CropLife AUSTRALIA

SUBMISSION IN RESPONSE TO

REVIEW OF THE WESTERN AUSTRALIAN

GENE TECHNOLOGY ACT 2006

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1. INTRODUCTION

CropLife Australia (CropLife) is the peak industry organisation representing the agricultural chemical and biotechnology (plant science) sector in Australia. CropLife represents the innovators, developers, manufacturers, formulators and registrants of crop protection and agro-biotechnology products. The plant science industry provides products to protect crops against pests, weeds and diseases, as well as developing crop biotechnologies that are key to the nation's agricultural productivity, sustainability and food security. The plant science industry is worth more than $1.5 billion a year to the Australian economy and directly employs thousands of people across the country.

CropLife member companies spend more than $13 million a year on stewardship activities to ensure the safe use of their products on the environment and human health. CropLife ensures the responsible use of these products through its industry code of conduct and has set a benchmark for industry stewardship through programs such as ***drum****MUSTER*, ChemClear® and Agsafe Accreditation and Training.

Genetically modified (GM) crops are just another step along the same path of technological improvement that led to Australian agricultural inventions like the combine harvester and federation wheat varieties. The utilisation of these innovations has delivered safe and affordable food to the nation and the globe. GM crops are safe. This is agreed by the reputable majority of the global scientific community. Despite this proven record of safety, every GM crop is subjected to intense global regulatory scrutiny. None of the regulators anywhere in the world has found any safety issues associated with these GM crops.

One threat to the potential success of this important agricultural innovation is overly-stringent regulation that brings an equally unnecessary cost burden. CropLife believes that all regulation should be commensurate with the associated risk, cost and benefit to the community. Science and experience have established that there is no health or safety risk differential between approved GM and non-GM crops. However, already the current regulations in Australia impose a much greater level of regulatory burden on the biotechnology industry and this burden is exacerbated by unclear and inconsistent market interventions by state governments.

If Australia fails to properly exploit the opportunities that are offered by this technology the results will be profound. The world's food producers are currently facing the sobering challenge of needing to increase global food production by 70 per cent in 40 years, with dwindling resources, in a changing climate. This situation presents opportunities for Australia to assist in the global food security effort and also to profit from increased demand for our agricultural products. If we can produce more with less through efficient use of technology then the sector and the regional communities that rely upon it will be strengthened. If, however, we allow our regulations to unnecessarily slow the adoption of modern crops in Australia these opportunities will be missed.

2. INTEGRATION WITH THE NATIONALLY GENE TECHNOLOGY ACT

Key Points

- CropLife Australia is a strong supporter of a nationally harmonised approach to regulating gene technology in agriculture.
- A national approach reflects a risk based regulatory system because risks to the environment and human health are national.
- A national approach is particularly important for a country like Australia where the market size is small.

Australia is a small market for agriculture by global standards. In wet years, the sale of Australian agricultural tools can comprise around 3 per cent of the global market, while in dry years it can be as little as 1 per cent of global sales. Given this small market, it is vital that agricultural regulations are harmonised nationally so that the regulatory burden is minimised and Australian farmers do not miss out on access to vital agricultural tools. CropLife Australia strongly supports a national approach for regulating GM crops in Australia and we note that this was the original intention of the gene technology regulatory scheme. This is evident in Section 5 of the *Gene Technology Act 2006* which states:

> It is the intention of the Parliament that this Act forms a component of a nationally consistent scheme for the regulation of certain dealings with genetically modified organisms by the Commonwealth and State.

The Inter-Governmental Agreement that was signed when the scheme was introduced also makes the intent to establish a national scheme very clear in several places:

- Paragraph 3: “the purpose of this Agreement is to facilitate a national gene technology regulation scheme”
- Paragraph 9: “Each State and Territory will submit to its Parliament as soon as possible a Bill or Bills to form part of the Scheme, for the purpose of ensuring that the Scheme applies consistently to all persons, things and activities within Australia. Each State and Territory will use its best endeavours to secure the passage of….any other State or Territory Bill that is subsequently required to ensure the Scheme remains nationally consistent...”
- The entire text of Part 5 (paragraphs 39-43) of the Agreement is aimed at “maintenance of a nationally consistent scheme over time and amendment of the scheme”

Despite these intentions, there has been a clear failure to establish a nationally consistent scheme for regulating GM crops. Many states, including Western Australia, have implemented legislation to address “marketing concerns” that are neither consistent nor transparent. This additional legislation means that there is no national scheme and the intent of the original legislation has been undermined.

The loss of the national scheme means that there is no clear path to market for the developers of GM crops in Australia even when licence applicants have satisfied the requirements of the Gene Technology Act. The pathway to market remains unclear even when effects on markets have been shown to be negligible or positive. This situation was demonstrated in 2003 when the OGTR approved GM canola for commercial release. It was not until seven years later that GM canola could be commercially cultivated in Western Australia due primarily to a change in Government. That is not the result of a national, risk based or transparent scheme.

