



Australian Capital Territory

# Gene Technology Act 2003

A2003-57

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Australian Capital Territory

# Gene Technology Act 2003

**A2003-57**

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An Act to regulate activities involving gene technology, and for related purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

## Part 1 Preliminary

### 1 Name of Act etc

- (1) This Act is the *Gene Technology Act 2003*.
- (2) This Act may also be referred to as the Gene Technology Law of the ACT or simply as the Gene Technology Law.

*Note* This section differs from the Commonwealth Act, s 1.

### 2 Commencement

This Act commences on a day fixed by the Minister by written notice.

*Note 1* The naming and commencement provisions automatically commence on the notification day (see *Legislation Act 2001*, s 75).

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see *Legislation Act 2001*, s 77 (1)).

*Note 3* If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see *Legislation Act 2001*, s 79).

*Note 4* This section differs from the Commonwealth Act, s 2.

### 3 Object of Act

The object of this Act 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 through regulating certain dealings with GMOs.

### 4 Regulatory framework to achieve object

The object of this Act is to be achieved through a regulatory framework that—

- (a) provides that where there are threats of serious or irreversible environmental damage, a lack of full scientific certainty should not be used as a reason for postponing cost-effective measures to prevent environmental degradation; and
- (b) provides an efficient and effective system for the application of gene technologies; and
- (c) operates in conjunction with other Commonwealth and State regulatory schemes relevant to GMOs and GM products.

*Note* Examples of the schemes mentioned in paragraph (c) are those that regulate food, agricultural and veterinary chemicals, industrial chemicals and therapeutic goods.

## **5 Nationally consistent scheme**

It is the intention of the Legislative Assembly that this Act form a component of a nationally consistent scheme for the regulation of certain dealings with GMOs by the Commonwealth and the States.

## **6 Act to bind the Crown**

*Note* The Commonwealth Act includes a provision binding the Crown. The provision is unnecessary in the ACT (see *Legislation Act 2001*, s 121).

## **7 External Territories**

*Note* The Commonwealth Act includes a provision extending that Act to every external Territory other than Norfolk Island.

## **8 Offences against Act—application of Criminal Code etc**

Other legislation applies to offences against this Act.

*Note 1* *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2* *Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

*Note 3* This section differs from the Commonwealth Act, s 8.

## **8A Numbering**

- (1) To maintain consistent section numbering between this Act and the Commonwealth Act—
  - (a) if the Commonwealth Act contains a section that is not needed in this Act—the provision number and heading to the section appearing in the Commonwealth Act are included in this Act despite the omission of the body of the section; and
  - (b) if this Act contains a section that is not included in the Commonwealth Act—the section is numbered so as to maintain consistency in numbering between sections common to both Acts.
- (2) A provision number and heading mentioned in subsection (1) (a) form part of this Act.
- (3) If a provision of this Act (other than a section) is numbered differently from the equivalent provision of the Commonwealth Act, the provision of this Act may be referred to using the number of the equivalent provision of the Commonwealth Act.

*Note 1* A note appears under each heading of a kind mentioned in s (1) (a) describing the omitted section of the Commonwealth Act.

*Note 2* A note appears under each section of a kind mentioned in s (1) (b) highlighting the non-appearance of an equivalent section in the Commonwealth Act.

*Note 3* This section does not appear in the Commonwealth Act.



**8B Notes**

A note included in this Act is explanatory and is not part of this Act.

*Note 1* See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of notes.

*Note 2* This section does not appear in the Commonwealth Act.

**8C Outlines**

The provisions appearing at the beginning of parts 2 to 12, outlining the part (simplified outlines), are intended only as a guide to readers about the general scheme and effect of the parts.

*Note* This section does not appear in the Commonwealth Act.

## Part 2 Interpretation and operation of Act

### Division 2.1 Simplified outline of part 2

#### 9 Simplified outline—pt 2

In outline, this part—

- (a) provides for the definitions used in this Act; and
- (b) contains provisions to facilitate a nationally consistent regulatory scheme; and
- (c) enables the Ministerial council to issue policy principles, policy guidelines and codes of practice.

*Note* This section differs from the Commonwealth Act, s 9.

### Division 2.2 Interpretation

#### 10 Dictionary etc

- (1) The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act.

For example, the signpost definition ‘*aggravated offence*—see section 38 (1).’ means that the expression ‘aggravated offence’ is defined in that section.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Legislation Act 2001*, s 155 and s 156 (1)).

- (2) If this Act requires or permits the Ministerial council to do something, the Ministerial council must do it in accordance with the gene technology agreement.

*Note* Subsection (1) differs from the Commonwealth Act, s 10 (1).

**11 Meaning of *intentional release of a GMO into the environment***

A dealing with a GMO involves the *intentional release of the GMO into the environment* if the GMO is intentionally released into the open environment, whether or not it is released with provision for limiting the dissemination or persistence of the GMO or its genetic material in the environment.

**12 Meaning of *corresponding State law***

*Note* The Commonwealth Act includes a provision defining ‘corresponding State law’ for that Act.

**Division 2.3 Operation of Act**

**13 Operation of Act**

*Note* The Commonwealth Act includes a provision about the application of that Act.

**14 Wind-back of reach of Act**

*Note* The Commonwealth Act includes a provision about the giving of wind-back notices to a State.

**15 Relationship to other Territory laws**

This Act is in addition to, and not in substitution for, the requirements of any other Territory law, whether passed or made before or after the commencement of this section.

*Note* The equivalent section in the Commonwealth Act deals with the relationship of that Act to other Commonwealth laws.

## Division 2.4 Provisions to facilitate a nationally consistent scheme

### Subdivision 2.4.1 General provisions

#### 16 State laws may operate concurrently

*Note* The Commonwealth Act includes a provision allowing State laws, other than State laws prescribed for the provision, to operate concurrently with that Act.

#### 17 Conferral of functions on Commonwealth officers and bodies

*Note* The Commonwealth Act includes a provision allowing corresponding State laws to give functions, powers and duties to certain Commonwealth officers and bodies.

#### 18 No doubling-up of liabilities

If a person has been ordered to pay a pecuniary penalty under the Commonwealth Act, the person is not liable to a pecuniary penalty under this Act in respect of the same conduct.

*Note* The Commonwealth Act, s 18 also includes a provision preventing a person being prosecuted for an offence against this Act and the Commonwealth Act. The provision is unnecessary in the ACT (see *Legislation Act 2001*, s 191).

#### 19 Review of certain decisions

- (1) Application may be made to the Commonwealth administrative appeals tribunal for review of a reviewable State decision.
- (2) A decision made by the regulator in the exercise of a function under this Act is a *reviewable State decision* if—
  - (a) this Act provides for review of the decision by the Commonwealth administrative appeals tribunal; and

- (b) the decision is declared by regulations made under the Commonwealth Act to be a reviewable State decision for the Commonwealth Act, section 19.
- (3) The Commonwealth Administrative Appeals Tribunal Act (other than part 4A) applies as a Territory law in relation to reviewable State decisions.
- (4) For this section, a reference in a provision of the Commonwealth Administrative Appeals Tribunal Act (as that provision applies as a Territory law) to all or any part of part 4A of that Act is taken to be a reference to all or any part of that part as it has effect as a law of the Commonwealth.

*Note 1* The reference in s (3) to the Commonwealth Administrative Appeals Tribunal Act includes a reference to the regulations in force under that Act from time to time (see *Legislation Act 2001*, s 102 and s 104).

*Note 2* This section differs from the Commonwealth Act, s 19.

## **20 Things done for multiple purposes**

The validity of a licence, certificate or other thing issued, given or done for this Act is not affected only because it was issued, given or done also for the Commonwealth Act.

### **Subdivision 2.4.2 Policy principles, policy guidelines and codes of practice**

## **21 Ministerial council may issue policy principles**

- (1) The Ministerial council may issue policy principles in relation to the following:
  - (a) ethical issues relating to dealings with GMOs;
  - (b) recognising areas (if any) designated under a Territory law for the purpose of preserving the identity of 1 or both of the following for marketing purposes:

- (i) GM crops;
- (ii) non-GM crops;
- (c) matters relating to dealings with GMOs prescribed under the regulations for this paragraph.

*Note 1* Section 57 provides that the regulator must not issue a licence if to do so would be inconsistent with a policy principle.

*Note 2* The *Legislation Act 2001*, s 46 gives power to amend or repeal an instrument made under an Act.

- (2) Before issuing a policy principle, the Ministerial council must be satisfied that the policy principle was developed in accordance with the Commonwealth Act, section 22.
- (3) Regulations for subsection (1) (c) may relate to matters other than the health and safety of people or the environment, but must not derogate from the health and safety of people or the environment.

