

Hon Kim Chance; Hon Dr Chrissy Sharp; Hon John Fischer; Hon Murray Criddle; Hon Bruce Donaldson; Hon Jim Scott; Hon Frank Hough; Chairman

GENETICALLY MODIFIED CROPS FREE AREAS BILL 2003

Committee

Resumed from an earlier stage in the sitting. The Chairman of Committees (Hon George Cash) in the Chair; Hon Kim Chance (Minister for Agriculture, Forestry and Fisheries) in charge of the Bill.

Clause 4: Designation of genetically modified crops free areas -

Debate was interrupted after the clause had been amended.

Hon KIM CHANCE: I need to respond to Hon Christine Sharp. I have not finally made up my mind on the matter of the general order to apply to the State. As I indicated to the member, I had not given a great deal of thought to it until she asked the question. I am considering that the concept of a general order would require some consultation. Indeed, I have determined, as I indicated today, the methodology for the consultation that I will undertake. A specific order would require less consultation and could be introduced quickly. I do not believe that the option of a general order is, as a result of the aforementioned, a quicker and cleaner solution. If the legislation is not proclaimed well before the next growing season, I would need to consider whether I will have time to carry out the broader consultation that would be necessary for the member's suggestion to be adopted. I doubt that the question is central to the Bill in any case. I realise that it is relevant to the discussion and that it is a direct consequence of the part of the Bill we have just dealt with, but it is not actually a question that is relevant to the Bill. It is a matter of how I will administer the legislation. I will consider the question. I am happy to take further advice from Hon Chrissy Sharp, or any other member, on how I should proceed with that. I am not giving the member a final answer; I am simply underlining the influences that I will be working with in coming to that decision.

There is a need for us to progress this Bill. If it is not third read by six o'clock tonight, it is unlikely that we will be able to finish with it this year, because other legislation needs to be dealt with this week, and I can hardly enforce time discipline on other ministers' Bills if I do not enforce it on my own. I believe we have time to do it, but I am obliged to bring on other business after dinner and for the rest of the week. In those circumstances, there is a danger that we will not even finish with this legislation until March next year. Therefore, we need to get on with it. However, I will happily consider Hon Chrissy Sharp's advice, and any other member's advice, on how that should be done.

Hon CHRISTINE SHARP: I must tell the minister that I am quite shocked by his response. I am surprised that he has told the Chamber that he has not thought this through, given that he certainly has been aware of the committee's recommendation since it reported in July. Certainly, the minister and I have had conversations on this matter, and I am sure he has had individual conversations with other members. Those conversations have touched very much on the application of the provisions of this Bill, and not simply the provisions themselves. I do not understand how the minister can argue that a general order is any more complex for him to implement than a specific order. Given that the Government's policy is that there will be a statewide moratorium until 2006, given that the Government has received unanimous advice from a standing committee that that moratorium should be kept in place, and given that the Council has now provided the minister with a mechanism to do so, I cannot possibly understand why the minister does not intend to implement that and, moreover, why he does not feel motivated to give a very clear market signal that, until 2006, Western Australia will be entirely GM free. That is a very important signal because, as the standing committee pointed out in its report, the fact that authority is given for one crop to be grown can have implications for the entire marketing image of all Western Australian crops. Therefore, there is a significant advantage in the Government adopting, through the moratorium policy, a position on all GM crops until such time as the Government decides, after consultation, that it wishes to revoke the moratorium.

Hon KIM CHANCE: I do not know how I can say it much more clearly. I agree with all the things Hon Chrissy Sharp has said. Let me just explain a time line. It might be March or even April before this Bill has been through both Houses and is proclaimed. We have already discussed the amount of consultation that will be required - I believe there is a reasonable expectation that it would be required - before a general order is issued. That could take, at a minimum, 45 days. That puts us at the end of May, the end of the sowing season, before I could effectively bring in an order. That means that there is nothing preventing Monsanto and Bayer from organising with growers to sow thousands of acres of GM canola. I will not take that risk. I have clearly said that I want to act quickly on those two lines of canola and then start the broad consultation that deals with the general order. I do not want to put at risk Western Australian agriculture as a result of some principle that a general order ought to be dealt with first. I want to deal with the specific issue. There are no other issues facing Western Australian agriculture other than the Bayer and Aventis lines of canola. Let us deal with them and talk about how we will deal with the process of the general order. There is a reasonable expectation among the scientific and the farming community that there will be some consultation. It is necessary to have some

Hon Kim Chance; Hon Dr Chrissy Sharp; Hon John Fischer; Hon Murray Criddle; Hon Bruce Donaldson; Hon Jim Scott; Hon Frank Hough; Chairman

consultation about the concept of the general order and how that will be introduced. Let us deal with the issues that face us and get on with dealing with the broader issue of the general order.

