

SUMMARY OF MAJOR AMENDMENTS TO GENE TECHNOLOGY BILL 2000

1. Precautionary Principle – Section 4

A new paragraph has been added to section 4 as follows:

- (aa) provides that where there are threats of serious or irreversible environmental damage, a lack of full scientific certainty should not be used as a reason for postponing cost effective measures to prevent environmental degradation.

2. Definition of Gene Technology Agreement – Section 10

The definition of Gene Technology Agreement has been changed to mean the agreement between the Commonwealth and at least 4 States, as in force from time to time.

Since the introduction of the *Gene Technology Bill 2000* into Parliament, the text of the gene technology agreement has been settled between officials from the Commonwealth and all States and Territories. The final text provides that the agreement commences on signature by the Commonwealth and at least four States (including Territories), rather than on signature of all States and Territories (as was previously set out in the Bill that was introduced into Parliament). The Act has therefore been amended to reflect this change.

3. Name of Gene Technology Community Consultative Group – Section 10

The name of the Gene Technology Community Consultative Group has been changed to the Gene Technology Community Consultative Committee, in order to better reflect its function under the national scheme.

4. GM-free zones – Section 21

Section 21 of the Act has been amended to allow the Ministerial Council to issue policy principles recognising areas, if any, designated under State or Territory law for the purpose of preserving the identity of GM crops and non-GM crops for marketing purposes.

5. Penalties – Sections 32 and 34 (not 33 and 35)

Imprisonment terms have been included in the legislation for someone who deals with a GMO without a licence (maximum 2 years, or 5 years in the case of an aggravated offence), or who breaches a condition of a GMO licence (again, a maximum of 2 years, or 5 years in the case of an aggravated offence).

6. Continuing Offences – Section 34

A new provision has been included in the Act to provide that where a person has breached a condition of a licence, the person is guilty of a separate offence for each day that the breach occurred.

7. Insurance – Section 62

Section 62 has been amended to include an additional subsection as follows:

- (3) Licence conditions may also include conditions requiring the licence holder to be adequately insured against any loss, damage, or injury that may be caused to human health, property or the environment by the licensed dealing.

8. GMO Register – Section 78

The Act has been amended to allow GM Products that have not previously been licensed to be placed on the GMO Register. This ensures that an appropriate level of regulation is also able to be applied to non-viable GM products that pose negligible biosafety risks (for example, non-viable stockfeed derived from GM plants).

9. GTTAC – Section 100

The Act has been amended to ensure that the Gene Technology Technical Advisory Committee includes a member of the Consultative and of the Ethics Committees.

10. Function of the Community Consultative Committee – Section 107

An additional subsection has been included in this section providing that one of the functions on the Gene Technology Community Consultative Committee is to provide advice on the request of the Regulator or the Ministerial Council on matters of general concern identified by the Regulator in relation to applications made under the Act.

11. Appointment of the GTR – Section 118

Section 118 has been amended to include two additional subsections as follows:

- (5) The Governor-General must not appoint a person as the Regulator if, at any time during the period of 2 years immediately before the proposed period of appointment, the person was employed by a body corporate whose primary commercial activity relates directly to the development and implementation of gene technologies.
- (6) The Governor-General must not appoint a person as the Regulator if the person has a pecuniary interest in a body corporate whose primary commercial activity relates directly to the development and implementation of gene technologies.

12. Quarterly Reports to Parliament – Section 136A

A new section has been added to require the GTR to, as soon as practicable after the end of each quarter, prepare and give to the Minister a report on the operations of the Regulator during that quarter. The report must include information on GMO licenses issued during the quarter, any breaches of conditions of a GMO dealing during the quarter, and the auditing and monitoring of dealings. The Minister must cause a copy of this report to be laid before both Houses of Parliament within 15 sitting days of receiving the report.

13. Extended Standing for Judicial Review – Section 183A

This amendment explicitly states that a State is taken to be a person aggrieved of a decision for the purposes of the *Administrative Decisions (Judicial Review) Act 1977*, meaning that States may seek review by the Federal Court of a decision made by the GTR under the Act, or of the failure of the GTR to make a decision, or of the conduct engaged in for the purpose of making a decision.

14. Confidential commercial information – Section 185

Two new subsections have been added as follows:

(2A) The Regulator must refuse to declare that information is confidential commercial information if the information relates to one or more locations at which field trials involving GMOs are occurring, or are proposed to occur, unless the Regulator is satisfied that significant damage to the health and safety of people, the environment or property would be likely to occur if the locations were disclosed.”