*Note* This section differs from the Commonwealth Act, s 21.

## **22 Consultation on policy principles**

*Note* The Commonwealth Act includes a provision about how policy principles are to be developed.

## **23 Ministerial council may issue policy guidelines**

The Ministerial council may issue policy guidelines in relation to matters relevant to the functions of the regulator under this Act.

*Note 1* Section 56, among other things, requires the regulator to have regard to policy guidelines when deciding an application for a GMO licence. Section 30 provides that the regulator is not subject to direction in relation to individual decisions.

*Note 2* The *Legislation Act 2001*, s 46 gives power to amend or repeal an instrument made under an Act.

## **24 Ministerial council may issue codes of practice**

The Ministerial council may issue codes of practice, developed under the Commonwealth Act, section 24 (2) in relation to gene technology.

*Note 1* The *Legislation Act 2001*, s 46 gives power to amend or repeal an instrument made under an Act.

*Note 2* The Commonwealth Act, s 24 includes provisions about how codes of practice are to be developed and making them disallowable instruments.

## Part 3 Gene technology regulator

### 25 Simplified outline—pt 3

In outline, this part provides the functions and powers of the gene technology regulator under this Act.

*Note* This section differs from the Commonwealth Act, s 25.

### 26 Gene technology regulator

*Note* The Commonwealth Act, s 26 creates the office of gene technology regulator.

### 27 Functions of regulator

The regulator has the following functions:

- (a) to exercise functions relating to GMO licences under part 5;
- (b) to develop draft policy principles and policy guidelines, as requested by the Ministerial council;
- (c) to develop codes of practice;
- (d) to issue technical and procedural guidelines about GMOs;
- (e) to provide information and advice to other regulatory agencies about GMOs and GM products;
- (f) to provide information and advice to the public about the regulation of GMOs;
- (g) to provide advice to the Ministerial council about—
  - (i) the operations of the regulator and the gene technology technical advisory committee; and
  - (ii) the effectiveness of the legislative framework for the regulation of GMOs, including about possible amendments of relevant legislation;



- (h) to undertake or commission research about risk assessment and the biosafety of GMOs;
- (i) to promote the harmonisation of risk assessments for GMOs and GM products by regulatory agencies;
- (j) to monitor international practice for regulating GMOs;
- (k) to maintain links with international organisations dealing with the regulation of gene technology and with agencies regulating GMOs in places outside the ACT;
- (l) to exercise other functions given to the regulator under this Act or any other law.

## **28 Powers of regulator**

*Note* The Commonwealth Act, s 28 gives the regulator powers. The provision is unnecessary in the ACT (see *Legislation Act 2001*, s 196).

## **29 Delegation**

- (1) The regulator may delegate the regulator's functions under this Act to any of the following:
  - (a) a public servant;
  - (b) an officer or employee of a Territory agency, if the functions of the Territory agency relate, directly or indirectly, to GMOs or GM products;
  - (c) an employee of a Commonwealth authority, if the functions of the Commonwealth authority relate, directly or indirectly, to GMOs or GM products.

*Note* For the making of delegations and the exercise of delegated functions, see *Legislation Act 2001*, pt 19.4.

- (2) In exercising a function under a delegation, the delegate must comply with any directions of the regulator.

*Note* This section differs from the Commonwealth Act, s 29.

**30 Independence of regulator**

- (1) The regulator has discretion in the exercise of the regulator's functions under this Act.
- (2) In particular, the regulator is not subject to direction from anyone about—
  - (a) whether or not a particular application for a GMO licence is issued or refused; or
  - (b) the conditions to which a particular GMO licence is subject.

## **Part 4**                      **Regulation of dealings with GMOs**

### **Division 4.1**              **Simplified outline of part 4**

#### **31**      **Simplified outline—pt 4**

In outline, this part—

- (a) deals with the regulation of dealings with GMOs; and
- (b) prohibits dealings with GMOs unless—
  - (i) the person undertaking the dealing is authorised to do so by a GMO licence; or
  - (ii) the dealing is a notifiable low risk dealing (see division 6.2); or
  - (iii) the dealing is an exempt dealing; or
  - (iv) the dealing is included in the GMO register (see division 6.3); and
- (c) imposes heavier penalties on unlawful dealings that cause, or are likely to cause, significant damage to the health and safety of people or to the environment.

### **Division 4.2**              **Dealings with GMOs must be licensed**

#### **32**      **Person not to deal with GMO without licence**

A person commits an offence if the person—

- (a) deals with a GMO, knowing that it is a GMO; and
- (b) knows that the dealing with the GMO by the person is not authorised by a GMO licence or is reckless about whether or not the dealing is so authorised; and

- (c) knows that the dealing is not a notifiable low risk dealing or is reckless about whether or not the dealing is a notifiable low risk dealing; and
- (d) knows that the dealing is not an exempt dealing or is reckless about whether or not the dealing is an exempt dealing; and
- (e) knows that the dealing is not included on the GMO register or is reckless about whether or not the dealing is included on the GMO register.

Maximum penalty:

- (a) for an aggravated offence—2 000 penalty units, imprisonment for 5 years or both; or
- (b) in any other case—500 penalty units, imprisonment for 2 years or both.

*Note 1* **Aggravated offence** is defined in s 38.

*Note 2* For provisions corresponding to the Commonwealth Act, s 32 (4), see the *Legislation Act 2001*, s 48.

### **33 Person not to deal with GMO without licence—strict liability offence**

- (1) A person commits an offence if—
  - (a) the person deals with a GMO, knowing that it is a GMO; and
  - (b) the dealing with the GMO by the person is not authorised by a GMO licence; and
  - (c) the dealing is not a notifiable low risk dealing; and
  - (d) the dealing is not an exempt dealing; and
  - (e) the dealing is not included on the GMO register.

Maximum penalty:

- (a) for an aggravated offence—200 penalty units; or
- (b) in any other case—50 penalty units.

- (2) Strict liability applies to subsection (1) (b), (c), (d) and (e).

*Note* This section differs from the Commonwealth Act, s 33.

### **34 Person must not breach conditions of GMO licence**

- (1) The holder of a GMO licence commits an offence if the holder—
- (a) intentionally takes an action or omits to take an action; and
  - (b) knows that the action or omission contravenes the licence or is reckless about whether or not the action or omission contravenes the licence.

Maximum penalty:

- (a) for an aggravated offence—2 000 penalty units, imprisonment for 5 years or both ; or
- (b) in any other case—500 penalty units, imprisonment for 2 years or both.

- (2) A person covered by a GMO licence commits an offence if the person—

- (a) intentionally takes an action or omits to take an action; and
- (b) knows that the action or omission contravenes the licence or is reckless about whether or not the action or omission contravenes the licence; and
- (c) has knowledge of the conditions of the licence.

Maximum penalty:

- (a) for an aggravated offence—2 000 penalty units, imprisonment for 5 years or both ; or
- (b) in any other case—500 penalty units, imprisonment for 2 years or both.

- (3) A person who contravenes subsection (1) or (2) commits a separate offence for each day (after the first day) during any part of which the contravention continues.

Maximum penalty (for each day):

- (a) for an aggravated offence—200 penalty units ; or  
(b) in any other case—50 penalty units.

**35 Person must not breach conditions of GMO licence—  
strict liability offence**

- (1) The holder of a GMO licence commits an offence if the holder—  
(a) takes an action or omits to take an action; and  
(b) the action or omission contravenes the licence.

Maximum penalty:

- (a) for an aggravated offence—200 penalty units; or  
(b) in any other case—50 penalty units.

- (2) A person covered by a GMO licence commits an offence if—  
(a) the person takes an action or omits to take an action; and  
(b) the action or omission contravenes the licence; and  
(c) the person has knowledge of the conditions of the licence.

Maximum penalty:

- (a) for an aggravated offence—200 penalty units; or  
(b) in any other case—50 penalty units.

- (3) Strict liability applies to subsections (1) (a) and (b) and (2) (a) and (b).

**36 Person must not breach conditions on GMO register**

- (1) A person commits an offence if the person—  
(a) deals with a GMO, knowing that it is a GMO; and

- (b) the dealing is on the GMO register; and
- (c) the dealing contravenes a condition about the dealing that is stated in the GMO register.

Maximum penalty: 50 penalty units.

- (2) Strict liability applies to subsection (1) (b) and (c).