Hon CHRISTINE SHARP: The minister has a mandate from the people of Western Australia. He was elected to government on the position of a moratorium that applied statewide to all genetically modified crops until 2006. The minister has a clear mandate that has now been reinforced unanimously by this Parliament.

Hon JOHN FISCHER: I agree entirely with the Minister for Agriculture on this. Quite frankly, it concerns me that my membership of the flat earth society might be renewed if we designate the whole of this State. Many other grain crops other than GM canola are extremely economically important to the north of this State. It would be a really bad move to put a blanket ban over this State before we have had time to thoroughly look into all the consequences of a blanket ban. I totally agree with the Minister for Agriculture on this point.

Clause, as amended, put and passed.

Clause 5: Offence -

Hon KIM CHANCE: I move -

Page 3, line 17 - To delete "food".

Again, this amendment has the same argument and removes the word "food" in the context of genetically modified crops.

Amendment put and passed.

Hon KIM CHANCE: Amendment 14/5 on the supplementary notice paper contains a typographical error. The word "if" is missing before "the order". I seek leave to alter the amendment.

Amendment, by leave, altered.

Hon KIM CHANCE: I move -

Page 3, line 20 - To insert before "the crop" -

if the order is made under section 4(1)(b),

This amendment recognises the insertion of clause 4(1)(b), which deals with the generality of the scope of the Bill.

Amendment, as altered, put and passed.

Hon KIM CHANCE: I move -

Page 3, line 22 - To delete "food".

Amendment put and passed.

Page 4, lines 1 to 8 - To delete the lines.

This amendment seeks to remove the specific conditions that need to be attached to a field trial licence issued by the Gene Technology Regulator for a field trial to be excluded from the operation of the offence provision. Those conditions were included when the focus was on canola trials on which such conditions were imposed. However, they will not be relevant to other types of GM crop trials, and they would limit the Bill inappropriately. In order to be excluded from the operation of the offence provision, a licensed field trial will still have to comply with any conditions that are imposed. Therefore, rather than the conditions that will be imposed being within the narrow definition, as indicated in the unamended Bill, they will be deemed to be appropriate for both the type of crop and the area in which the trial is proposed.

Amendment put and passed.

Further consideration of the clause postponed, on motion by Hon Kim Chance (Minister for Agriculture, Forestry and Fisheries).

[Continued on page 14648.]

Clause 6: Orders for destruction of genetically modified food crops -

Hon KIM CHANCE: I move -

Page 4, line 26 - To delete "food".

Amendment put and passed.

Hon Kim Chance; Hon Dr Chrissy Sharp; Hon John Fischer; Hon Murray Criddle; Hon Bruce Donaldson; Hon Jim Scott; Hon Frank Hough; Chairman

Hon KIM CHANCE: I move -

Page 4, line 28 - To insert after “4” -

(the “**designating order**”)

It is necessary to introduce these words because clause 6(1)(b) makes reference to a crop cultivated in an area that is designated in an order made under clause 4. That creates a definition of a designating order as opposed to an exemption. There is a clear difference between the two. The term “designating order” is not otherwise mentioned.

Amendment put and passed.

Hon KIM CHANCE: I move -

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.

The designating order needs to be specified in the change to clause 4(1)(b). That provision is the specific reference; clause 4(1)(a) is the general reference. It is necessary to amend clause 6, which refers to orders for the destruction of crops. This amendment allows for designating orders under clause 4 as opposed to an exemption order. It inserts provisions for two purposes: when a relevant order relates to a specific crop and not GM crops generally, the crop to be destroyed is the crop specified in the order and the crop to be destroyed is not covered by an exemption or, if it is, that “the person to whom the exemption applies has failed to comply in a material way with the conditions to which the exemption is subject.”

Amendment put and passed.

