

GENETICALLY MODIFIED CROPS FREE AREAS BILL 2003

Returned

Bill returned from the Council with amendments.

Council's Amendments - Consideration in Detail

The amendments made by the Council were as follows -

No. 1

Clause 3, page 2, lines 19 and 20 - To delete the lines.

No. 2

Clause 3, page 2, line 23 - To delete "food" in both places where it occurs.

No. 3

Clause 4, page 3, line 7 - To insert after "which" -

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(a) a genetically modified crop must not be cultivated; or

(b)

No. 4

Clause 4, page 3, line 8 - To delete "food".

No. 5

Clause 5, page 3, line 17 - To delete "food".

No. 6

Clause 5, page 3, line 20 - To insert before "the crop" -
if the order is made under section 4(1)(b),

No. 7

Clause 5, page 3, line 22 - To delete "food".

No. 8

Clause 5, page 4, lines 1 to 8 - To delete the lines.

No. 9

Clause 5, page 4, lines 15 to 19 - To delete the lines and insert instead -

(4) Subsection (1) does not apply to the cultivation of a genetically modified organism if the cultivation is covered by an exemption granted under section 6.

No. 10

Clause 6, page 4, line 26 - To delete "food".

No. 11

Clause 6, page 4, line 28 - To insert after "4" -
(the "**designating order**")

No. 12

Clause 6, page 4, line 29 - To delete the line and insert instead -

(c) if the designating order is made under section 4(1)(b), the crop is specified in the designating order; and

(d) an exemption under section 6 does not apply in relation to the crop, or, if an exemption under section 6 does apply, the person to whom the exemption applies has failed to comply in a material way with the conditions to which the exemption is subject.

No. 13

New clauses 6 and 7, page 4, after line 21 - To insert the following new clauses -

6. Exemptions

- (1) The Minister may, by order published in the *Gazette*, exempt a person, or a specified class of persons, from the application of section 5(1) to a specified extent in relation to a specified area or in any other specified way.
- (2) An exemption may be granted subject to specified conditions.
- (3) The Minister may, by order published in the *Gazette*, vary the conditions to which an exemption is subject or revoke the exemption.
- (4) Section 42 of the *Interpretation Act 1984* applies to an order under subsection (1) or (3) as if the order were a regulation.
- (5) An exemption may be included in an order designating an area under section 4.

7. Breach of conditions of an exemption

- (1) A person to whom an exemption applies who contravenes a condition to which the exemption is subject commits an offence.
Penalty: \$200 000.
- (2) Proceedings for an offence under subsection (1) are to be dealt with by a court constituted by a magistrate.

No. 14

New clause 8, page 5, after line 23 - To insert the following new clause -

8. Orders a court may make on conviction

- (1) If a court convicts a person of an offence against section 5 or 7 and the genetically modified crop has been destroyed under an order of the chief executive officer under section 6(1), the court may, in addition to any other penalty imposed, order that the person pay to the Minister the costs of destroying the crop.
- (2) If -
 - (a) a court convicts a person of an offence against section 5 or 7;
 - (b) it is proved on the balance of probabilities that the cultivation of the genetically modified crop by the convicted person resulted in another crop being a genetically modified crop;
 - (c) that other crop is destroyed under an order of the chief executive officer under section 6(1); and
 - (d) compensation is paid to another person under section 7 because of the destruction of that other crop,the court may, in addition to any other penalty imposed, order the convicted person pay to the Minister an amount equal to the amount of compensation paid.
- (3) If a court convicts a person of an offence against section 5 or 7, the court may, in addition to any other penalty imposed, order the convicted person to pay to any other person who has suffered loss or damage or incurred costs or expenses as a result of the commission of the offence compensation for the loss or damage, or an amount for or towards the costs or expenses.

No. 15

Long Title, page 1 - To delete “**food**”.

Mr F.M. LOGAN - by leave: I move -

That amendments Nos 1 to 5 made by the Council be agreed to.

Question put and passed; the Council's amendments agreed to.

Mr F.M. LOGAN: I move -

That amendment No 6 made by the Council be agreed to.