### **37 Offence relating to notifiable low risk dealings**

- (1) A person commits an offence if—
  - (a) the person deals with a GMO, knowing that it is a GMO; and
  - (b) the dealing is a notifiable low risk dealing; and
  - (c) the dealing by the person was not undertaken in accordance with the regulations.

Maximum penalty: 50 penalty units.

- (2) Strict liability applies to subsection (1) (b) and (c).

### **38 Aggravated offences—significant damage to health or safety of people or to environment**

- (1) An offence is an *aggravated offence* if the commission of the offence causes significant damage, or is likely to cause significant damage, to the health and safety of people or to the environment.
- (2) To prove an aggravated offence, the prosecution must prove that the person who committed the offence—
  - (a) intended his or her conduct to cause significant damage to the health and safety of people or to the environment; or
  - (b) was reckless about whether his or her conduct would cause significant damage to the health and safety of people or to the environment.

## **Part 5 Licensing system**

### **Division 5.1 Simplified outline of part 5**

#### **39 Simplified outline—pt 5**

In outline, this part—

- (a) provides a licensing system under which a person can apply to the regulator for a licence authorising dealings with GMOs; and
- (b) sets out the processes the regulator must follow for applications involving the following kinds of dealings:
  - (i) those that involve the intentional release of a GMO into the environment;
  - (ii) those that do not involve the intentional release of a GMO into the environment; and
- (c) provides that a licence can cover dealings by people other than the licence holder and requires the licence holder to tell them of any conditions of the licence that apply to them.

### **Division 5.2 Licence applications**

#### **40 Person may apply for a licence**

- (1) A person may apply to the regulator for a licence authorising stated dealings with 1 or more stated GMOs.
- (2) The application must be in writing, and must contain—
  - (a) the information (if any) prescribed under the regulations; and
  - (b) the information specified in writing by the regulator.



- (3) The application must state whether any of the dealings proposed to be authorised by the licence would involve the intentional release of a GMO into the environment.
- (4) The dealings for which a person may apply for a licence may be—
  - (a) all dealings with a GMO, or with a stated class of GMOs; or
  - (b) a stated class of dealings with a GMO, or with a stated class of GMOs; or
  - (c) 1 or more stated dealings with a GMO, or with a stated class of GMOs.
- (5) The applicant may apply for a licence authorising the dealings by—
  - (a) a stated person or stated people; or
  - (b) a stated class of people; or
  - (c) all people.
- (6) The application must be accompanied by the application fee (if any) prescribed under the regulations.

#### **41 Application may be withdrawn**

- (1) The applicant may withdraw the application at any time before the licence is issued.
- (2) The application fee is not refundable if the applicant withdraws the application.

#### **42 Regulator may require applicant to give further information**

- (1) The regulator may, by written notice, require the applicant to give the regulator any further information about the application the regulator requires.
- (2) The notice may state the period within which the information must be given.

**43    Regulator must consider applications except in certain circumstances**

- (1) The regulator must consider the application in accordance with this part.
- (2) However, the regulator is not required to consider the application if—
  - (a) the application does not contain the information specified by the regulator or prescribed under the regulations; or
  - (b) the application does not satisfy section 40 (3); or
  - (c) the application is not accompanied by the application fee (if any) prescribed under the regulations; or
  - (d) the applicant did not provide further information required by the regulator by notice under section 42 within the period stated in the notice; or
  - (e) the regulator is satisfied that to issue the licence would be inconsistent with a policy principle in force under section 21.
- (3) The regulator must issue the licence, or refuse to issue the licence, within the period (if any) prescribed under the regulations.

**44    Regulator may consult with applicant**

Before considering the application, the regulator may consult the applicant, or another regulatory agency, on any aspect of the application.

**45    Regulator must not use certain information in considering licence application**

If—

- (a) a person (the *first person*) applies for a GMO licence; and
- (b) the first person gives information to the regulator for the regulator's consideration of the application; and

(c) the information is confidential commercial information;

the regulator must not take that information into account in considering an application by someone else for a GMO licence, unless the first person has given written consent for the information to be so taken into account.

### **Division 5.3                    Initial consideration of licences for dealings not involving intentional release of GMO into environment**

#### **46    Applications to which div 5.3 applies**

This division applies to an application for a GMO licence if the regulator is satisfied that none of the dealings proposed to be authorised by the licence would involve the intentional release of a GMO into the environment.

#### **47    What regulator must do in relation to application**

- (1) Before issuing the licence, the regulator must prepare a risk assessment and a risk management plan in relation to the dealings proposed to be authorised by the licence (the *proposed dealings*).
- (2) In preparing the risk assessment, the regulator must take into account the risks posed by the proposed dealings, including any risks to the health and safety of people and any risks to the environment.
- (3) In preparing the risk management plan, the regulator must take into account the ways of managing any risks posed by the proposed dealings that protect—
  - (a) the health and safety of people; and
  - (b) the environment.
- (4) The regulator may consult any of the following on any aspect of the application:

- (a) the States;
- (b) the gene technology technical advisory committee;
- (c) relevant Commonwealth authorities or agencies;
- (d) any local council the regulator considers appropriate;
- (e) anyone else the regulator considers appropriate.

## **Division 5.4 Initial consideration of licences for dealings involving intentional release of GMO into environment**

### **48 Applications to which div 5.4 applies**

This division applies to an application for a GMO licence if the regulator is satisfied that at least 1 of the dealings proposed to be authorised by the licence would involve the intentional release of a GMO into the environment.

### **49 Dealings that may pose significant risks to health and safety of people or environment**

- (1) If the regulator is satisfied that at least 1 of the dealings proposed to be authorised by the licence (the *proposed dealings*) may pose significant risks to the health and safety of people or the environment, the regulator must prepare a written notice in accordance with subsection (3).
- (2) For satisfying himself or herself about whether the dealings proposed to be authorised by the licence may pose significant risks to the health and safety of people or to the environment, the regulator must have regard to the following:
  - (a) the properties of the organism to which the dealings relate before it became, or will become, a GMO;

- (b) the effect, or the expected effect, of genetic modification that has happened, or will happen, on the properties of the organism;
  - (c) provisions for limiting the dissemination or persistence of the GMO or its genetic material in the environment;
  - (d) the potential for spread or persistence of the GMO or its genetic material in the environment;
  - (e) the extent or scale of the proposed dealings;
  - (f) any likely impacts of the proposed dealings on the health and safety of people;
  - (g) anything else prescribed under the regulations for this paragraph.
- (3) The notice mentioned in subsection (1) must—
- (a) state that the application has been made; and
  - (b) state that a person may request further information about the application under section 54; and
  - (c) invite written submissions, on whether the licence should be issued, about matters that the regulator is required to take into account—
    - (i) under section 51 (1) (a) in preparing a risk assessment in relation to the proposed dealings; and
    - (ii) under section 51 (2) (a) in preparing a risk management plan in relation to the proposed dealings; and
  - (d) state the closing date for submissions, which must not be earlier than 30 days after the notice is notified under the *Legislation Act 2001*.
- (4) The notice is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

- (5) The regulator must also publish the notice—
- (a) in a newspaper circulating generally in the ACT; and
  - (b) on the regulator’s website (if any).

*Note* This section differs from the Commonwealth Act, s 49.

**50 Regulator must prepare risk assessment and risk management plan**

- (1) Before issuing the licence, the regulator must prepare a risk assessment and a risk management plan in relation to the dealings proposed to be authorised by the licence.
- (2) The regulator must prepare a risk assessment and a risk management plan whether or not the regulator was required to publish a notice about the application under section 49.
- (3) The regulator must seek advice on matters relevant to the preparation of the risk assessment and the risk management plan from—
  - (a) the States; and
  - (b) the gene technology technical advisory committee; and
  - (c) each Commonwealth authority or agency prescribed under the regulations for this paragraph; and
  - (d) the Commonwealth Environment Minister; and
  - (e) any local council that the regulator considers appropriate.

