

## GM Canola Update

*Corporate Division lawyer and agribusiness group member, Bianca Battistella, reports on recent developments in the legislative regime surrounding genetically modified canola.*

Western Australia has joined the other major grain growing states in becoming the third state to approve commercial cultivation of genetically modified canola. New South Wales and Victoria have allowed farmers to grow GM canola commercially since 2008, leaving only South Australia, Tasmania and the Australian Capital Territory with subsisting moratoria on GM crops.

As detailed in the May 2008 edition of the E-bulletin, crop moratoria legislation was enacted in all States and Territories of Australia that have a climate conducive to growing canola crops, namely New South Wales, Victoria, South Australia, Tasmania, the ACT and Western Australia. This occurred after the Office of the Gene Technology Regulator approved the commercial release of two varieties of GM canola in 2003, namely, Bayer CropScience's InVigor® and Monsanto Australia's Roundup Ready®, pursuant to the newly established national regulatory scheme surrounding certain dealings with GM organisms under the *Gene Technology Act 2000* (Cth).

The basis of the OGTR's approval was its conclusion that the GM canola varieties posed no greater risk to human health or the environment than conventional canola. GM canola is the first GM agricultural crop used primarily as a food crop that has been approved for general release in Australia. The purported benefits of GM canola include its resistance to some herbicides, such as glyphosate, used as broad acre weed control.

Since 2004 there has been a moratorium on commercial cultivation of all GM crops in Western Australia. The moratorium operates by virtue of the *Genetically Modified Crops Free Areas Act 2003* (WA) ("Act").

Exemptions under the Act have been permitted in recent years for small-scale research trials and other purposes. Most significantly, an exemption order was issued under the Act in April 2009 for a limited commercial-scale trial of GM canola cultivation, including plantings of up to 1000 hectares at 20 separate sites, in an attempt to demonstrate the supply chain management and agronomic viability of OGTR approved GM canola.

The trials were closely supervised by the Department of Agriculture and Food and those involved in the trial were obliged to participate in a training program to ensure the maintenance of the highest biosecurity standards from receipt of the seed until after delivery to Cooperative Bulk Handling Ltd for export.

On 25 January 2010 Western Australian Agriculture and Food Minister, Terry Redman, approved an exemption under the Act to permit cultivation of GM canola crops in Western Australia, pursuant to the *Genetically Modified Crops Free Areas Exemption Order 2010*, which came into operation on 29 January 2010. The exemption order operates to exempt persons whom cultivate GM canola in Western Australia from committing the relevant offence in section 5(1) of the Act, for so long as that GM canola is licensed for international release into the environment under the *Gene Technology Act 2000*.



Mr Redman reported that commercial trials in Western Australia in 2009 “demonstrated successful cultivation and segregation of GM canola” and that despite the occurrence of 11 minor events, “all were managed appropriately and segregation from paddock to port was achieved”. Whilst the yields were comparable to non-GM canola varieties, growers reported that the GM technology facilitated efficient weed control and ease of management.

This exemption is a significant development for Western Australian farmers. One of the purported benefits is that the lifting of the moratorium will offer growers of canola added choice in their cropping systems, assisting them to improve profitability and maintain international competitiveness. According to Mr Redman, Western Australia is the major canola producing state in Australia and in 2008-09 exported \$535 million worth of canola, primarily to Netherlands, France, Pakistan, Japan and Belgium.

The controversy associated with GM canola is still yet to show any signs of abating. This is evidenced by Western Australia’s opposition Agriculture Minister Mick Murray’s comments that this development “is an ill-conceived ,

reckless and unjustified decision made by a Government which has given no thought to the consequences” and that its implications will only impact negatively on consumers and the majority of farmers.

The debate on this issue in South Australia has been reinvigorated as a result of change in Western Australia’s position. Monsanto Australia (an owner of the GM technology) and the president of the grains section of the South Australian Farmers Federation share the view that South Australia’s prevailing moratorium is putting our farmers at a disadvantage. On the other hand, Greens member Mark Parnell claims that that Western Australia’s move to commercial GM crop cultivation actually offers us a market advantage in the form of “an opportunity to target markets, like Japan, that continue to reject GM crops”.

Mr Parnell has urged the State Government to maintain the moratorium on GM crops in South Australia, calling on Mr Rann to publicly commit to a further extension of the GM crop moratorium. At the same time, GM supporters, including some South Australian farmers, Victorian Agriculture Minister Joe Helper and university experts, have called on the Government to lift the ban.

The South Australian Government announced on 28 April 2008 the extension of its moratorium on GM crops indefinitely. This is yet to be the subject of any further reviews or recommendations and, according to the Government, is unlikely to become an issue during this year’s state election.

For so long as the South Australian moratorium remains in place, the ability of Victorian GM canola farmers to freely transport GM canola to South Australian ports, without the risk of legal action, is impaired. Interestingly, claims have been made that South Australia’s moratorium may in fact amount to a breach of section 92 of the Australian Constitution, which provides for unrestricted trade between states. Ironically the South Australian Government is also making use of this section to challenge Victoria’s 4 per cent annual cap on water permanently traded out of the state to South Australia and the Federal Government.