Hon MURRAY CRIDDLE: I move -

Page 5, after line 6 - To insert -

- (3) Prior to giving effect to an order under this section inspection of the property must have been undertaken according to section 9 or 10.

This provision will allow people who own property to have an indication that an inspector will go onto their property. Under clause 6 as it stands, an authorised officer will have the authority to enter onto land and, if necessary, premises to carry out the seizure or destruction of a crop without giving notice to the landowner.

Hon KIM CHANCE: I oppose this amendment. I am sorry to do this, because I can see the work that Hon Murray Criddle has done and the basis upon which he has constructed the amendments, but it is not until one sees the amendments in the context of how they will actually work that one has to make a determination on whether the amendment ought to be supported. In my view the amendment is not necessary. The reference to clauses 9 and 10 go without saying, because to determine the existence of the pre-conditions for a destruction order, an inspection would have to have been made either with the owner’s consent - that is, under clause 9 - or under warrant - that is, under clause 10. The pre-existing requirement of clauses 9 and 10 require, in different ways, that some contact with the owner must have been had. The intent of the amendment might have been to ensure that the destruction power is not exercised without prior communication with the owner, other than to necessarily require an inspection, and there is no specific provision for prior communication because that would possibly allow time for a crop to be harvested and removed, and it might have enabled the crop to be moved to an unknown destination with the risk of the spread of that genetically modified organism and consequent potential damage to markets. Clause 6 particularly - indeed, the whole Bill - is designed to prevent damage to markets by non-GM crops before the spread of a GMO makes it too late to do so. When a crop is destroyed in circumstances in which an offence against the Act has not been committed - in other words, we made a mistake, sorry - the owner of the crop can apply for compensation for the loss. In any event, as noted, it is highly unlikely that there will have been no communication with the owner of the crop in these circumstances, except in cases in which the owner of a crop has clearly set out to circumvent the law. It is difficult to conceive of a case in which prior entry to a property by an authorised person would not have been necessary to establish the crop was in fact a GM crop in the first place. Again, that is a matter of judgment. The acceptance and adoption of the amendment will not cripple the legislation, but the effect of clauses 9 and 10 provide sufficient guarantee of consultation in instances in which the owner of the crop is a person who is trying to do the right thing, but when

Hon Kim Chance; Hon Dr Chrissy Sharp; Hon John Fischer; Hon Murray Criddle; Hon Bruce Donaldson; Hon Jim Scott; Hon Frank Hough; Chairman

a person is setting out deliberately to circumvent the law and is setting out to do something which really has an antisocial intent, it is necessary to be able to forestall some of the further illegal options that might be available to that person. In other words, for people trying to do the right thing, the Act is sufficient; for people not trying to do the right thing, we need some more persuasive powers.

Amendment put and negatived.

Clause, as amended, put and passed.

Clauses 7 to 15 put and passed.

Clause 16: Review of Act -

Hon MURRAY CRIDDLE: This clause provides for a review of the operations and effectiveness of the Act to be carried out five years after its commencement and a report tabled in Parliament. I intend, by a later amendment, to put in place a mechanism that would allow for both a review to take place and the Act to be terminated in 2008. Therefore, I will oppose this clause.

Hon BRUCE DONALDSON: The Opposition will be supporting the foreshadowed amendment of Hon Murray Criddle, and therefore will oppose this clause. It is probably not the normal process, but I have been in this place long enough to understand that a provision for a five-year review and the tabling of a report 12 months later has often resulted in an amendment Bill having to be passed very quickly when the review period has expired. The proposed amendment of Hon Murray Criddle will encourage the Government to undertake the review of the legislation prior to its sunset clause - that is effectively what the amendment will put in place - and, although it may not be the norm, it will ensure that this legislation is reviewed long before it expires.