(3A) If;

- a) the Regulator declares that particular information is confidential commercial information, and
- b) the information relates to one of more locations at which field trials involving GMOs are occurring, or are proposed to occur;

the Regulator must make publicly available a statement of reasons for the making of the declaration, including but not limited to:

- c) the reasons why the Regulator was satisfied as mentioned in subsection (1); and
- d) the reasons why the Regulator was not satisfied under subsection (2) that the public interest in disclosure of the information outweighed the prejudice that the disclosure would cause; and
- e) the reasons why the Regulator was satisfied under subsection (2A) that significant damage to the health and safety of people, the environment or property would be likely to occur if the locations were disclosed.

15. Interference with dealings with GMOs – Section 192A

A provision has been added to the Act providing as follows:

A person is guilty of an offence if:

- (a) the person engages in conduct; and
- (b) the conduct:
 - (i) results in damage to, destruction of, or interference with, premises at which dealings with GMOs are being undertaken; or
 - (ii) involves damaging, destroying, or interfering with, a thing at, or removing a thing from, such premises; and
- (c) the owner or occupier of the premises, or the owner of the thing (as the case requires) has not consented to the conduct; and
- (d) engaging in the conduct, the person intends to prevent or hinder authorised GMO dealings that are being undertaken at the premises or facility; and
- (e) the person knows, or is reckless as to, the matters mentioned in paragraphs (b) and (c).

Authorised GMO dealings are defined, in relation to premises or a facility, as meaning dealings with GMOs being undertaken at the premises or facility that:

- (a) are authorised to be undertaken at the premises or facility by a GMO licence; or
- (b) are notifiable low risk dealings; or
- (c) are exempt dealings; or
- (d) are on the GMO register.

16. Human cloning – Section 192B

A new section has been included in the Act to make it an offence if a person:

- (a) engages in conduct; and
- (b) the person knows that, or is reckless as to whether, the conduct will result in the cloning of a whole human being.

The maximum penalty for the offence is 2,000 penalty units or imprisonment for 10 years.

Cloning of a whole human being is defined in the Act as the use of technology for the purpose of producing, from one original, a duplicate(s) or descendant(s) that is genetically identical to the original.

17. Experiments involving animal eggs – Section 192C

A new section has been inserted into the Act to make it an offence if a person:

- (a) engages in conduct; and
- (b) the person knows that, or is reckless as to whether, the conduct involves carrying out experiments or research that involves putting human cells, or a combination of human cells and animal cells, into animal eggs.

The maximum penalty for the offence is 2,000 penalty units or imprisonment for 10 years.

18. Experiments involving putting human and animal cells into a human uterus – Section 192D

A new section has been inserted into the Act to make it an offence if a person:

- (a) engages in conduct; and
- (b) the person knows that, or is reckless as to whether, the conduct involves carrying out experiments or research that involves putting a combination of human cells and animal cells into a human uterus.

The maximum penalty for the offence is 2,000 penalty units or imprisonment for 10 years.

19. Review of the Act – Section 194

The Act has been amended to ensure that the Ministerial Council must cause an independent review of the Act (including the OGTR) to be undertaken after four years of operation. The section provides as follows:

- (1) The Ministerial Council must cause an independent review of the operation of this Act, including the structure of the Office of the Gene Technology Regulator, to be

undertaken as soon as possible after the fourth anniversary of the commencement of this Act.

- (2) A person who undertakes such a review must give the Ministerial Council a written report of the review.
- (3) The Minister, on behalf of the Ministerial Council, must cause a copy of the report of the review to be tabled in each House of the Parliament within 12 months after the fourth anniversary of the commencement of this Act.
- (4) In this section:

independent review means a review undertaken by persons who:

- (a) in the opinion of a majority of the Ministerial Council possess appropriate qualifications to undertake the review; and
- (b) include one or more persons who are not employed by the Commonwealth or a Commonwealth authority.

SOME ADDITIONAL ISSUES

1. Cost Recovery

No amendment was made to the Act on cost recovery. The ALP had proposed amendments but agreed to withdraw them after the Government agreed that cost recovery for the OGTR would not be introduced for 2 years after the commencement of operations.

2. Consensus Conference

The Democrats proposed that the Community Consultative Committee should be able to appoint a citizens' jury on an ad hoc basis to assist its work. This jury would have been operated along the lines of the consensus conference.

Whilst this amendment was not supported, the Government did agree to hold another consensus conference on a gene technology to be within the first 12 months of the OGTR's operation.