

New South Wales

Gene Technology (GM Crop Moratorium) Amendment Bill 2007

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Gene Technology (GM Crop Moratorium) Act 2003* (the **Principal Act**):

- (a) to postpone the expiry of the Principal Act from 3 March 2008 to 1 July 2011, and
- (b) to restate the objects of the Principal Act, and
- (c) to replace provisions of the Principal Act relating to the making of moratorium orders to prohibit the cultivation of GM food plants with a blanket moratorium on the commercial cultivation of genetically modified food plants (**GM food plants**) except as permitted under the Principal Act, and
- (d) to establish a scheme for approving a GM food plant or class of GM food plant for commercial cultivation in New South Wales but only if:
 - (i) a GMO licence is in force under the *Gene Technology Act 2000* of the Commonwealth which authorises dealings of the kind necessary for the commercial cultivation of the GM food plant or GM food plants of that class, and

- (ii) the industry or sector of the industry that deals with that GM food plant or class of GM food plants meets defined criteria, and
- (e) to provide for the establishment of an Expert Committee (in place of the Advisory Council presently established under the Principal Act) to provide advice on whether industries or sectors of industry dealing with GM food plants meet those defined criteria, and
- (f) to make various transitional and consequential provisions.

The Bill also amends the *Gene Technology (New South Wales) Act 2003* (the **NSW Act**). At present, section 5 of the NSW Act applies the *Gene Technology Act 2000* of the Commonwealth (the **Commonwealth Act**) and certain other Commonwealth gene technology laws as laws of New South Wales and automatically applies any amendments to those Commonwealth laws as laws of this State. Section 6 (1) of the NSW Act modifies the Commonwealth Act as applied to prohibit the Regulator from granting a licence for a dealing that would involve an intentional release of a GMO into the New South Wales environment if the dealing is in contravention of a moratorium order made under the Principal Act. Section 6 (2) and (3) of the NSW Act enable regulations to be made modifying the Commonwealth laws as applied. The Bill omits section 6 (1) as a consequence of the proposed amendment of Division 1 of Part 2 of the Principal Act described above. It also omits section 6 (2) and (3) so that New South Wales will no longer be able to modify by regulations the Commonwealth gene technology laws as automatically applied. It also makes consequential amendments to sections 4 and 5 of the NSW Act.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act (other than Schedule 1 [16] which is to commence on the date of assent), on a day or days to be proclaimed.

Clause 3 is a formal provision that gives effect to the amendments to the *Gene Technology (GM Crop Moratorium) Act 2003* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Gene Technology (New South Wales) Act 2003* set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Gene Technology (GM Crop Moratorium) Act 2003 No 12

Objects of Principal Act

Schedule 1 [1] replaces section 3 of the Principal Act so as to restate the objects of that Act.

Moratorium on commercial cultivation of licensed GM food plants

Section 6 of the Principal Act currently enables the Minister to make moratorium orders prohibiting the cultivation in New South Wales of a specified GM food plant or class of GM food plants. Section 7 makes it an offence to contravene such an order. Section 8 enables the Minister to make orders conferring exemptions from the operation of moratorium orders.

Schedule 1 [6] replaces sections 6 and 7 of the Principal Act with proposed sections 6–7A.

Proposed section 6 imposes a blanket moratorium prohibiting the cultivation in New South Wales of certain GM food plants that are licensed to be dealt with by the *Gene Technology Act 2000* of the Commonwealth unless the GM food plants have been approved for commercial cultivation by the Minister for Primary Industries, or cultivation of the GM food plants for the principal purpose of conducting experiments is permitted by an exemption, under the Principal Act. Proposed section 7 makes it an offence to contravene this blanket prohibition.

Proposed section 7A sets out a scheme for the Minister to approve the commercial cultivation of a licensed GM food plant in all or part of New South Wales by an order published in the Gazette made on the application by a representative of the relevant industry involved in or proposing to be involved in the commercial cultivation of the GM food plant. An order may only be made if certain criteria set out in proposed section 7A (3) are met by the relevant industry and the Minister must take into account whether or not the GM food plant is authorised or permitted to be cultivated in another State or Territory. The criteria must be addressed in the application for the making of the order and the Minister may only make the order if satisfied, on the advice of an Expert Committee, that the industry meets the requirements.

