

GMO Free Zones in WA

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The *Genetically Modified Crops Free Areas Bill 2003 (WA)* was introduced into State Parliament on 7 May 2003. The Bill will enable a Minister (we presume it will be the Minister for Agriculture) to declare an area of the State (or the whole State) to be a “designated area” in which it is an offence to cultivate a GMO food crop. The explanatory memorandum for the Bill states that:

“The intention is that an order will be made if this is believed to be necessary to protect the State’s markets for non-GM crops and to protect the State’s reputation as a “clean, green” source of agricultural products. The State’s markets and its good reputation could be seriously damaged if the introduction of GM crops is allowed before adequate segregation and identity preservation systems are in place.”

The Bill proposes that the Minister’s designation must be gazetted and then laid before Parliament. The designation can be disallowed by a motion of disallowance passed by either House of Parliament within 14 days of being tabled.

The maximum offence for knowingly cultivating a GMO food crop in a designated area will be \$200,000. The Chief Executive Officer of the Department assisting the relevant Minister will have the power to order the destruction of a GMO food crop which is cultivated in a designated area, and to pay compensation to innocent people whose crops are destroyed because they are contaminated with GMO food crops.

Potential problems with the Bill include:

- The Minister is not required to carry out any public consultation in making a designation. There is no process for anyone to nominate an area for designation. There is no provision or facility for the Minister to get expert advice about a designation. In fact, the only “check and balance” on the Minister’s power is the parliamentary disallowance process.
- The Minister can only designate an area to be free from GMO food crops. However, there could be other crops, for example, cotton, which should be prohibited in the State.
- The Bill only deals with cultivation of GMO food crops – it does not deal with the movement of, storage of, research into or any other dealings with GMO food crops .
- It is an offence to cultivate a GMO food crop in a GMO free crop designated area only if the person *knows or is reckless* as to whether the crop is a GMO

food crop. This means that to successfully prosecute anyone under the Bill, the Crown must have proof that the offender actually knew the crop was GMO or was reckless about it. It will, however, be difficult in most cases to prove that a person had actual knowledge of the fact that a food crop was GMO or was reckless about this. It will therefore it will be difficult to successfully prosecute most cases. It should instead be an offence under the Bill if a person could be *reasonably imputed* to have knowledge that the food crop was GMO.

- While not explicit in the Bill, it is possible that the State expects that the Bill will only operate in accordance with the Commonwealth *Draft Gene Technology (Recognition of Designated Areas) Principle 2003*. This means that the Bill will not actually prevent the Commonwealth Gene Technology Regulator from accepting licence applications or issuing licences unless the Regulator has sufficient evidence to show that the licence will actually be inconsistent with a designated area.
- The Bill adopts the position in the Commonwealth *Gene Technology Act 2000* that the Minister cannot designate a GMO free zone for any purpose other than a “marketing purpose”. There may, however, be many reasons other than “marketing purposes” for which the State wishes to designate GMO Free Zones. For example, the State may wish to designate a GMO Free Zone to protect a particularly important established crop, or to protect biodiversity in a particularly sensitive area.

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