**51 Matters regulator must take into account in preparing risk assessment and risk management plan**

- (1) In preparing the risk assessment in relation to the dealings proposed to be authorised by the licence (the *proposed dealings*), the regulator must take into account the following:

- (a) the risks posed by the proposed dealings, including any risks to the health and safety of people or risks to the environment, having regard to the matters mentioned in section 49 (2) (a) to (f);
  - (b) any submission made under section 49 (3) (c) about the risks;
  - (c) any advice about the risk assessment given by the following in response to a request under section 50 (3):
    - (i) a State;
    - (ii) the gene technology technical advisory committee;
    - (iii) a Commonwealth authority or agency;
    - (iv) the Commonwealth Environment Minister;
    - (v) a local council;
  - (d) anything else prescribed under the regulations for this paragraph.
- (2) In preparing the risk management plan, the regulator must take into account the following:
- (a) the ways of managing any risks posed by the proposed dealings that protect—
    - (i) the health and safety of people; and
    - (ii) the environment;
  - (b) any submission made under section 49 (3) (c) about the ways of managing the risks;
  - (c) any advice about the risk management plan given by the following in response to a request under section 50 (3):
    - (i) a State;
    - (ii) the gene technology technical advisory committee;
    - (iii) a Commonwealth authority or agency;

- (iv) the Commonwealth Environment Minister;
- (v) a local council;
- (d) anything else prescribed under the regulations for this paragraph.
- (3) To remove any doubt, in taking into account the ways of managing risks mentioned in subsection (2) (a), the regulator—
  - (a) is not limited to considering submissions or advice mentioned in subsection (2) (b) and (c); and
  - (b) subject to section 45, may take into account other information, including, for example, relevant independent research.

## **52 Public notification of risk assessment and risk management plan**

- (1) After taking the steps mentioned in sections 49 (if applicable), 50 and 51, the regulator must prepare a written notice in accordance with subsection (2).
- (2) The notice must—
  - (a) state that a risk assessment and a risk management plan have been prepared for dealings proposed to be authorised by the licence; and
  - (b) state that a person may ask for a copy of information about the risk assessment and the risk management plan under section 54; and
  - (c) invite written submissions about the risk assessment and the risk management plan; and
  - (d) state the closing date for submissions, which must not be earlier than 30 days after the notice is notified under the *Legislation Act 2001*.



- (3) The notice is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

- (4) The regulator must also publish the notice—
- (a) in a newspaper circulating generally in the ACT; and
  - (b) on the regulator's website (if any).
- (5) The regulator must also seek advice on the risk assessment and the risk management plan from—
- (a) the States; and
  - (b) the gene technology technical advisory committee; and
  - (c) each Commonwealth authority or agency prescribed under the regulations for this paragraph; and
  - (d) the Commonwealth Environment Minister; and
  - (e) any local council that the regulator considers appropriate.

*Note* This section differs from the Commonwealth Act, s 52.

### **53 Regulator may take other actions**

- (1) In addition to satisfying the requirements of this division, the regulator may take any other action the regulator considers appropriate for deciding the application, including holding a public hearing.
- (2) If the regulator holds a public hearing, the regulator may, having regard to the requirements of this Act about confidential commercial information, direct that any part of the hearing be held in private, and may decide who can attend.
- (3) The regulator may give directions prohibiting or restricting the publication of evidence given, or material contained in documents produced, at a public hearing.

- (4) A person must not contravene a direction under subsection (3).

Maximum penalty: 30 penalty units.

- (5) An offence against subsection (4) is an offence of strict liability.

*Note* For offences of strict liability, see the Criminal Code, s 17.

#### **54 Person may request copies of certain documents**

- (1) A person may ask the regulator for a copy of the following documents:

- (a) an application to which this division applies;
- (b) a risk assessment or a risk management plan prepared under section 50.

- (2) If a person makes a request under subsection (1), the regulator must give the person a copy of the documents, other than—

- (a) any confidential commercial information contained in the documents; and
- (b) any information contained in the documents about relevant convictions of the applicant for the licence.

*Note* For information to be confidential commercial information, it must be covered by a declaration under s 185.

- (3) In this section:

*relevant conviction*—see section 58 (4).

### **Division 5.5 Decision on licence application**

#### **55 Regulator must make a decision on licence and licence conditions**

After taking any steps required by division 5.3 or 5.4 for an application for a GMO licence, the regulator—

- (a) must decide whether to issue or refuse to issue the licence; and

- (b) if the regulator decides to issue the licence—may impose conditions on it.

**56 Regulator must not issue the licence unless satisfied as to risk management**

- (1) The regulator must not issue the licence unless the regulator is satisfied that any risks posed by the dealings proposed to be authorised by the licence are able to be managed in a way that protects—
  - (a) the health and safety of people; and
  - (b) the environment.
- (2) For subsection (1), the regulator must have regard to the following:
  - (a) if a risk assessment has been prepared under section 50 for the dealings—the risk assessment;
  - (b) if a risk management plan has been prepared under section 50 for the dealings—the risk management plan;
  - (c) any submissions received under section 52 about the licence;
  - (d) any policy guidelines in force under section 23 about—
    - (i) risks that may be posed by the dealings; or
    - (ii) ways of managing the risks that protect the health and safety of people and protect the environment.

**57 Other circumstances in which regulator must not issue the licence**

- (1) The regulator must not issue the licence if the regulator is satisfied that issuing the licence would be inconsistent with a policy principle in force under section 21.
- (2) The regulator must not issue the licence unless the regulator is satisfied that the applicant is a suitable person to hold the licence.

**58 Matters to be taken into account in deciding whether person is suitable to hold licence**

- (1) Without limiting the matters to which the regulator may have regard in deciding whether an individual is a suitable person to hold a licence, the regulator must have regard to—
  - (a) any relevant conviction of the individual; and
  - (b) any revocation or suspension of a licence or permit (however described) held by the individual under a law of the Territory, the Commonwealth, a State or a foreign country about the health and safety of people or the environment; and
  - (c) the capacity of the individual to meet the conditions of the licence.
- (2) Without limiting the matters to which the regulator may have regard in deciding whether a corporation is a suitable person to hold a licence, the regulator must have regard to—
  - (a) any relevant conviction of the corporation; and
  - (b) if there is a relevant conviction of the corporation—
    - (i) whether the offence concerned was committed when anyone who is presently a director of the corporation was a director; and
    - (ii) whether that offence was committed when any officer or shareholder of the corporation who is presently in a position to influence the management of the corporation was an officer or shareholder of the corporation; and
  - (c) any revocation or suspension of a licence or permit (however described) held by the corporation under a law of the Territory, the Commonwealth, a State or a foreign country about the health and safety of people or the environment; and
  - (d) the capacity of the corporation to meet the conditions of the licence.

(3) This section does not affect the *Spent Convictions Act 2000*.

(4) In this section:

**relevant conviction**, for an applicant for a licence, means a conviction for an offence against a law of the Territory, the Commonwealth, a State or a foreign country, about the health and safety of people or the environment, if—

- (a) the offence was committed within 10 years immediately before the making of the application for the licence; and
- (b) the offence was punishable by a fine of \$5 000 or more, or by imprisonment for 1 year or more.

*Note* This section differs from the Commonwealth Act, s 58.

## **59 Notification of licence decision**

The regulator must notify the applicant in writing of the regulator's decision, including any conditions imposed by the regulator.

## **60 Period of licence**

- (1) A licence continues in force—
  - (a) if the licence is expressed to be in force for a particular period—until the end of the period; or
  - (b) otherwise—until it is cancelled or surrendered.
- (2) A licence is not in force during a period of suspension.

## **Division 5.6 Conditions of licences**

### **61 Licence is subject to conditions**

A GMO licence is subject to the following conditions:

- (a) the conditions stated in sections 63, 64 and 65;
- (b) any conditions prescribed under the regulations;

- (c) any conditions imposed by the regulator when issuing the licence;
- (d) any conditions imposed by the regulator under section 71 after the licence is issued.

## **62 Conditions that may be prescribed or imposed**

- (1) Licence conditions may include conditions that impose obligations about GM products derived from a GMO for which particular dealings are licensed.
- (2) Licence conditions may relate to, for example, the following:
  - (a) the scope of the dealings authorised by the licence;
  - (b) the purposes for which the dealings may be undertaken;
  - (c) variations to the scope or purposes of the dealings;
  - (d) documentation and record-keeping requirements;
  - (e) the required level of containment for the dealings, including requirements about the certification of facilities to stated containment levels;
  - (f) waste disposal requirements;
  - (g) measures to manage risks posed to the health and safety of people or to the environment;
  - (h) data collection, including studies to be conducted;
  - (i) auditing and reporting;
  - (j) actions to be taken if a GMO is released from a contained environment;
  - (k) the geographic area where the dealings authorised by the licence may happen;
  - (l) requiring compliance with a code of practice issued under section 24, or a technical or procedural guideline issued under section 27;

- (m) supervision by, and monitoring by, institutional biosafety committees;
  - (n) contingency planning for unintended effects of the dealings authorised by the licence;
  - (o) limiting the dissemination or persistence of the GMO or its genetic material in the environment.
- (3) Licence conditions may also include conditions requiring the licence holder to be adequately insured against any loss, damage or injury that may be caused to human health, property or the environment by the dealings authorised by the licence.