Schedule 1 [2]–[5], [7]–[9] and [11]–[15] make consequential amendments.

Expert Committee

Section 13 of the Principal Act currently establishes and makes provision for a New South Wales Agricultural Advisory Council on Gene Technology (the *Advisory Council*). The Advisory Council has various functions, including giving the Minister advice on various matters relating to GM food plants and making recommendations as to whether the Minister should make exemption orders.

Schedule 1 [10] omits section 13 and replaces it with proposed section 13 which establishes the New South Wales Expert Committee on Gene Technology (the *Expert Committee*) in place of the Advisory Council. The Expert Committee has

such functions as are conferred or imposed on it by or under the Principal Act or by the Minister and, in particular, has the function of evaluating and providing advice to the Minister as to whether an industry meets the criteria that must be met before an order approving the commercial cultivation of a licensed GM food plant is made. The Expert Committee is to consist of persons appointed by the Minister to represent food plant industries or who have appropriate expertise, qualifications and experience that will enable them to make a valuable contribution to the Expert Committee. **Schedule 1 [10]** also inserts proposed sections 13A and 13B to provide for confidentiality of information obtained by the Expert Committee and for disclosure by Committee members of direct or indirect pecuniary interests in matters considered or about to be considered at meetings of the Committee that may raise conflicts of interest.

Expiry of Principal Act

Schedule 1 [16] amends section 43 of the Principal Act to postpone the expiry of that Act from 3 March 2008 to 1 July 2011.

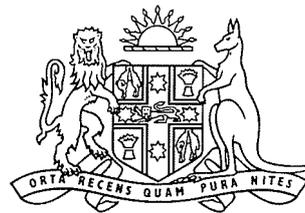
Savings, transitional and other provisions

Schedule 1 [17] enables the making of regulations of a savings and transitional nature.

Schedule 1 [18] provides for the existing members and independent chairperson of the Advisory Council to continue in office as members and chairperson of the Expert Committee.

Schedule 2 Amendment of Gene Technology (New South Wales) Act 2003 No 11

Schedule 2 makes the amendments to the *Gene Technology (New South Wales) Act 2003* described in the Overview.



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New South Wales

Gene Technology (GM Crop Moratorium) Amendment Bill 2007

No. , 2007

A Bill for

An Act to amend the *Gene Technology (GM Crop Moratorium) Act 2003* to make further provision with respect to cultivation in New South Wales of licensed GM food plants and to extend the operation of that Act; to amend the *Gene Technology (New South Wales) Act 2003* with respect to the application of Commonwealth gene technology laws in this State; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Gene Technology (GM Crop Moratorium) Amendment Act 2007</i> .	3 4
2 Commencement	5
(1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).	6 7
(2) Schedule 1 [16] commences on the date of assent to this Act.	8
3 Amendment of Gene Technology (GM Crop Moratorium) Act 2003 No 12	9
The <i>Gene Technology (GM Crop Moratorium) Act 2003</i> is amended as set out in Schedule 1.	10 11
4 Amendment of Gene Technology (New South Wales) Act 2003 No 11	12
The <i>Gene Technology (New South Wales) Act 2003</i> is amended as set out in Schedule 2.	13 14
5 Repeal of Act	15
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	16 17
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	18 19