Mr T.K. WALDRON: I state the National Party's opposition to clause 6 for the simple reason that there is no provision by which the landowner is notified when an order is made for the destruction of a crop. This clause gives an authorised officer the power to enter land and, if necessary, the premises upon that land to seize and destroy a crop. However, there is nothing in the clause that requires the authorised officer to notify the landowner. The National Party has consistently opposed this clause. We believe it infringes on people's basic rights to have the opportunity to explain their position or to explain to the authorised officer that the decision is wrong before their crop is destroyed. We believe that is not right. This is a small, simple piece of legislation but it gives the Department of Agriculture immense powers to enter properties, destroy crops and impose fines without having to give notification. The amendments that we moved during the passage of the Bill have not been accepted. Our position has not changed. We oppose this clause for those reasons.

Mr F.M. LOGAN: I agree with the member for Wagin; the National Party has been consistent in its opposition to clause 6 of the Bill, both in the Legislative Assembly and the Legislative Council. The member for Wagin has pointed out that the nub of the problem with this clause of the Bill, as the National Party sees it, is that it gives an authorised officer of the Department of Agriculture unnecessary power to enter a farmer's property, to inspect a crop and order its destruction should the department believe that it is in breach of the genetically modified organisms licence. I reiterate what was said in this place in the first instance when the member for Wagin moved an amendment to delete the clause: by the time an authorised officer of the Department of Agriculture entered a farm or place of residence for the purpose of destroying a genetically modified crop as a result of a breach of a licence, an illegally grown crop or for whatever reason, a number of inspections would already have taken place.

Mr T.K. Waldron: There is no notification.

Mr F.M. LOGAN: It is not a question of notification. A number of inspections would already have taken place. The Department of Agriculture would have already ascertained whether the growing of the crop was in breach of the GMO licence or was illegal. If the Department of Agriculture issued an order, the growing of the crop would clearly have been in breach of the licence or illegal. The member for Wagin, and Hon Murray Criddle in the upper House, was seeking to amend the clause that represents the final step to be taken by the Department of Agriculture when issuing an order for the destruction of a crop. The horse would have already bolted. It would already have been determined that the crop was illegally grown or grown in breach of the licence. The department would have issued the order for the destruction of the crop. Effectively, the Department of Agriculture's authorised officer would be there to put the whole matter to rest. The member for Wagin was seeking to amend the clause so that notification would be given to the farmer. Neither that amendment nor the amendment moved by Hon Murray Criddle in the other place would have achieved the effect that the member is seeking.

Mr T.K. WALDRON: I will not go on with this at length, except to say that I do not agree with the parliamentary secretary's interpretation. The wording "if necessary, enter premises upon that land" that entitles the authorised officer to enter the premises without notification is wrong and infringes on people's basic rights. That is the National Party's strongly held position.

Mr F.M. LOGAN: I will highlight one other point to finalise the debate on this point of the reasons for no notification. As was mentioned before when this clause was debated in this Chamber, the reason for the clause is to ensure that the farmer is given no prior notice of the intention to issue an order to destroy the crop so that he does not have the ability to harvest the crop and transport it. That is one of the fundamental reasons for not giving notice.

Mr T.K. Waldron: You have just contradicted what you said before.

Mr F.M. LOGAN: I have indicated that the Department of Agriculture would already have found out what was going on at the farm where there has been a breach.

Mr T.K. Waldron: Therefore, the farmer could harvest it.

Mr F.M. LOGAN: If the farmer is aware that the Department of Agriculture is on his case, he may well take the crop off and transport it. That is the reason the farmer will not be notified if an order to destroy the crop is to be issued.

Question put and passed; the Council's amendment agreed to.

Mr F.M. LOGAN - by leave: I move -

That amendments Nos 7 to 15 made by the Council be agreed to.

Mr R.N. SWEETMAN: I have read the *Hansard* of the upper House. It appears that all bar two of the amendments were moved by the Minister for Agriculture, Forestry and Fisheries. Either there was discussion with the minor parties about what amendments were to be made or the Government had a rethink about the

legislation. Two of the amendments moved by Hon Murray Criddle were agreed to, and the rest that were passed by the Council were moved by the minister. Is that correct?

Mr F.M. LOGAN: That is correct. There was discussion between the Minister for Agriculture, Forestry and Fisheries and all parties, not just the minor parties. The National Party was included in those discussions. As the member quite rightly pointed out, two of the amendments moved by Hon Murray Criddle were accepted by the minister and passed.

Question put and passed; the Council's amendments agreed to.

The Council acquainted accordingly.