### **63 Condition about telling people of obligations**

- (1) It is a condition of a licence that the licence holder tell anyone covered by the licence, to whom a particular condition of the licence applies, of the following:
- (a) the particular condition, including any variations of it;
  - (b) the cancellation or suspension of the licence;
  - (c) the surrender of the licence.
- (2) Requirements about how information is given under subsection (1) may be—
- (a) prescribed under the regulations; or
  - (b) specified by the regulator.
- (3) The requirements may include, for example, measures about labelling, packaging, conducting training and giving information.
- (4) If requirements are prescribed or specified, it is a condition of a licence that the licence holder comply with the requirements.

#### **64 Condition about monitoring and audits**

- (1) It is a condition of a licence that if—
  - (a) a person is authorised by the licence to deal with a GMO; and
  - (b) a particular condition of the licence applies to the dealing by the person—

the person must allow the regulator, or a person authorised by the regulator, to enter premises where the dealing is being undertaken, for auditing or monitoring the dealing.
- (2) Subsection (1) does not limit the conditions that may be imposed by the regulator or prescribed under the regulations.

#### **65 Condition about additional information to be given to regulator**

- (1) It is a condition of a licence that the licence holder tell the regulator if the licence holder becomes aware of—
  - (a) additional information about any risks to the health and safety of people, or to the environment, associated with the dealings authorised by the licence; or
  - (b) any contraventions of the licence by a person covered by the licence; or
  - (c) any unintended effects of the dealings authorised by the licence.
- (2) For subsection (1)—
  - (a) the licence holder is taken to have become aware of additional information of a kind mentioned in subsection (1) if the licence holder was reckless about whether the information existed; and



- (b) the licence holder is taken to have become aware of contraventions, or unintended effects, of a kind mentioned in subsection (1) if the licence holder was reckless about whether the contraventions had happened, or the unintended effects existed.

#### **66 Person may give information to regulator**

A person covered by a licence may tell the regulator if the person becomes aware of any of the following:

- (a) additional information about any risks to the health and safety of people, or to the environment, associated with the dealings authorised by the licence;
- (b) any contraventions of the licence by a person covered by the licence;
- (c) any unintended effects of the dealings authorised by the licence.

#### **67 Protection of persons who give information**

A person does not incur any civil liability for loss, damage or injury of any kind suffered by someone else because the first person gave information to the regulator under section 65 or 66.

### **Division 5.7 Suspension, cancellation and variation of licences**

#### **68 Suspension and cancellation of licence**

The regulator may, by written notice given to the holder of a GMO licence, suspend or cancel the licence if—

- (a) the regulator believes on reasonable grounds that a condition of the licence has been breached, whether by the licence holder or a person covered by the licence; or

- (b) the regulator believes on reasonable grounds that the licence holder, or a person covered by the licence, has committed an offence against this Act; or
- (c) any annual charge payable for the licence remains unpaid after the due date; or
- (d) the licence was obtained improperly; or
- (e) the regulator becomes aware of risks associated with the continuation of the dealings authorised by the licence, and is satisfied that the licence holder has not proposed, or is not in a position to implement, adequate measures to deal with the risks; or
- (f) the regulator is satisfied that the licence holder is no longer a suitable person to hold the licence.

## **69 Surrender of licence**

A licence holder may surrender the licence with the regulator's consent.

## **70 Transfer of licences**

- (1) The licence holder and someone else (the *transferee*) may jointly apply to the regulator for the licence to be transferred from the licence holder to the transferee.
- (2) The application must be in writing, and must contain—
  - (a) the information (if any) prescribed under the regulations; and
  - (b) the information specified in writing by the regulator.
- (3) The regulator must not transfer the licence unless the regulator is satisfied that, if the licence is transferred, any risks posed by the dealings authorised by the licence will continue to be able to be managed in a way that protects—

- (a) the health and safety of people; and
  - (b) the environment.
- (4) The regulator must not transfer the licence unless the regulator is satisfied that the transferee is a suitable person to hold the licence.
- (5) The regulator must give written notice of his or her decision on the application to the licence holder and the transferee.
- (6) If the regulator decides to transfer the licence—
- (a) the transfer takes effect on the date stated in the notice; and
  - (b) the licence continues in force as mentioned in section 60; and
  - (c) the licence is subject to the same conditions as the conditions in force immediately before the transfer.

## **71 Variation of licence**

- (1) The regulator may, at any time, by written notice given to the licence holder, vary a licence.
- (2) However, the regulator must not vary a licence to authorise dealings involving the intentional release of a GMO into the environment if the application for the licence was originally considered under division 5.3.

*Note* Applications may only be considered under div 5.3 if none of the dealings proposed to be authorised by the licence would involve the intentional release of a GMO into the environment.

- (3) Without limiting subsection (1), the regulator may—
- (a) impose licence conditions or additional licence conditions; or
  - (b) remove or vary licence conditions that were imposed by the regulator; or
  - (c) extend or reduce the authority granted by the licence.

- (4) However, the regulator must not vary the licence unless the regulator is satisfied that any risks posed by the dealings proposed to be authorised by the licence as varied are able to be managed in a way that protects—
- (a) the health and safety of people; and
  - (b) the environment.

**72 Regulator to notify of proposed suspension, cancellation or variation**

- (1) Before suspending, cancelling or varying a licence under this division, the regulator must give written notice of the proposed suspension, cancellation or variation to the licence holder.
- (2) The notice—
- (a) must state that the regulator proposes to suspend, cancel or vary the licence; and
  - (b) may require the licence holder to give to the regulator any information of a kind stated in the notice that is relevant to the proposed suspension, cancellation or variation; and
  - (c) may invite the licence holder to make a written submission to the regulator about the proposed suspension, cancellation or variation.
- (3) The notice must state a period within which the licence holder—
- (a) must give the information mentioned in subsection (2) (b); and
  - (b) may make a submission under subsection (2) (c).
- (4) The period must not end earlier than 30 days after the day the notice was given.
- (5) In considering whether to suspend, cancel or vary a licence, the regulator must have regard to any submission made under subsection (2) (c).

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- (6) This section does not apply to a suspension, cancellation or variation requested by the licence holder.
- (7) This section does not apply to a suspension, cancellation or variation of a licence if the regulator considers that the suspension, cancellation or variation is necessary to avoid an imminent risk of death, serious illness, serious injury or serious damage to the environment.

## **Division 5.8            Annual charge**

### **72A    GMO licence—annual charge**

- (1) A person who is the holder of a GMO licence at any time during a financial year is liable to pay a charge for the licence for the year.
- (2) The amount of the charge for a financial year is the amount prescribed under the regulations.
- (3) The amount prescribed may be in the nature of a tax and not be related to the cost of providing any service.

*Note*        This section does not appear in the Commonwealth Act. Provision is included, however, in the *Gene Technology (Licence Charges) Act 2000* (Cwlth) for the imposition of an annual charge for a GMO licence.

## **Part 6** Regulation of notifiable low risk dealings on GMO register

### **Division 6.1** Simplified outline of part 6

#### **73** Simplified outline—pt 6

In outline, this part—

- (a) establishes a mechanism for the regulations to regulate certain dealings with GMOs (*notifiable low risk dealings*) that do not involve the intentional release of GMOs into the environment (see division 6.2); and
- (b) provides that the regulations may, among other things, require that the regulator be notified of the dealings; and
- (c) enables the regulator to determine that certain dealings previously authorised by a licence be included on the GMO register; and
- (d) ensures that, if a dealing is included on the GMO register, anyone may undertake the dealing, subject to stated conditions.

### **Division 6.2** Notifiable low risk dealings

#### **74** Notifiable low risk dealings

- (1) The regulations may declare a dealing with a GMO to be a notifiable low risk dealing for this Act.
- (2) Before the Executive makes regulations declaring a dealing with a GMO to be a notifiable low risk dealing, the regulator must be satisfied that the dealing would not involve the intentional release of a GMO into the environment.

- (3) Also, before the Executive makes regulations declaring a dealing with a GMO to be a notifiable low risk dealing, the regulator must consider the following matters:
- (a) whether the GMO is biologically contained so that it is not able to survive or reproduce without human intervention;
  - (b) whether the dealing with the GMO would involve minimal risk to the health and safety of people and to the environment, taking into account the properties of the GMO as a pathogen or pest and the toxicity of any proteins produced by the GMO;
  - (c) whether no conditions, or minimal conditions, would be necessary to be prescribed to manage any risk mentioned in paragraph (b).