Schedule 1	Amendment of Gene Technology (GM Crop Moratorium) Act 2003 No 12	1
		2
	(Section 3)	3
[1] Section 3		4
	Omit the section. Insert instead:	5
	3 Object of Act	6
	The object of this Act is to establish a regime to regulate:	7
	(a) the commercial cultivation of licensed GM food plants,	8
	and	9
	(b) the conduct of experiments on licensed GM food plants,	10
	in New South Wales for marketing purposes.	11
[2] Section 4 Definitions		12
	Omit the definitions of <i>Advisory Council</i> and <i>moratorium order</i> from section 4 (1).	13
		14
[3] Section 4 (1)		15
	Insert in alphabetical order:	16
	<i>approved GM food plant</i> means a GM food plant approved for commercial cultivation under section 7A.	17
		18
	<i>deal with</i> , in relation to a GM food plant, has a meaning that corresponds to <i>deal with</i> , in relation to a GMO, under the <i>Gene Technology Act 2000</i> of the Commonwealth.	19
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		21
	<i>Expert Committee</i> means the New South Wales Expert Committee on Gene Technology established under section 13.	22
		23
	<i>GMO licence</i> has the same meaning as it has in the <i>Gene Technology Act 2000</i> of the Commonwealth.	24
		25
	<i>licensed GM food plant</i> means a GM food plant in respect of which a GMO licence is in force authorising dealings with the GM food plant that are inherently necessary for commercial cultivation of the GM food plant.	26
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	<i>non-GM food plant</i> means a food plant that is not a GM food plant.	30
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	<i>relevant industry</i> , in relation to a licensed GM food plant or class of licensed GM food plants, means an industry or sector of an industry dealing with or proposing to deal with the licensed GM food plant or class of licensed GM food plants.	32
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		34
		35

[4] Part 2, heading	1
Omit the heading. Insert instead:	2
Part 2 Moratorium on commercial cultivation of GM food plants	3
	4
[5] Part 2, Division 1, heading	5
Omit the heading. Insert instead:	6
Division 1 Moratorium	7
[6] Sections 6, 7 and 7A	8
Omit sections 6 and 7. Insert instead:	9
6 Moratorium on commercial cultivation of licensed GM food plants	10
The cultivation in New South Wales of a licensed GM food plant is prohibited unless:	11
	12
(a) the GM food plant has been approved for commercial cultivation under section 7A, or	13
	14
(b) cultivation of the GM food plant is permitted by an exemption order under section 8.	15
	16
7 Offence of contravening prohibition on commercial cultivation of licensed GM food plants	17
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A person who cultivates a plant that is a GM food plant in contravention of section 6 knowing, or being reckless as to whether, the plant is a licensed GM food plant is guilty of an offence.	19
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Maximum penalty: in the case of a corporation, 1,250 penalty units or, in any other case, 500 penalty units or imprisonment for 2 years, or both.	23
	24
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7A Approval of licensed GM food plants for commercial cultivation	26
(1) On application by a representative of a relevant industry the Minister may, by order published in the Gazette, declare that a specified licensed GM food plant, or class of licensed GM food plants, is approved for commercial cultivation in all or part of New South Wales.	27
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(2) The application must:	32
(a) be made in writing, and	33

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- (b) address the criteria specified in subsection (3), and 1
- (c) be accompanied by the fee (if any) prescribed by the regulations, and 2
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- (d) be supported by documentation verifying the applicant's status as a representative of the relevant industry concerned. 4
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6
- (3) The Minister must not make a declaration under this section unless the Minister is satisfied that the relevant industry meets the following criteria: 7
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- (a) the relevant industry has adequately identified the requirements demanded by key domestic and international markets for the GM food plant, 10
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- (b) the relevant industry has identified the threshold levels for the accidental or unintended presence of GM traits in food plants that are acceptable in those key domestic and international markets, 13
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- (c) the relevant industry has, or is capable of having, supply chain management processes in place that adequately address those requirements, including (if it is a market requirement that GM food plants and non-GM food plants be segregated) processes to segregate GM food plants and non-GM food plants, 17
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- (d) any approvals or any other form of authorisation required by or under any law of the key domestic or international markets relating to the importation of GM food plants have been, or can be, obtained, 23
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- (e) the relevant industry meets any other criteria prescribed by the regulations. 27
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- (4) Before making a declaration under this section, the Minister must request the Expert Committee to provide advice (not later than 28 days after the request) in relation to whether or not: 29
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- (a) the relevant industry meets the criteria referred to in subsection (3), and 32
33
- (b) the GM food plant is authorised or permitted to be cultivated in another State or a Territory under a law of that State or Territory, 34
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- and must take into account any advice provided by the Expert Committee before the end of that 28 day period (the *initial request period*). 37
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Schedule 1 Amendment of Gene Technology (GM Crop Moratorium) Act 2003 No 12

