one interpretation of section 8, the Minister must go backwards and forwards to the council with applications for exemptions, draft orders, amendments to draft orders and recommendations. In the case of the GM canola applications, the process took over three months. It was also very costly, occupying both the department's time and the council's time. The intent of the legislation has always been that the Minister would refer any application for an exemption to the advisory council, and seek its recommendation on whether an exemption should be given, and if so, under what conditions. After receiving this advice, the Minister would decide whether to grant an exemption, and if so, under what conditions. The bill currently before the House amends section 8 to remove the current, overly bureaucratic process, and replace it with one that reflects the original intention.

Under the amendment, the Minister will not be able to make an exemption without giving the council a copy of the written exemption application. This will greatly streamline the process by cutting out the backwards and forwards that currently goes on. However, before I go further, I must point out that the amendment does not diminish the role of the advisory council. As I have said, it does not remove the requirement to obtain a recommendation from the advisory council before making an exemption. Nor does it remove the requirement that the Minister must provide written reasons for not following the Council's advice in cases where the Council recommends against an exemption. Another aspect of the current legislation that requires clarification concerns the post-harvest handling of GM product from a trial and the subsequent use of the trial site. This brings me to the second amendment in the bill. There appears to be ongoing conjecture surrounding the enforceability of post-harvest conditions under the current legislation.

The Government is not prepared to allow this issue to be used to detract from the consideration of more important issues associated with GM crops. To overcome the doubt in some people's minds, this bill introduces changes to section 8 to clarify the conditions that can be included in an exemption order. Specifically, the amendment confirms that the Minister can impose conditions that relate to the handling, storage, transport or other use of any GM product from a trial. The change also provides clarification that the Minister can impose conditions in an exemption order relating to the post-harvest use of a site on which a trial has been conducted. Related to this amendment is a further change to section 8. The bill amends that section to make provision for penalties if post-harvest conditions are breached. The penalties are the same as those already in place under the current moratorium legislation. They are significant amounts—for a corporation, the penalty is $137,500, for an individual, it is $55,000. An individual can also face a prison term of two years.

These sizeable penalties should act as a deterrent to anyone thinking about breaching conditions. Another amendment contained in this bill requires the advisory council to consult with the Australian Grain Harvesters Association in relation to the harvesting of GM food plants and also in relation to the cleaning of equipment that has been used to harvest GM food plants. This consultation must, quite rightly, be done before an exemption order is granted. This will allow the advisory council to provide the Minister with appropriate recommendations in relation to the important issue of harvester hygiene. This is not to say that harvester hygiene issues have not been considered in the past. Earlier this year, the concerns of the Australian Grain Harvesters Association were made known to the advisory council when they delivered a presentation on harvester issues. No doubt these concerns were well considered by the advisory council when it made its recommendations to the Minister.

The Act already requires the Minister to publish all exemption orders, in their entirety, in the *Government Gazette*. It also requires the Minister to cause notice of each exemption order to be published in relevant papers and on the department's website. This bill imposes additional requirements in relation to the publication of information regarding GM trial sites. Specifically, this bill requires the Minister to publish details of the precise location of the land subject to an exemption order. It also requires the Minister to provide this information to the relevant local council and the relevant rural lands protection board, plus any other person prescribed by the regulations. In the past, the advertisements published in the papers referred to the availability of the entire exemption order on the department's website, from the *Government Gazette*, or from the departmental contact officer. Thus the location of trial sites has always been readily accessible to the public. This amendment simply ensures greater public access with respect to the location of GM trial sites.

This bill also ensures that the director-general's Register of Exemption Orders includes details regarding the location of the GM trial sites. The director-general already includes this information in the register. This amendment simply makes it compulsory to do so. As this register is available for inspection by the public, free of charge, either at the department's head office or on the website, it cannot be disputed that information regarding the location of GM trial sites is readily available to the public. The amendments to the New South Wales gene technology legislation presented in this bill make practical changes to the consultation process and ensure that important post-harvest conditions can be imposed. The amendments will significantly improve the operation of the legislation. I commend the bill to the House.