



SECOND SESSION OF THE THIRTY-SIXTH PARLIAMENT

**REPORT OF THE
STANDING COMMITTEE ON ENVIRONMENT
AND PUBLIC AFFAIRS
IN RELATION TO THE
GENE TECHNOLOGY BILL 2001 AND THE
GENE TECHNOLOGY AMENDMENT BILL 2001
*PROPOSAL TO TRAVEL***

Presented by Hon Christine Sharp MLC (Chairman)

Report 5
December 2002

STANDING COMMITTEE ON ENVIRONMENT AND PUBLIC AFFAIRS

Date first appointed:

May 24 2001

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

“3. Environment and Public Affairs Committee

- 3.1 An *Environment and Public Affairs Committee* is established.
- 3.2 The Committee consists of 7 members.
- 3.3 The functions of the Committee are to inquire into and report on -
 - (a) any public or private policy, practice, scheme, arrangement, or project whose implementation, or intended implementation, within the limits of the State is affecting, or may affect, the environment;
 - (b) any bill referred by the House;
 - (c) petitions.
- 3.4 The Committee, where relevant and appropriate, is to assess the merit of matters or issues arising from an inquiry in accordance with the principles of ecological sustainable development and the minimisation of harm to the environment.
- 3.5 The Committee may refer a petition to another committee where the subject matter of the petition is within the competence of that committee.
- 3.6 In this order “**environment**” has the meaning assigned to it under section 3(1), (2) of the *Environmental Protection Act 1986*.”

Members as at the time of this inquiry:

Hon Christine Sharp MLC (Chairman)	Hon Bruce Donaldson MLC
Hon Kate Doust MLC (Deputy Chairman)	Hon Frank Hough MLC
Hon Robyn McSweeney MLC	Hon Louise Pratt MLC
Hon Jim Scott MLC	

Staff as at the time of this inquiry:

Lisa Hanna, Advisory Officer (General)	Mark Warner, Committee Clerk
Stefanie Dobro, Advisory Officer (General)	

Address:

Parliament House, Perth WA 6000, Telephone (08) 9222 7222

website: <http://www.parliament.wa.gov.au>

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REPORT OF THE STANDING COMMITTEE ON ENVIRONMENT AND PUBLIC AFFAIRS

IN RELATION TO THE

GENE TECHNOLOGY BILL 2001 AND THE GENE TECHNOLOGY AMENDMENT BILL 2001

PROPOSAL TO TRAVEL

1 REFERENCE AND PROCEDURE

1.1 On June 26 2002, the Gene Technology Bill 2001 and the Gene Technology Amendment Bill 2001 (Bills) were referred to the Standing Committee on Environment and Public Affairs (Committee) by resolution of the Legislative Council (Council) pursuant to Standing Order 230A(3). Standing Order 230A ordinarily requires that the Committee report to the Council within 30 days of the first reading of the Bill.

1.2 The adjournment and subsequent prorogation of the Parliament on August 9 2002 resulted in the Bills lapsing from the Notice Paper together with the referral to the Committee. On August 14 2002, pursuant to Standing Order 230A(4), the Leader of the House, Hon Kim Chance MLC moved the following motion without notice:

That the Gene Technology Bill 2001 and Gene Technology Amendment Bill 2001 be referred back to the Standing Committee on Environment and Public Affairs and that it report not later than 30 June 2003.¹

1.3 Speaking to the motion for the reinstatement and re-referral of the Bills, and extended reporting date, Hon Kim Chance MLC explained why he had nominated a date as far ahead as June 30 2003 as the reporting date.