Hon KIM CHANCE: Obviously, I support the question that this clause stand as printed. Hon Murray Criddle's argument against the clause will be built on by his proposed amendment 8/NC16. It is reasonable for the Committee to consider that Hon Murray Criddle is not arguing to defeat the purpose of a review in five years. He is arguing rather to put in a sunset date of 30 June 2008, which he will move to do at the appropriate time. To do that, it is necessary for clause 16 as printed to be defeated. It is a debateable matter, but I do not think there is a need for a preordained expiry date for this legislation. I made the comment earlier that there is no sunset date on this legislation, although there is a five-year review, which all legislation has these days. The Government's policy supports a five-year moratorium, but that does not mean that at the end of that period, or at any other time, such as 2008, all GM crops will be acceptable from the point of view of marketing risks. We should not take action that might lead people to believe that that is in our minds. With technology moving at the rate it does in this area, it is more than conceivable that the legislation may be needed for a period greater than five years. As drafted, the legislation will be reviewed after five years and, if it is found to be no longer required, it can be repealed at that point. Alternatively, amendments can be made, if needed. There is no risk in the legislation remaining on the statute books. Nothing will fall over as a result of the Act remaining on the statute books. The orders that flow from the Act give the Act teeth - not the Act itself.

Hon Christine Sharp: Indeed, minister!

Hon KIM CHANCE: I thank Hon Christine Sharp for reminding me of that. Even if no order is made, the Act will remain in place, in case it is needed, until it is clearly determined that it is no longer needed. I therefore support clause 16.

Hon JIM SCOTT: The Greens (WA) support the clause. The proposed amendment of Hon Murray Criddle, if passed, would leave the State in a very dangerous position. If certain crops were allowed into the State, the proposed amendment would remove a very good management tool and would expose the State to the open slather destruction of all non-GM crops. That would not be a sensible move. I vigorously oppose the deletion of the clause and support its retention as it is.

Hon FRANK HOUGH: One Nation supports the proposed amendment by Hon Murray Criddle. Good management and good forethought is most important in this matter. The amendment is just a management control tool. Everything must be done with good planning. I think the amendment has both, and One Nation will support it.

Hon CHRISTINE SHARP: I reiterate that I am completely opposed to a sunset clause. We may not get to that debate, if the Committee does not support Hon Murray Criddle's amendment, because a subsequent amendment would be inconsistent with the rest of the clause. I feel that I must put my view on the record. The notion of a review of the Act is a good and useful one. At the time of the review it may be determined to supplant the provisions in the clause with other provisions. However, I am totally opposed to a sunset clause, as I am totally opposed to the deregulation and implementation of GM crops, as they will leave the State in a completely unprotected position. It is absolutely critical that the State at all times retain provisions for a minister to make appropriate management decisions to protect our markets. This will ensure - if there must be GM crops - not

Hon Kim Chance; Hon Dr Chrissy Sharp; Hon John Fischer; Hon Murray Criddle; Hon Bruce Donaldson; Hon Jim Scott; Hon Frank Hough; Chairman

only that we properly work out the issues relating to segregation arrangements, liability for contamination, additional costs and who must bear them, but also that there is a way of ensuring the effectiveness of those management decisions and that they become part of the management system. If that does not happen, then, as Hon Jim Scott said, there will be open slather, which will certainly not be in the interests of the future of agriculture in Western Australia.

Hon MURRAY CRIDDLE: That is fine if we have the numbers in this place at that time. An Act can be changed readily by a sympathetic House. What happens in 2008 will depend entirely on the people who sit in not only this place but also the other place. Therefore, I do not see the relevance of the member's argument, because when we review the Act, obviously another mechanism will be put in place if the members of Parliament at that time think that is appropriate.

Hon JIM SCOTT: The problem with Hon Murray Criddle's position is that if the Bill has a sunset clause and the review is not completed, we will no longer have protection for non-GM growers. The problem is also that a sunset provision would enable another Government to discontinue the Act by stealth, without any debate in the community, and suddenly there would be open slather for GM crops. At least if we leave it as it is, the Government will need to have a debate and face up to the community, which does not want this to happen. Therefore, I believe that any Government that supported that position would disappear very quickly.

Hon MURRAY CRIDDLE: The second part of the amendment that I propose to move if this clause is defeated is that 12 months prior to the date, the minister shall undertake a review of the operation and effectiveness of the Act, and that report must be put before each House of the Parliament.

Hon KIM CHANCE: Hon Murray Criddle has made a point about the requirement that rests on the minister to undertake a review of the Act. It is not a requirement on the minister to reintroduce legislation. That is the problem. I concede that we are talking about another clause, but it is consequential, because if clause 16 were to fall over, we would get to this point. If we were to adopt the clause as proposed by Hon Murray Criddle, then at the appointed day the Act would fall over, unless we had introduced new legislation to replace it; and not only would the Act fall over, but also all the orders that were made under the authority of the Act would cease to have effect.