(5)	The Minister must (subject to subsections (6) and (7)) determine the application for a declaration within 14 days after the end of the initial request period (the <i>initial determination period</i>).	1 2 3
(6)	At any time before the end of the initial determination period, the Minister may request the Expert Committee to provide, within 14 days (the <i>further request period</i>), further advice or information on the matters concerned.	4 5 6 7
(7)	The Minister must (irrespective of whether or not the Expert Committee has provided the further advice or information as requested) determine the application not later than 14 days after the end of the further request period.	8 9 10 11
(8)	Subsection (4) does not limit the factors that the Minister may take into account in deciding whether or not to make a declaration under subsection (1).	12 13 14
(9)	An order under this section in relation to a licensed GM food plant is automatically revoked if the GMO licence in respect of the GM food plant is suspended or cancelled by the Regulator under the <i>Gene Technology Act 2000</i> of the Commonwealth.	15 16 17 18
(10)	An order under this section may be revoked by the Minister only if the Minister is satisfied, after consulting with and taking into account any advice of the Expert Committee, that the relevant industry concerned no longer meets one or more of the criteria referred to in subsection (3).	19 20 21 22 23
(11)	The Minister's determination of, or failure or refusal to determine, an application or decision to revoke an order under this section may not be challenged, reviewed, quashed or called into question before any court of law or administrative review body in any proceedings or restrained, removed or otherwise affected by any proceedings.	24 25 26 27 28 29
[7]	Section 8 Exemptions from operation of section 6	30
	Omit "a moratorium order" from section 8 (1).	31
	Insert instead "section 6 to permit the cultivation of a licensed GM food plant for the principal purpose of conducting experiments".	32 33
[8]	Section 8 (2)–(5), (6B) and (8)	34
	Omit the subsections.	35
[9]	Section 8 (7)	36
	Omit "a moratorium order". Insert instead "section 6".	37

[10] Sections 13–13B	1
Omit section 13. Insert instead:	2
13 Expert Committee on Gene Technology	3
(1) The Minister is to establish a New South Wales Expert Committee on Gene Technology.	4 5
(2) The Expert Committee is to consist of those persons who represent food plant industries, or who have other appropriate expertise, qualifications or experience that the Minister considers will enable them to make a valuable contribution to the Committee, as are appointed as members of the Committee by the Minister from time to time.	6 7 8 9 10 11
(3) One of the members is to be appointed, in and by the instrument by which the member is appointed, as the independent chairperson of the Expert Committee.	12 13 14
(4) A person appointed by the Minister under this section holds office for the term specified in the instrument of appointment but may be removed from office at any time by the Minister.	15 16 17
(5) The Expert Committee has such functions as are conferred or imposed on it by or under this Act or by the Minister.	18 19
(6) In particular, the Expert Committee has the function of evaluating and providing advice and information (if requested to do so by the Minister) on the matters referred to in section 7A within the periods specified in that section.	20 21 22 23
(7) A member of the Expert Committee is entitled to such allowances in connection with the work of the Expert Committee as the Minister approves in respect of the member.	24 25 26
(8) Subject to the regulations and any directions of the Minister, the Expert Committee is to regulate its own procedure for the calling of meetings and the conduct of its business.	27 28 29
13A Confidentiality	30
A member of the Expert Committee must not disclose information obtained in connection with the carrying out of the Committee's functions under section 13 except in any one or more of the following circumstances:	31 32 33 34
(a) with the consent of the person from whom the information was obtained,	35 36
(b) in connection with the carrying out of those functions,	37