I concede that it might be a longer period than one would expect a committee's inquiries to take. Of course, the committee may report earlier if it so chooses. The Government is looking for the advice and guidance of this House and the standing committee on a highly contentious question. The last thing we want to do is put the committee under pressure through its reporting time. It is also possible...that the committee may wish to travel. Since such travel would be to the Northern Hemisphere, it seemed pointless to specify a

¹ Western Australia, *Parliamentary Debates (Hansard)*, Legislative Council, August 14 2002, p.49.

reporting date that would require the committee to travel in the northern winter, particularly if it were to somewhere like Canada...²

1.4 The motion was debated, receiving support from all Members who chose to speak, and passed.

2 TERMS OF REFERENCE ADOPTED BY THE COMMITTEE FOR THE INQUIRY

2.1 In order to define the scope of its inquiry into the Bills, on September 25 2002, the Committee resolved to adopt the following terms of reference:

(i) *The Standing Committee on Environment and Public Affairs is conducting an inquiry into and will report to the Legislative Council on the Gene Technology Bill 2001 and the Gene Technology Amendment Bill 2001 (Bills).*

(ii) *The Committee is also specifically considering the implementation of the proposed powers under section 21 of the Gene Technology Bill 2001 which may recognise State legislation designating areas for the purposes of preserving the identity of one or both of the following:*

(i) *GM crops;*

(ii) *non GM crops;*

for marketing purposes.

(iii) *The Committee's inquiries may also include a consideration of any other matters in relation to the regulation, use and impacts of genetically modified organisms in Western Australia.*

3 INSTRUCTION FROM THE HOUSE

3.1 On September 26 2002, the Legislative Council issued the following instruction to the Committee in its consideration of the Bills:

That it be an instruction to the Standing Committee on Environment and Public Affairs in relation to its consideration of the Gene Technology Bill 2001 and the Gene Technology Amendment Bill 2001 that, where it is of the opinion -

(a) that clause 21 of the Gene Technology Bill 2001 requires a more extensive examination than might otherwise be permitted by the clause as drafted, of the State's ability to designate areas of the State

² Ibid., p.50.

with the intent of identifying and maintaining GM crops; or non-GM crops, for the purpose of marketing;

(b) that collateral issues relating to the introduction into the State, and the subsequent regulation of the GMOs, have relevance in assessing the suitability of the regime provided for in the Bill(s),

the committee have power to include the matters referred to in paragraphs (a) and (b) within the scope and purpose of its inquiry and report on them in its report on the Bills or separately, whether before or after the date on which it is to report the Bills to the House.

4 THE COMMITTEE'S INQUIRY

The Bills

- 4.1 The Bills provide for Western Australia to enter a national regulatory scheme to regulate certain dealings with genetically modified organisms (GMOs) which will ensure uniform application of legislation throughout all jurisdictions of Australia.

Objective

- 4.2 The primary objective of the national regulatory scheme is to protect public health and the safety of people, and to protect the environment from risks associated with gene technology. Essentially, the system will operate by identifying and assessing risks posed by or as a result of, gene technology and by managing public health and environmental risks through regulation of dealings with GMOs.

National Scheme

- 4.3 The regulatory regime being established, in respect of some gene technology, comprises three components –
- the Gene Technology Agreement (GTA), which is an intergovernmental agreement;
 - the Ministerial Council; and
 - a national legislative scheme (comprising Commonwealth and complementary State legislation).
- 4.4 The purpose of the GTA is to facilitate a national gene technology regulation scheme and to ensure that it remains consistent over time. It underpins the national system for the regulation of GMOs and describes the roles and responsibilities of each jurisdiction. The GTA commits all governments to introduce substantially similar legislation in their own jurisdiction ('legislation' includes regulations).

- 4.5 The GTA also provides for the maintenance of a nationally consistent scheme, including a review of the scheme within four years and specific provisions as to the proposed amendment by any Party of any legislation that forms part of the scheme.
- 4.6 The Ministerial Council, comprising Ministers from the Commonwealth and each of the States and Territories, is established under the GTA, to provide broad oversight of the regulatory framework and guidance on matters of policy that underpin the legislation.
- 4.7 Both State and Commonwealth legislation is required to achieve a nationally consistent scheme that provides full regulatory coverage for gene technology. The *Gene Technology Act 2002* (Cth) (Commonwealth Act) is the principal Act in the national regulatory scheme. As a result of constitutional limitations, the Commonwealth Act does not provide full regulatory coverage for gene technology.
- 4.8 The Bills provide for the Western Australian component of the scheme and provide regulatory coverage where the Commonwealth legislation is unable to cover. This includes individuals, Western Australia government agencies and higher education institutions. The Commonwealth legislation regulates all imports, all activities by corporations or individuals engaged in interstate trade and commerce, and things done or not done by a person that may cause the spread of disease or pests.