Hon Murray Criddle: That is exactly the situation now.

Hon KIM CHANCE: Yes, because we do not have legislation now. However, hopefully in 15 minutes we will agree to legislation that will enable the Government to issue those orders, and those orders will remain until they are removed, as will the legislation remain until the Parliament makes a conscious decision to remove it. In my view, that is the way it should be. I do not think we should impose on a future Government this sword of Damocles that on 30 June 2008 will fall and cut off any legislative power that the Government has to issue orders with regard to GMOs.

Clause put and passed.

New clauses 6 and 7 -

Hon KIM CHANCE: I move -

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 from the application of section 5(1) in relation to a field trial, or a class of field trial, specified in the order, other than a field trial covered by section 5(2).
- (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 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.

Hon Kim Chance; Hon Dr Chrissy Sharp; Hon John Fischer; Hon Murray Criddle; Hon Bruce Donaldson; Hon Jim Scott; Hon Frank Hough; Chairman

Penalty: \$200 000.

- (2) Proceedings for an offence under subsection (1) are to be dealt with by a court constituted by a magistrate.

New clause 6 deals with exemptions, and new clause 7 deals with breach of conditions of an exemption. The exemptions relate to the operation of an order prohibiting cultivation of a GM crop or crops. An exemption will be made by order and may be included in the designating order or be made subsequently, and may be made subsequent to conditions. This is to provide things to be done within the control of the Act under exemption and is a process that each member would be fairly familiar with under the fisheries law, whereby a general prohibition is made and then certain rules within that general order are permitted under an exemption order. It will allow for the ongoing technical development of biotechnology in the field. The amendment deals also with the insertion of new clause 7, which creates an offence of contravention of a condition to an exemption. This is as serious an offence as the cultivation of a GM crop in contravention of a designating order, because the effect of contravention could be just as grave or, indeed, identical. We will return to the amendments to clause 6, "Orders for destruction of genetically modified crops", because that refers to the postponed clause.

Hon CHRISTINE SHARP: I support the new clauses. I hope that a future minister will make good use of new clause 6, particularly because if such a minister were to issue an exemption, as opposed to revoke an order, the minister would find that, under proposed subclause (2), he or she would have the ability to specify conditions for exemptions. Under the two words "specified conditions", a future agriculture minister could do enormous amounts to ensure the safe and orderly use of any approved genetically modified crop.

New clauses put and passed.

Postponed clause 5: Offence -

Resumed from an earlier stage of the sitting after the clause had been amended.

Hon KIM CHANCE: I move -

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.

Amendment put and passed.

Postponed clause, as amended, put and passed.

New clause 8 -

Hon KIM CHANCE: I move -

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.

Hon Kim Chance; Hon Dr Chrissy Sharp; Hon John Fischer; Hon Murray Criddle; Hon Bruce Donaldson; Hon Jim Scott; Hon Frank Hough; Chairman

- (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.

Orders that a court might make on conviction of an offence against the Act are dealt with in new clause 8. It covers three types of orders a court can make, in addition to any penalty imposed. First, when the convicted person's crop is destroyed under the Act, the court may order that the cost of destroying the crop be paid by the convicted person. Secondly, when the cultivation of a GM crop by the convicted person results in another person's crop being a GM crop and being destroyed - this is an attempt to address the liability question - the court may order that any compensation paid for the loss of that crop is to be paid to the minister by the convicted person. This allows the State to recover from the person who caused another person's crop to be destroyed the amount of any compensation paid by the State to that other person. Thirdly, when the cultivation of a GM crop by the convicted person results in loss or damage being suffered or costs or expenses being incurred by another person, the court may order the convicted person to pay compensation for the loss or damage or an amount for or towards the costs or expenses.

New clause put and passed.

The CHAIRMAN: As the earlier review clause was carried, the amendment to insert new clause 16 cannot be moved as it would be inconsistent.

Title -

Hon KIM CHANCE: I move -

Page 1 - To delete "food".

Amendment put and passed.

Title, as amended, put and passed.

Bill reported, with amendments and an amendment to the title.

Sitting suspended from 5.58 pm to 7.30 pm