*Note 1* For provisions corresponding to the Commonwealth Act, s 74 (4), see the *Legislation Act 2001*, s 48.

*Note 2* This section differs from the Commonwealth Act, s 74.

## **75 Regulation of notifiable low risk dealings**

- (1) The regulations may regulate a notifiable low risk dealing for the purpose of protecting the health and safety of people or the environment.
- (2) The regulations may prescribe different requirements to be complied with in different situations or by different people, including requirements in relation to the following:
  - (a) the people who may undertake notifiable low risk dealings;
  - (b) notifying the regulator of notifiable low risk dealings;
  - (c) supervision by institutional biosafety committees of notifiable low risk dealings;
  - (d) the containment level of facilities in which notifiable low risk dealings may be undertaken.

- (3) Subsection (2) does not limit the *Legislation Act 2001*, section 48 (Power to make instrument includes power to make different provision for different categories etc).

## **Division 6.3**                      **GMO register**

### **76**      **GMO register**

*Note*      The Commonwealth Act, s 76 provides for the establishment and maintenance of the GMO register.

### **77**      **Contents of register**

If the regulator determines under section 78 that a dealing with a GMO is to be included on the GMO register, the regulator must state in the GMO register—

- (a) a description of the dealing; and
- (b) any condition to which the dealing is subject.

### **78**      **Regulator may include dealings with GMOs on GMO register**

- (1) The regulator may, in writing, determine that a dealing with a GMO is to be included on the GMO register if the regulator is satisfied that—
- (a) the dealing is, or has been, authorised by a GMO licence; or
  - (b) the GMO—
    - (i) is a GM product; and
    - (ii) is a GMO only because of regulations made under the definition of *genetically modified organism*, paragraph (c).
- (2) A determination under subsection (1) may be made—
- (a) on application by the holder of a licence authorising the dealing; or



- (b) on the regulator's own initiative.
- (3) A determination under subsection (1) commences on the day stated in the determination.
- (4) If the determination was made on application by the holder of a GMO licence authorising the dealing, the day must not be before the licence ceases to be in force.

*Note* The Commonwealth Act, s 78 (4) provides for determinations to be disallowable instruments.

## **79 Regulator not to make determination unless risks can be managed**

- (1) The regulator must not make a determination under section 78 (1) about a dealing with a GMO unless the regulator is satisfied that—
  - (a) any risks posed by the dealing are minimal; and
  - (b) it is not necessary for people undertaking the dealing to hold, or be covered by, a GMO licence to protect the health and safety of people or to protect the environment.
- (2) For subsection (1), the regulator must have regard to the following:
  - (a) any data available to the regulator about adverse effects posed by the dealing;
  - (b) any other information about risks associated with the dealing of which the regulator is aware, including information given to the regulator by a licence holder under section 65 or by someone else under section 66;
  - (c) whether there is a need for the dealing to be subject to conditions;
  - (d) any other information about whether the dealing should be authorised by a GMO licence.
- (3) The regulator may have regard to any other matters the regulator considers relevant.

## **80 Variation of GMO register**

- (1) The regulator may vary the GMO register by written determination.
- (2) A variation may—
  - (a) remove a dealing from the GMO register; or
  - (b) revoke or vary conditions to which a dealing on the GMO register is subject; or
  - (c) impose additional conditions to which a dealing on the GMO register is subject.

*Note* The Commonwealth Act, s 80 (3) provides for determinations to be disallowable instruments.

## **81 Inspection of register**

*Note* The Commonwealth Act, s 81 requires the regulator to permit any person to inspect the GMO register.

## **Part 7                      Certification and accreditation**

### **Division 7.1              Simplified outline of part 7**

#### **82      Simplified outline—pt 7**

- (1) In outline, this part establishes a system under which the regulator may certify facilities to stated containment levels in accordance with guidelines issued by the regulator.
- (2) Licence conditions may require that facilities be certified to stated containment levels (see division 7.2).
- (3) Also, this part enables the regulator to accredit organisations in accordance with accreditation guidelines issued by the regulator.
- (4) Licence conditions may state that dealings must be supervised by an institutional biosafety committee established by an accredited organisation (see division 7.3).

### **Division 7.2              Certification**

#### **83      Application for certification**

- (1) A person may apply to the regulator for certification of a facility to a particular containment level.
- (2) The application must be in writing, and must contain the information the regulator requires.

*Note*      The conditions of a licence may require that a facility be certified under this division.

- (3) The application must be accompanied by the application fee (if any) prescribed under the regulations.

**84 When regulator may certify facility**

The regulator may, in writing, certify the facility to a stated containment level if the facility meets the containment requirements provided in guidelines issued by the regulator under section 90.

**85 Regulator may require applicant to give further information**

- (1) The regulator may, by written notice, require an applicant for certification of a facility to give the regulator further information about the application.
- (2) The notice may state the period within which the information must be given.

**86 Conditions of certification**

The certification of a facility is subject to the following conditions:

- (a) any conditions imposed by the regulator at the time of certification;
- (b) any conditions imposed by the regulator under section 87 after certification;
- (c) any conditions prescribed under the regulations.

**87 Variation of certification**

- (1) The regulator may, at any time, by written notice given to the holder of the certification, vary the certification of a facility.
- (2) Without limiting subsection (1), the regulator may—
  - (a) impose additional conditions; or
  - (b) remove or vary conditions imposed by the regulator.

**88 Suspension or cancellation of certification**

The regulator may, by written notice, suspend or cancel the certification of a facility if the regulator believes on reasonable grounds that a condition of the certification has been breached.

**89 Regulator to notify of proposed suspension, cancellation or variation**

- (1) Before suspending, cancelling or varying a certification under this division, the regulator must give written notice of the proposed suspension, cancellation or variation to the holder of the certification.
- (2) The notice—
  - (a) must state that the regulator proposes to suspend, cancel or vary the certification; and
  - (b) may require the holder of the certification to give to the regulator any information of a kind stated in the notice that is relevant to the proposed suspension, cancellation or variation; and
  - (c) may invite the holder to make a written submission to the regulator about the proposed suspension, cancellation or variation.
- (3) The notice must state a period within which the holder of the certification—
  - (a) must give the information mentioned in subsection (2) (b); and
  - (b) may make a submission under subsection (2) (c).
- (4) The period must not end earlier than 30 days after the day the notice was given.
- (5) In considering whether to suspend, cancel or vary a certification, the regulator must have regard to any submission made under subsection (2) (c).

- (6) This section does not apply to a suspension, cancellation or variation requested by the holder of the certification.
- (7) This section does not apply to a suspension, cancellation or variation of a certification if the regulator considers the suspension, cancellation or variation is necessary to avoid an imminent risk of death, serious illness, serious injury or serious damage to the environment.

## **90 Guidelines**

The regulator may issue written technical or procedural guidelines about the requirements for the certification of facilities to stated containment levels.

*Note 1* For provisions corresponding to the Commonwealth Act, s 90 (2), see the *Legislation Act 2001*, s 46.

*Note 2* This section differs from the Commonwealth Act, s 90.

## **Division 7.3 Accredited organisations**

### **91 Application for accreditation**

- (1) A person may apply to the regulator for accreditation of an organisation as an accredited organisation.

*Note* The conditions of a licence may require supervision of dealings by an institutional biosafety committee established by an accredited organisation (see s 62 (2) (m)), and the regulations may require supervision by a committee of notifiable low risk dealings (see s 75 (2) (c)).

- (2) The application must be in writing, and must contain the information the regulator requires.

### **92 Regulator may accredit organisations**

- (1) The regulator may, in writing, accredit an organisation as an accredited organisation.

- (2) In deciding whether to accredit an organisation, the regulator must have regard to—
- (a) whether the organisation has established, or proposes to establish, an institutional biosafety committee under guidelines issued by the regulator under section 98; and
  - (b) whether the organisation will be able to maintain an institutional biosafety committee under the guidelines; and
  - (c) whether the organisation has, or will have, appropriate indemnity arrangements for its institutional biosafety committee members; and
  - (d) any other matters provided in the guidelines.

**93 Regulator may require applicant to give further information**

- (1) The regulator may, by written notice, require an applicant for accreditation of an organisation to give the regulator further information about the application.
- (2) The notice may state the period within which the information must be given.

**94 Conditions of accreditation**

The accreditation of an accredited organisation is subject to the following conditions:

- (a) any conditions imposed by the regulator at the time of accreditation;
- (b) any conditions imposed by the regulator under section 95 after accreditation;
- (c) any conditions prescribed under the regulations.