Proposed State Legislation

- 4.9 The proposed State legislation is a package of two bills:
- a) Gene Technology Bill 2001. The purpose of the Gene Technology Bill 2001 is to establish the Western Australian component of a national scheme that regulates activities involving gene technology, and GMOs, by applying precisely the same system that applies under the Commonwealth Act, in those situations where the Commonwealth Act is constitutionally unable to reach.
 - b) Gene Technology Amendment Bill 2001. The purpose of the Gene Technology Amendment Bill 2001 is to enable annual charges to be levied on licences authorising certain dealings with GMOs. This Bill deals with matters that involve consideration of section 46(7) of the *Constitution Acts Amendment Act 1899* (the imposition of taxation).

Regulation of GMOs

- 4.10 The Gene Technology Bill 2001 will regulate certain dealings with GMOs that are currently not regulated under existing regulatory systems, primarily through a licensing system. The definition of dealings is extremely broad, and covers the entire life cycle of GMOs, from laboratory experiments, growth, research, development, production or manufacture of GMOs, use of GMOs to manufacture GM products, possession, transport and disposal of trash, commercial release and import.

4.11 As well as dealings in GMOs, the scheme covers some genetically modified (GM) products (for example, stock feed derived from a GM crop such as cotton) not regulated by an existing regulatory agency. The regulatory framework is designed to operate in conjunction with other existing State, Territory and Commonwealth regulatory schemes relevant to GMOs or GM products such as food, therapeutic goods, agricultural, veterinary, and industrial chemicals.³

What does the Gene Technology Bill 2001 do?

4.12 The Gene Technology Bill 2001:

- a) provides for an independent national Gene Technology Regulator (Regulator) to assess scientifically dealings in gene technology;
- b) establishes a series of consultative committees to provide advice on gene technology to the Regulator and the Ministerial Council;
- c) prohibits persons from dealing with GMOs (for example: research, manufacture, production, commercial release and import) unless the dealing is exempt, a specified low risk dealing on the Register of GMOs or licensed by the Regulator;
- d) establishes a scheme to assess the risks to human health and the environment associated with various dealings with GMOs, including opportunities for public input;
- e) provides for monitoring and enforcement of the legislation; and
- f) provides for a centralised, publicly available database of all GMOs and GM products approved in Australia.

Term of Reference (ii)

4.13 A key focus of the Committee's inquiry is examining the extent to which Western Australia will be able to regulate its dealings with GMOs, within the constraints of the uniform scheme.

4.14 Section 21 of the Gene Technology Bill 2001 provides the mechanism for the State to declare GM and/or non-GM zones for marketing purposes. Specifically, that the Ministerial Council may issue a policy principle which will enable the State, by regulation (under a law of Western Australia), to designate certain areas to be GM and/or non-GM, for the purpose of preserving the identity of GM crops and/or non-GM crops for marketing purposes.

³ Gene Technology Bill 2000, Bills Digest 11 2000-01, Parliament of Australia, Library, p.8.

- 4.15 The Committee is concerned to inform the Parliament of the issues that will affect the ability of the State to best protect its interests, and in particular, on issues relating to the use of GM crops in Western Australia. These include identity preservation and segregation systems, the management of risks associated with the co-existence of GM and non-GM crops (including organic or 'GM-free' crops), and related marketability issues.
- 4.16 The ability to have GM-free or non-GM zones co-exist with GM zones requires careful consideration, research, planning, and oversight. This is of particular import in relation to the marketing of Western Australian products, particularly non-GM or GM-free products. The tainting of non-GM or GM-free products by GMOs could compromise Western Australia's ability to retain its markets.