State bans cost the economy a significant amount of money. One analysis concluded that nationally the bans on GM canola cultivation were costing $157 million per annum and $74 million per annum in Western Australia alone[1]. The potential of GM crops are evident in the cotton industry where virtually the entire crop is now GM. In added value terms, the effect of the reduced costs of production on farm income in the 2008 Australian cotton crop was equivalent to an annual increase in production of 37% (105,000 tonnes) [2].

3. ABILITY OF AGRICULTURE MINISTER TO DECLARE GM-FREE AREAS

Key Points

- Section 21(aa) of the Gene Technology Act 2006, undermines the national regulatory scheme for agricultural biotechnology.
- Political considerations determine whether this section is invoked by a government.
- The ability of the agricultural industry to separate different types of crops has been consistently demonstrated for decades.
- Intervening in functioning markets removes certainty and transparency from Western Australia's Gene Technology Act and damages WA's reputation as a free market economy.
- The establishment of GM free zones assumes that all growers in a localised area share the same planting intentions. This is not the case.
- The use of this clause from 2003-2010 to ban GM canola cultivation in WA cost the state over $350 million.

As noted in the previous section, the decision to regulate GM crops at a state level completely undermines the national system for regulating GM crops that the *Gene Technology Act 2006* is meant to establish. This destruction of the national scheme is facilitated by section 21(1)(aa) which states that

> The Ministerial Council may issue policy principles in relation to the following….recognising areas, if any, designated under a law of Western Australia, for the purpose of preserving the identity of one or both of the following
>
> (i) GM crops;
>
> (ii) Non-GM crops;
>
> for marketing purposes.

Section 21(1)(aa) creates an uncertain path to market that acts as a major disincentive for private investment in the sector. This uncertainty is exacerbated by the fact that the marketing legislation is written so that it prevents the Minister from granting a licence unless certain conditions are met; however it does not compel the Minister to grant a licence if an application meets these same conditions. As a result, there remains a very real possibility that a company would invest significantly in bringing a technology to market in Australia with data to address all the state and federal regulations and still be unable to sell its product commercially in WA.

[1] Norton R.M., Roush, R.T., (2007) *Canola and Australian Farming Systems 2003-2007*
[2] Brooks and Barfoot (2010) GM crops: global socio-economic and environmental impacts 1996-2008

It is a key principle of good governance that governments should only intervene in a market where there is demonstrated market failure. However, state government moratoria on commercial production of GM crops have never identified any market failures with the Office of the Gene Technology Regulator (OGTR) approved GM crops or why these market failures were local rather than national situations.

A wide range of crops that require separation throughout their life cycle co-exist in the supply chain without regulation. Activist claims that this would not be possible with GM crops has been completely disproven. Four seasons of commercial cultivation have demonstrated that farmers who are lucky enough to live in a state that respects OGTR decisions can sell either GM or non-GM canola (or both) at different prices, into different markets. There is no need to make random regional decisions on farmers' behalf and it is ridiculous to expect that all farmers in any region will make identical cropping decisions.

These decisions also affect grower profitability. In a study released in 2007, Norton and Roush estimated that if GM canola replaced around half of the non-GM canola used in Western Australia the state would increase its agricultural income by $74 million a year. The assumption of 50% adoption is quite conservative when compared to a mature GM canola markets like Canada where over 80% of commercial canola is GM. Even using a conservative estimate like this the WA moratorium cost more than $500 million.

Section 21(1)(aa) is a costly disincentive for private investment in WA agriculture and removes farmer choice. CropLife believes that section 21(1)(aa) should be removed.

4. CONCLUSION

It is clear when reviewing the language in the *Gene Technology Act 2006* that its architects intended, quite correctly in CropLife's view, to contribute to a single transparent and efficient national regulatory system for biotechnology in Australia. This was an important aim because Australia is a relatively small market and cannot afford to impose excessive regulatory costs on companies that are looking to. Unfortunately that goal has not been realised to date, due to section 21(1)(aa). If commercial risks are to be regulated, then a market failure should be demonstrated by regulators. In the unlikely event that a market failure can be identified that relates to the introduction of GM crops in Australia then these risks should be regulated nationally. In either case Section 21(1)(aa) should be removed from the West Australian legislation.

Agricultural biotechnology has much to offer the world - cleaner, cheaper, more secure and healthier food being produced on sustainable farms that represent a smaller proportion of the global landscape. CropLife believes that in order for Western Australia to capitalise on these opportunities regulation needs to be streamlined to take into account experience with GM crops over the last 15 years and state government intervention in functioning markets needs to cease. This would remove the shackles from this field of agricultural innovation and allow Australia to join other countries that are global leaders in a technology that is going to be vital to all of our futures.