**95 Variation of accreditation**

- (1) The regulator may, at any time, by written notice given to an accredited organisation, vary the organisation's accreditation.
- (2) Without limiting subsection (1), the regulator may—
  - (a) impose additional conditions; or
  - (b) remove or vary conditions imposed by the regulator.

**96 Suspension or cancellation of accreditation**

The regulator may, by written notice given to an accredited organisation, suspend or cancel the accreditation if the regulator believes on reasonable grounds that a condition of the accreditation has been breached.

**97 Regulator to notify of proposed suspension, cancellation or variation**

- (1) Before suspending, cancelling or varying an accreditation under this division, the regulator must give written notice of the proposed suspension, cancellation or variation to the holder of the accreditation.
- (2) The notice—
  - (a) must state that the regulator proposes to suspend, cancel or vary the accreditation; and
  - (b) may require the holder of the accreditation to give to the regulator any information of a kind stated in the notice that is relevant to the proposed suspension, cancellation or variation; and
  - (c) may invite the holder of the accreditation to make a written submission to the regulator about the proposed suspension, cancellation or variation.
- (3) The notice must state a period within which the holder of the accreditation—



- (a) must give the information mentioned in subsection (2) (b); and
  - (b) may make a submission under subsection (2) (c).
- (4) The period must not end earlier than 30 days after the day the notice was given.
- (5) In considering whether to suspend, cancel or vary an accreditation, the regulator must have regard to any submission made under subsection (2) (c).
- (6) This section does not apply to a suspension, cancellation or variation requested by the holder of the accreditation.
- (7) This section does not apply to a suspension, cancellation or variation of an accreditation if the regulator considers the suspension, cancellation or variation is necessary to avoid an imminent risk of death, serious illness, serious injury or serious damage to the environment.

## **98 Guidelines**

- (1) The regulator may, in writing, issue technical or procedural guidelines about requirements that must be met for an organisation to be accredited under this division.
- (2) The guidelines may relate to, but are not limited to, matters about establishing and maintaining institutional biosafety committees.

*Note 1* For provisions corresponding to the Commonwealth Act, s 98 (3), see the *Legislation Act 2001*, s 46.

*Note 2* This section differs from the Commonwealth Act, s 98.

<b>Part 8</b>	Gene technology technical advisory committee, gene technology community consultative committee and gene technology ethics committee
<b>Division 8.1</b>	Simplified outline of part 8
Section 99	

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## **Part 8**

# **Gene technology technical advisory committee, gene technology community consultative committee and gene technology ethics committee**

### **Division 8.1**

## **Simplified outline of part 8**

#### **99**

### **Simplified outline—pt 8**

In outline, this part sets out the functions under this Act of the following committees:

- (a) the gene technology technical advisory committee;
- (b) the gene technology community consultative committee;
- (c) the gene technology ethics committee.

*Note* This section differs from the Commonwealth Act, s 99.

### **Division 8.2**

## **Gene technology technical advisory committee**

#### **100**

### **Gene technology technical advisory committee**

*Note* The Commonwealth Act, s 100 provides for the establishment and membership of the gene technology technical advisory committee.

## **101 Function of gene technology technical advisory committee**

The function of the gene technology technical advisory committee under this Act is to provide scientific and technical advice, on the request of the regulator or the Ministerial council, on the following:

- (a) gene technology, GMOs and GM products;
- (b) applications made under this Act;
- (c) the biosafety aspects of gene technology;
- (d) the need for policy principles, policy guidelines, codes of practice and technical and procedural guidelines about GMOs and GM products and the content of the principles, guidelines and codes.

## **102 Expert advisers**

*Note* The Commonwealth Act, s 102 provides for the appointment of expert advisers to the gene technology technical advisory committee.

## **103 Remuneration**

*Note* The Commonwealth Act, s 103 provides for the payment of remuneration and allowances to members of, and expert advisers to, the gene technology technical advisory committee.

## **104 Members and procedures**

*Note* The Commonwealth Act, s 104 authorises the making of regulations about the membership and operation of the gene technology technical advisory committee.

## **105 Subcommittees**

*Note* The Commonwealth Act, s 105 deals with the establishment of subcommittees by the gene technology technical advisory committee.

<b>Part 8</b>	Gene technology technical advisory committee, gene technology community consultative committee and gene technology ethics committee
<b>Division 8.3</b>	Gene technology community consultative committee
Section 106	

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## **Division 8.3                      Gene technology community consultative committee**

### **106    Gene technology community consultative committee**

*Note*    The Commonwealth Act, s 106 establishes the gene technology community consultative committee.

### **107    Function of consultative committee**

The function of the consultative committee under this Act is to provide advice, on the request of the regulator or the Ministerial council, on the following:

- (a) matters of general concern identified by the regulator about applications made under this Act;
- (b) matters of general concern about GMOs;
- (c) the need for policy principles, policy guidelines, codes of practice and technical and procedural guidelines about GMOs and GM products and the content of the principles, guidelines and codes.

*Note*    This section differs from the Commonwealth Act, s 107.

### **108    Membership**

*Note*    The Commonwealth Act, s 108 provides for the membership of the consultative committee.

### **109    Remuneration**

*Note*    The Commonwealth Act, s 109 provides for the payment of remuneration and allowances to members of the consultative committee.

### **110    Regulations**

*Note*    The Commonwealth Act, s 110 authorises the making of regulations about the membership and operation of the consultative committee.

## 110A Subcommittees

*Note* The Commonwealth Act, s110A deals with the establishment of subcommittees by the consultative committee.

## Division 8.4 Gene technology ethics committee

### 111 Gene technology ethics committee

*Note* The Commonwealth Act, s 111 provides for the establishment and membership of the gene technology ethics committee.

### 112 Function of gene technology ethics committee

The function of the ethics committee under this Act is to provide advice, on the request of the regulator or the Ministerial council, on the following:

- (a) ethical issues about gene technology;
- (b) the need for, and content of, codes of practice about ethics for conducting dealings with GMOs;
- (c) the need for, and content of, policy principles about dealings with GMOs that should not be conducted for ethical reasons.

### 113 Expert advisers

*Note* The Commonwealth Act, s 113 provides for the appointment of expert advisers to the ethics committee.

### 114 Remuneration

*Note* The Commonwealth Act, s 114 provides for the payment of remuneration and allowances to members of, and expert advisers to, the ethics committee.

### 115 Members and procedures

*Note* The Commonwealth Act, s 115 authorises the making of regulations about the membership and operation of the ethics committee.

**Part 8** Gene technology technical advisory committee, gene technology community consultative committee and gene technology ethics committee

**Division 8.4** Gene technology ethics committee

Section 116

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## **116 Subcommittees**

*Note* The Commonwealth Act, s 116 deals with the establishment of subcommittees by the ethics committee.

## **Part 9 Administration**

### **Division 9.1 Simplified outline of part 9**

#### **117 Simplified outline—pt 9**

In outline, this part—

- (a) provides for financial matters (see division 9.3); and
- (b) sets out reporting requirements (see division 9.5); and
- (c) requires the regulator to ensure that certain information is entered on a record of GMOs and GM products (see division 9.6); and
- (d) permits the regulator to review notifiable low risk dealings and exemptions (see division 9.7).

*Note* This section differs from the Commonwealth Act, s 117.

### **Division 9.2 Appointment and conditions of regulator**

#### **118 Appointment of regulator**

*Note* The Commonwealth Act, s 118 provides for the appointment of the regulator.

#### **119 Termination of appointment**

*Note* The Commonwealth Act, s 119 sets out the circumstances in which the regulator's appointment may be terminated.

#### **120 Disclosure of interests**

*Note* The Commonwealth Act, s 120 requires the regulator to disclose his or her interests to the relevant Commonwealth Minister.

### **121 Acting appointment**

*Note* The Commonwealth Act, s 121 deals with the appointment of a person to act as the regulator.

### **122 Terms and conditions**

*Note* The Commonwealth Act, s 122 deals with the terms and conditions of appointment of the regulator.

### **123 Outside employment**

*Note* The Commonwealth Act, s 123 prohibits the regulator from engaging in paid outside employment without the relevant Commonwealth Minister's approval.

### **124 Remuneration**

*Note* The Commonwealth Act, s 124 provides for the payment of remuneration and allowances to the regulator.

### **125 Leave of absence**

*Note* The Commonwealth Act, s 125 deals with the entitlement of the regulator to leave of absence.

### **126 Resignation**

*Note* The Commonwealth Act, s 126 deals with the procedure for resignation by the regulator.

## **Division 9.3 Money**

### **127 Regulator may charge for services**

The regulator may charge for services provided by, or on behalf of, the regulator in exercising the regulator's functions under this Act.