Other issues for consideration

- 4.17 The Committee, in its inquiry, will also be examining a number of collateral issues relating to the introduction into the State, and the subsequent regulation of GMOs. These include legal liability, compensation and cost issues.

5 THE COMMITTEE'S APPROACH TO THE INQUIRY

- 5.1 Given that the Committee's reporting dates have changed, and the Committee's terms of reference have broadened since the initial referral of the Bills, the Committee has undertaken a two stage public consultation process.

Stage One

- 5.2 On July 6 2002, the Committee advertised for written submissions in *The West Australian* newspaper. Details of the inquiry were also placed on the parliamentary website.
- 5.3 The Committee wrote to individuals and groups that were identified as having a particular interest or specialist knowledge in matters which are the subject of the Bills, seeking written submissions addressing the terms of reference for the inquiry.
- 5.4 The initial deadline for submissions was August 6 2002.

Stage Two

- 5.5 Upon re-referral the Committee again wrote to individuals and groups that were identified as having a particular interest or specialist knowledge in matters which are the subject of the Bills, seeking written submissions addressing the terms of reference for the inquiry. A response was requested by September 20 2002.

5.6 On October 5 2002, the Committee again advertised, for written submissions and seeking expressions of interest from those wishing to make oral submissions on the terms of reference for the inquiry, in the following newspapers:

- a) *The West Australian*
- b) *Countryman*
- c) *Kimberley Echo*
- d) *South West Times*
- e) *Northern Guardian*
- f) *Geraldton Guardian*
- g) *Great Southern Herald*
- h) *Esperance Express*

5.7 The deadline for submissions was November 1 2002. The Committee has continued to receive submissions subsequent to the deadline from those who have requested an extension of time in which to make a submission.

5.8 To date the Committee has received 50 submissions and has conducted public hearings.

6 GM CROPS IN AUSTRALIA

6.1 At present in Australia, the only genetically modified broad-acre crop currently being planted is cotton.⁴ Grain crops such as canola have been trialled and there is currently an application for the commercial release into the environment of GM canola before the Gene Technology Regulator (Regulator). (In July, Monsanto lodged the first application for a GM food crop with its bid to obtain the commercial release of its 'Roundup Ready' canola.)⁵

6.2 In Western Australia there has been no commercial release of any GM crops to date.

⁴ Cotton is to some extent a 'food crop', as cottonseed oil is a product extracted from cotton crops, including GM cotton crops.

⁵ See SBS video on the Canadian Saskatchewan farmer Percy Schmeiser. ABC Online 'Percy faces the Goliath of GM canola', July 5, 2002. <http://abc.net.au/news/indepth/featureitems/s599662.htm>

7 GM CROPS OVERSEAS

- 7.1 GM crops were first introduced commercially, in the United States, in 1996.⁶ Today, there are over 50 million hectares of GM crops grown in the world, by 13 countries.⁷ The United States (70%), Argentina (14%) and Canada (9%) are the major producers, but other countries such as China are increasing GM planting. The main crops planted are soybean (53%), maize (27%), cotton (9%) and oilseeds (8%).⁸
- 7.2 Currently, crops are genetically modified to render them resistant to particular herbicides, so that the herbicides can still be applied to the field while the crop plants are growing, or to produce an insecticide, the toxin from the bacteria *Bacillus thuringiensis*, to make the crop resistant to insect attack.
- 7.3 The overseas acceptance of GMOs by regulators, and its take up by producers, is substantially greater than that experienced to date in Australia. In 2000, worldwide, 11% of the 25 million hectares planted to canola were GM crops. Nearly all of this was grown in Canada. Canada, as the second largest producer of canola in the world, has embraced GM canola. Seventy percent of Canada's canola crop is GM with the herbicide tolerant trait.⁹
- 7.4 The United States, as the single largest producer of GM crops in the world, has similarly embraced gene technology.

