

Submission on the Gene Technology Amendment Bill 2007 13 April 2007

Introduction

Thank you for the opportunity to register concerns regarding the Gene Technology Amendment Bill 2007 (“Amendment”). Greenpeace believes that the Amendment should not move forward, as written, in order to protect Australians from the abuse of Ministerial power associated with Part 5A – ‘Emergency Dealing Determinations’; dangerous omissions contained within the Amendment; and alterations of the original Gene Technology Act 2000 (“Act”). Greenpeace is particularly concerned about Part 5A of the Amendment. This gives the Minister unilateral powers to approve the release of GMOs, in cases where the Minister is satisfied that there is an imminent threat, which Greenpeace believes fall outside the scope of the Act.

Greenpeace is also extremely concerned about alterations and omissions that reduce the potential for public consultation regarding the Government’s policy on genetically modified organisms (GMOs). These include removing both the requirement for public consultation in dealings that may pose significant risks to the health and safety of people or the environment and the requirement to consult the States and other parties regarding the field testing of genetically engineered (GE) crops. The proposed merger of the Gene Technology Community Consultative Committee and the Gene Technology Ethics Committee to create the Ethics and Community Committee would further reduce the potential for public consultation regarding the government’s policy on GMOs.

Discussion

The Object of the Gene Technology Act 2000 is to “protect the health and safety of people, and to protect the environment, by identifying *risks posed by or as a result of gene technology*, and by managing those risks though regulating certain dealings with GMOs (page 2 of the Act).

The provisions of Part 5A – ‘Emergency Dealing Determinations’, Divisions 1-3 of the Amendment, (“Part 5A”), are not intended to protect against risks posed *by or as a result of* gene technology, but rather to bypass the regulatory process and *approve* GMOs in cases where the Minister is satisfied that there is an imminent threat (see pages 6-11 of the Amendment). Greenpeace believes that these provisions therefore fall outside the scope of the Act and should be completely removed from the Amendment.

Part 5A gives broad discretion to the Minister and almost no criteria that must be followed. For instance, ‘threat’ includes ‘pests and diseases’ – even if the ‘threat’ is constant and chronic. There is no requirement that the threat be of a particular severity or scope, nor is the term ‘threat’ explicitly defined. It is simply left open to Ministerial discretion, without the need to prove that a ‘threat’ actually exists, simply that the Minister is satisfied that a ‘threat’ is imminent.

In addition, the dealings in respect of which the Minister may make an emergency dealing determination may be (a) all dealings with a GMO or with a specified class of GMOs; or (b) a specified class of dealings with a GMO or with a specified class of GMOs; or (c) one or more specified dealings with a GMO or with a specified class of GMOs (Part 5A, Div. 2, 72B(4) - page 7 of the Amendment). This legislation is not restricted to vaccines for bird flu, for example, but extends to all GMOs including GE crops.

Greenpeace is particularly concerned that the Minister could use this provision to override State moratoria on the basis of a perceived threat such problems associated with pests, disease or drought (note, there does not have to be a finding of an ‘emergency’). It isn’t explicit that this provision overrides state moratoria, but the language strongly implies that is the case. There is no need to get approval from the States, only that they are to be consulted (Part 5A, Div. 2, 72B(2)(e) - page 7 of Amendment).

Greenpeace believes that all GMOs should undergo a full safety assessment and that this should never be compromised regardless of the severity of any given threat that they may address. The problems that we are currently experiencing with organisms introduced to control a perceived threat, e.g. cane toads, demonstrate the importance of the precautionary principle. A full safety assessment is clearly needed before any new organisms, whether GMO or not, are released into the environment. The Minister, in making an emergency dealing determination would need to obtain advice from: (i) the Commonwealth Chief Medical Officer; or (ii) the Commonwealth Chief Veterinary Officer; or (iii) the Commonwealth Chief Plant Protection Officer; or (iv) a person prescribed by the regulations, as well as advice from the Regulator. (Part 5A, Div. 2, 72B(2)(a) (see page 6 of the Amendment). However, given the unpredictable nature of GMOs, it is implausible that any of these parties could offer reliable advice in the absence of a full safety assessment.

In addition, while extension provisions of the emergency dealing determinations are detailed at length, any mention of a remedy for a State – or any other entity other than the Minister – to revoke the emergency dealing determination is completely absent. Ironically, a majority of jurisdictions must agree to an extension of the emergency dealing determination, while the agreement of a majority of jurisdictions is not explicitly required to implement an emergency dealing determination (Part 5A, Div. 2, 72C(5)(e) - page 8 of the Amendment). Also of note is that should “a person become aware of any unintended effects of the dealings specified in the emergency dealing determination” there is only an obligation to inform the Regulator, who in turn must advise the Minister, who in turn may or may not act on such advice (Part 5A, Div. 3, 72D(2)(h)(iii) - page 9 of Amendment). Clearly this puts Australians at risk by not identifying a remedy for immediate revocation of an emergency dealings determination that has unintended effects.

Another major concern with the Amendment is the complete omission of Section 49 – ‘Dealings that may pose significant risks to the health and safety of people or the environment’. This omission removes the requirement for public consultation when a proposed dealing may pose significant risks to the to the health and safety of people or to the environment (Part 5, Div. 4, Sect. 49(1) of the Act - page 22 of the Amendment).

Further, the proposed revision of Part 5, Division 4, Subsection 50(3) of the Act, and the addition of Subsection 50A (page 22 of the Amendment), states that if the Regulator is *satisfied* that the controls and limits of controlled release - field trials - are appropriate, then the Regulator need *not* seek advice from (a) The States; and (b) the Gene Technology Technical Advisory Committee; and (c) each Commonwealth authority or agency; and (d) the Environmental Minister; and (e) any local council that the Regulator considers appropriate (Part 5, Div. 4. Subsection 50(3) of the Act). This permissible absence of advice raises major concerns of abuse of power with unilateral decision-making lacking any checks or balance.

Another attack on any check and balance system provided in the original Act is the merger of the Gene Technology Community Consultative Committee and the Gene Technology Ethics Committee to create the Ethics and Community Committee. This effectively eliminates a twelve person committee intended to advise

the Ministerial Council and the Regulator, further reducing the potential for public consultation regarding the government's policy on GMOs (page 16 of the Amendment).

Another flaw in the Amendment is the addition of Subsection 35A – 'Person must not breach conditions of emergency dealing determination' (see page 4 of the Amendment). This implies that a person is guilty of an offence, including a strict liability offence, if they intentionally take an action or *omit to take an action* specified in an emergency dealing determination. This implies that an emergency dealing determination could be enforced on individual farmers, for example requiring them to to grow pest resistant GE crops in the event of a perceived immediate threat.

Conclusion

Given the extremely short public consultation period, this submission is not comprehensive. However, it serves as a preliminary outline of the dangers and inherent flaws in the Amendment. Greenpeace believes that Part 5A contradicts the objective of the original act and should be completely removed from the Amendment. The other sections of the Amendment discussed above should be revisited or completely removed in order to protect Australians and the environment from harm caused by GMOs.