(c)	in accordance with a requirement imposed by or under a law of the State (other than a requirement imposed by a subpoena or other compulsory process) or the Commonwealth.	1 2 3 4
	Maximum penalty: 10 penalty units or imprisonment for 3 months, or both.	5 6
13B	Disclosure of pecuniary interests	7
(1)	If:	8
(a)	a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Expert Committee, and	9 10 11
(b)	the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,	12 13 14
	the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Expert Committee.	15 16 17
(2)	A disclosure by a member at a meeting of the Expert Committee that the member:	18 19
(a)	is a member, or is in the employment, of a specified company or other body, or	20 21
(b)	is a partner, or is in the employment, of a specified person, or	22 23
(c)	has some other specified interest relating to a specified company or other body or to a specified person,	24 25
	is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subsection (1).	26 27 28 29
(3)	Particulars of any disclosure made under this section must be recorded by the Expert Committee in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee (if any) determined by the Expert Committee.	30 31 32 33 34
(4)	After a member has disclosed the nature of an interest in any matter, the member must not, unless the Expert Committee otherwise determines:	35 36 37
(a)	be present during any deliberation of the Expert Committee with respect to the matter, or	38 39

	(b) take part in any decision of the Expert Committee with respect to the matter.	1 2
	(5) For the purposes of the making of a determination by the Expert Committee under subsection (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:	3 4 5 6
	(a) be present during any deliberation of the Expert Committee for the purpose of making the determination, or	7 8
	(b) take part in the making by the Expert Committee of the determination.	9 10
	(6) A contravention of this section does not invalidate any decision of the Expert Committee.	11 12
[11]	Part 2, Division 2, heading	13
	Omit “orders”.	14
[12]	Section 14 Minister’s directions	15
	Omit “specified in a moratorium order” from section 14 (1) (a).	16
[13]	Section 14 (1) (b)	17
	Insert “is not an approved GM food plant or” after “tested plant”.	18
[14]	Section 20 Offence—disposal of offending plants	19
	Omit “a moratorium order” wherever occurring.	20
	Insert instead “section 6”.	21
[15]	Section 21 Offence—failure to report contravention of section 6	22
	Omit “a moratorium order” wherever occurring in section 21 (1) and (2) (e).	23
	Insert instead “section 6”.	24
[16]	Section 43 Expiry of Act	25
	Omit “3 March 2008”. Insert instead “1 July 2011”.	26
[17]	Schedule 1 Savings, transitional and other provisions	27
	Insert at the end of clause 1 (1):	28
	<i>Gene Technology (GM Crop Moratorium) Amendment Act 2007</i>	29

[18] Schedule 1, Part 4	1
Insert after Part 3:	2
Part 4 Provisions consequent on enactment of Gene Technology (GM Crop Moratorium) Amendment Act 2007	3 4 5
4 Definition	6
In this Part:	7
<i>amending Act</i> means the <i>Gene Technology (GM Crop Moratorium) Amendment Act 2007</i> .	8 9
5 Former members of the Advisory Council	10
(1) The Advisory Council established under section 13 as in force immediately before its substitution by the amending Act is taken, on that substitution, to be the Expert Committee.	11 12 13
(2) Subject to section 13, the members that constituted the Advisory Council hold office as members of the Expert Committee for the remainder of the term for which they were appointed as members of the Advisory Council.	14 15 16 17
(3) Subject to section 13, the person who held office as the independent chairperson of the Advisory Council immediately before the substitution of section 13 by the amending Act is taken to be the independent chairperson of the Expert Committee.	18 19 20 21
6 Orders	22
(1) The moratorium orders made under section 6, as in force immediately before its substitution by the amending Act, are repealed on that substitution.	23 24 25
(2) Exemption orders Numbers 7 and 8 (published in Government Gazette No 147 of 1.12.2005 at pages 9857 and 9858, respectively) are taken, on the amendment of section 8 (1) by the amending Act, to have been made under section 8 (1) as amended and to permit the cultivation of the exempt GM food plants concerned subject to the conditions specified in the orders.	26 27 28 29 30 31

Schedule 2	Amendment of Gene Technology (New South Wales) Act 2003 No 11	1
		2
	(Section 4)	3
[1] Section 4 Definitions		4
	Omit “, including any modification under section 6” from the definition of <i>applied provisions</i> in section 4 (1).	5
		6
[2] Section 4 (1)		7
	Omit the definition of <i>modifications</i> .	8
[3] Section 5 Application of Commonwealth gene technology laws to this State		9
		10
	Omit “and as modified by or under this Act” from section 5 (1).	11
[4] Section 6 Modification of Commonwealth gene technology laws		12
	Omit the section.	13