8 REQUIREMENT TO TRAVEL

Rationale

- 8.1 The Bills raise issues of a highly complex and often contentious nature. The regulation of genetically modified organisms will ultimately have a long-term impact on the State of Western Australia, the Western Australian economy and Western Australians.
- 8.2 The Committee's inquiry into the Bills cannot be undertaken effectively without hearing the views of key stakeholders working in the field, in an environment that is already quite different to Australia. Similarly, it is appropriate for the Committee to meet with representatives from Western Australia's largest export markets to inform itself of their views on the issue of genetically modified products.
- 8.3 The Committee therefore proposes to travel to Japan and to North America.

⁶ Department of Agriculture, Western Australia, *International Market Trends for Genetically Modified Crops*, February 2002.

⁷ Ibid.

⁸ http://europa.eu.int/comm/dgs/health_consumer/newsletter/200109s1/09_en.htm

⁹ Department of Agriculture, Western Australia, *International Market Trends for Genetically Modified Crops*, February 2002.

Travel to Japan

- 8.4 Japan is clearly one of the most important markets for Western Australia's cereals and oilseed exports. It is the third largest market for our wheat exports (\$222 million), the largest market for barley (\$129.3 million), oats (\$5.9 million) and canola (170,000 tonnes). In relation to beef production, Japan is the third largest export market for Western Australian beef (\$10 million). Japan is also the second largest market for Western Australian dairy exports (\$8 million) after Singapore (\$15 million). In terms of vegetables, Japan is the third largest market for Western Australian vegetable exports (\$10 million) after Malaysia (\$37 million) and Singapore (\$21 million). Japan is also the largest market for Western Australian fish exports (approximately \$240 million) and crustaceans (\$150 million).¹⁰
- 8.5 The Committee seeks to explore the views of Japanese consumers and retailers in relation to marketing of GM, non-GM and GM free products.

Travel to North America

- 8.6 At present, only GM cotton and GM carnations have received approval from the Regulator for commercial release.¹¹ Requests for the commercial release of other GM products are currently before the Regulator, and field trials are currently being conducted at locations around Australia and Western Australia.¹²
- 8.7 By contrast, Canada and the United States are much further down the road of gene technology than Australia. Both countries have approved and are currently planting genetically modified crops, including canola, cotton, soya beans and maize. Being significantly further down the gene technology path, these countries offer Australia great insight into the experience of gene technology in practice. They have or are currently experiencing the benefits as well as the unforeseen consequences of the planting of GM crops. They offer to Western Australia the knowledge of hindsight.
- 8.8 The Committee would like to learn first hand of the Canadian and American experiences in the area of genetically modified organisms, particularly crops. It is the Committee's intention to visit several areas and meet with scientists, legislators, peak organisation representatives, including farmers and consumers, government representatives and regulators, with a view to gaining much greater insight into the experience, benefits and consequences of the use of gene technology.

¹⁰ All figures are taken from the following publication: Department of Agriculture, *Western Australia's Agricultural, Food & Fisheries Industries 2000-2001: Market Information for investors, traders and businesses* 2001.

¹¹ <http://www.ogtr.gov.au/gmorec/grlist.htm> - The Genetic Manipulation Advisory Committee (GMAC) considered nine applications for the general, commercial release of a GMO in Australia. It approved only four of these applications.

¹² <http://www.ogtr.gov.au/ir/dirs.htm#eval>

8.9 The Committee proposes to travel to farming areas including Saskatchewan and Manitoba in Canada as well as the centres of federal regulation in both Canada (Ottawa, Ontario) and the United States (Washington, DC). The Committee's objective is to obtain significant first hand information in relation to the key issues of regulation, cross-pollination, liability, marketing, and risk management/risk minimisation from representatives across a wide spread of groups.

Cost and Benefit of Travel

8.10 The Committee is aware that such travel comes at a cost to the State, and it does not act lightly in putting forward a request to travel. In this instance, the Committee is of the view that it would be remiss to report back to the House on the implications of these Bills to the State without speaking directly with those who are the purchasers of our exports and those who are working in an environment where the planting of genetically modified crops has already been in place for several years.

8.11 The Committee also highlights the remarks of the Leader of the House, Hon Kim Chance MLC in reinstating the Bills that -

*The Government is looking for advice and guidance of this House and the standing committee on a highly contentious question.*¹³

8.12 The Committee is confident that there is considerable benefit to be gained from the proposed travel and that, as a consequence, it will be able to present to the House a highly informed report on the Bills and collateral issues.

9 PARTICIPANTS IN THE PROPOSED TRAVEL

9.1 At this stage, all committee members have indicated that they will be travelling with the committee. Two staff members will also be required to assist the committee.

9.2 A draft proposed itinerary is attached as **Appendix 1**.

9.3 The estimated costings for the proposed travel are set out at **Appendix 2**.

Recommendation 1: The Committee recommends that the Legislative Council give its approval to the Committee to seek funds from the Clerk for the purpose of undertaking the travel set out in this report.



Hon Christine Sharp MLC
Chairman

Date: December 5 2002

¹³ Western Australia, *Parliamentary Debates (Hansard)*, Legislative Council, August 14 2002, p.50.

APPENDIX 1

PROPOSED ITINERARY

It is the Committee's intention, at this stage, to travel between April 20 - May 3 2003.

The Committee intends to investigate the following issues relating particularly to the marketing and marketability of gene technology products:

- Cross-pollination (including storage and transport)
- Liability in relation to contamination of non-GM by GM crops
- Regulation of GMOs
- Management of risks

The Committee's objective is to meet with representatives of the following groups:

- Scientists
- Farmers
- Legislators
- Regulators
- Government representatives
- Marketers
- Retailers
- Consumers

JAPAN

Tokyo

Ito Yokado Co Ltd
Japan Retailers Association
Japanese Consumer Co-operative Union
Jusco Co Ltd
Kobe Co-op
The Daiei Inc., Food Import Section
Western Australian Government Office

CANADA

Ottawa, Ontario

Agriculture Institute of Canada
Canadian Bio-technology Advisory Committee
Canadian Food Inspection Agency

Canadian Seed Growers Association
Department of Agriculture and Agri-Food Canada
Department of Environmental Protection
Health Canada
House of Commons Standing Committee on Agriculture and Agri-Food
Office of Food Biotechnology

Winnipeg, Manitoba

Agri-Food Canada Research Branch
University of Manitoba
Canadian Grain Commission
Canadian Wheat Board
Manitoba Pulse Growers Association

Saskatoon, Saskatchewan

Ag-West Bio-tech Inc
Canadian Canola Council
Saskatchewan Agriculture and Food
Saskatchewan Canola Development Commission
Saskatchewan Organic Directorate
Saskatchewan Wheat Pool
National Farmers Union
University of Saskatchewan

Edmonton, Alberta

University of Alberta
Alberta Agriculture

UNITED STATES

Washington

International Centre for Technology Assessment (Mr Andrew Kimbrell)
Food and Drug Administration (Dr Michael Hansen)
Genetic ID, Dr John Fagan
National Farmers Federation
Professor Charles Bembrook, Agricultural Economist
Professor Sheldon Krinsky, Tufts University Massachusetts
US Department of Agriculture

APPENDIX 2
ESTIMATED COSTINGS

Flights (9people x \$10,000)	\$90,000
Accommodation/Meals (9 people x 14 days up to \$320)	\$40,320
Incidentals (9 people x 14 days x \$60)	\$ 7,560
Taxi/Car	\$ 2,000
Float	<u>\$ 1,000</u>
TOTAL COST	<u>\$140,880¹⁴</u>

¹⁴ The Committee notes the strength of the Australian dollar will affect the total travel expenses.