### **128 Notional payments**

*Note* The Commonwealth Act, s 128 provides for fees and charges to be notionally payable by the Commonwealth and allows directions to be given for the section. This provision is unnecessary in the ACT (see *Financial Management Act 1996*).



## **129 Gene technology account**

*Note* The Commonwealth Act, s 129 provides for the establishment of the gene technology account.

## **130 Credits to gene technology account**

The following amounts must be paid to the Commonwealth for crediting to the gene technology account:

- (a) amounts equal to amounts from time to time received by the Territory under division 5.8;
- (b) amounts equal to fees received by the Territory under section 40 (6) (Person may apply for a licence) and section 83 (3) (Application for certification);
- (c) amounts equal to amounts received by the Territory for the exercise of the regulator's functions under this Act;
- (d) amounts equal to amounts recovered by the Territory under section 146 (5) (Regulator may give directions) or section 158 (4) (Powers available to inspectors for dealing with dangerous situations), to the extent that they are referable to costs paid out of the gene technology account.

*Note* This section differs from the Commonwealth Act, s 130.

## **131 Recovery of amounts**

The following amounts may be recovered in a court of competent jurisdiction as debts owing to the Territory:

- (a) amounts payable to the Territory under division 5.8;
- (b) fees payable to the Territory under this Act;
- (c) amounts payable to the Territory for the exercise of the regulator's functions under this Act.

### **132 Purposes of account**

*Note* The Commonwealth Act, s 132 sets out the purposes for which money in the gene technology account may be expended.

## **Division 9.4 Staffing**

### **133 Staff assisting regulator**

*Note* The Commonwealth Act, s 133 provides for staff to be made available to assist the regulator.

### **134 Consultants**

*Note* The Commonwealth Act, s 134 authorises the regulator to engage consultants.

### **135 Seconded officers**

*Note* The Commonwealth Act, s 135 provides for staff to be seconded to the regulator.

## **Division 9.5 Reporting requirements**

### **136 Annual report**

- (1) As soon as practicable after the end of each financial year, the regulator must prepare and give to the Minister a report on the operations of the regulator under this Act during that year.
- (2) The Minister must present a copy of the report to the Legislative Assembly within 6 sitting days after the Minister receives the report.

*Note* The Commonwealth Act, s 136 (3) requires the regulator to give a copy of his or her report under that section to each State.

### **136A Quarterly reports**

- (1) As soon as practicable after the end of each quarter, the regulator must prepare and give to the Minister a report on the operations of the regulator under this Act during the quarter.

- (2) The report must include information about the following:
  - (a) GMO licences issued during the quarter;
  - (b) any breaches of conditions of a GMO licence that have come to the regulator's attention during the quarter;
  - (c) auditing and monitoring of dealings with GMOs under this Act by the regulator or an inspector during the quarter.
- (3) The Minister must present a copy of the report to the Legislative Assembly within 6 sitting days after the Minister receives the report.
- (4) In this section:

*quarter* means a period of 3 months beginning on 1 January, 1 April, 1 July or 1 October of any year.

### **137 Reports to Legislative Assembly**

- (1) The regulator may at any time give the Minister a report about matters relating to the regulator's functions under this Act and ask the Minister to present the report to the Legislative Assembly.
- (2) The Minister must present a copy of the report to the Legislative Assembly within 6 sitting days after the Minister receives the report.

*Note 1* The Commonwealth Act, s 137 (2) requires the regulator to give a copy of his or her report under that section to each State.

*Note 2* This section differs from the Commonwealth Act, s 137.

## **Division 9.6 Record of GMO and GM product dealings**

### **138 Record of GMO and GM product dealings**

- (1) The GM record must contain the following information, other than confidential commercial information, about each licence issued under section 55:

- (a) the name of the licence holder;
  - (b) the people covered by the licence;
  - (c) the dealings authorised by the licence and the GMO to which those dealings relate;
  - (d) any licence conditions;
  - (e) the date the licence was issued, and its expiry date (if any).
- (2) The GM record must contain the following information, other than confidential commercial information, about each notifiable low risk dealing notified to the regulator under regulations made for section 75 (2) (b):
- (a) the name of the person who notified the dealing;
  - (b) the particulars of the dealing prescribed under the regulations for this paragraph.
- (3) The GM record must contain the information prescribed under the regulations, other than confidential commercial information, about GM products mentioned in designated notifications given to the regulator under an Act.
- (4) The GM record must also contain—
- (a) a description of each dealing on the GMO register; and
  - (b) any condition to which the dealing is subject.
- (5) The regulator must ensure that information mentioned in subsection (1), (2), (3) or (4) is entered on the GM record as soon as reasonably practicable.
- (6) In this section:

***designated notification*** means a notification required to be given to the regulator under an Act or any law applying as a Territory law by force of an Act.

*Note* This section differs from the Commonwealth Act, s 138.

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### **139 Inspection of record**

*Note* The Commonwealth Act, s 139 requires the regulator to permit any person to inspect the GM record.

## **Division 9.7                      Reviews of notifiable low risk dealings and exemptions**

### **140 Regulator may review notifiable low risk dealings**

- (1) The regulator may, at any time, consider—
  - (a) whether a dealing with a GMO should be a notifiable low risk dealing; or
  - (b) whether an existing notifiable low risk dealing should no longer be a notifiable low risk dealing.
- (2) The basis of the regulator's consideration must relate to—
  - (a) the matters of which the regulator must be satisfied under section 74 (2); or
  - (b) the matters the regulator must consider under section 74 (3).

### **141 Regulator may review exemptions**

The regulator may, at any time, consider—

- (a) whether an exempt dealing should not be an exempt dealing; or
- (b) whether a dealing should be an exempt dealing.

### **142 Regulator may give notice of consideration**

- (1) The regulator may publish a notice inviting written submissions about any matter the regulator may consider under section 140 or 141.
- (2) The notice must state—
  - (a) the matters to which submissions must relate; and

- (b) the closing date for submissions, which must not be earlier than 30 days after the day the notice was published.
- (3) If the regulator publishes a notice under subsection (1), the regulator must also give written notice, stating the matters mentioned in subsection (2) (a), to—
  - (a) each State; and
  - (b) the gene technology technical advisory committee; and
  - (c) each Commonwealth authority or agency prescribed under the regulations for this paragraph.
- (4) A notice under this section may be about a single matter or a class of matters.

#### **143 What regulator may do after consideration**

- (1) If—
  - (a) the matter is about whether a dealing should be a notifiable low risk dealing; and
  - (b) the regulator is satisfied as mentioned in section 74 (2); and
  - (c) the regulator has considered the matters mentioned in section 74 (3);

the regulator may recommend to the Ministerial council that the dealing be declared to be a notifiable low risk dealing.

- (2) If—
  - (a) the matter is about whether an existing notifiable low risk dealing be reconsidered; and
  - (b) after having had regard to the matters mentioned in section 74, the regulator considers the dealing should not be a notifiable low risk dealing;

the regulator may recommend to the Ministerial council that the regulations be amended accordingly.

(3) If the matter is about whether a dealing—

- (a) should be an exempt dealing; or
- (b) should cease to be an exempt dealing;

the regulator may recommend to the Ministerial council that the regulations be amended accordingly.

#### **144 Regulator not required to review matters**

This division does not require the regulator to consider a matter under section 140 or 141.

## Part 10 Enforcement

### 145 Simplified outline—pt 10

In outline, this part—

- (a) authorises the regulator to give directions to a licence holder or to a person covered by a licence if—
  - (i) the regulator believes the person is not complying with this Act; and
  - (ii) the regulator believes it is necessary to give the directions to protect the health and safety of people or to protect the environment; and
- (b) authorises the Supreme Court to issue injunctions, and contains a forfeiture provision.

*Note* This section differs from the Commonwealth Act, s 145.

### 146 Regulator may give directions

- (1) If the regulator believes, on reasonable grounds, that—
  - (a) a licence holder is not complying with this Act in relation to a thing; and
  - (b) it is necessary to exercise powers under this section to protect the health and safety of people or to protect the environment;the regulator may, by written notice, direct the licence holder, within the time stated in the notice, to take stated reasonable steps relating to the thing to comply with this Act.
- (2) If the regulator believes on reasonable grounds that—
  - (a) a person covered by a GMO licence is not complying with this Act in relation to a thing; and



(b) it is necessary to exercise powers under this section to protect the health and safety of people or to protect the environment;

the regulator may, by written notice, direct the person, within the time stated in the notice, to take stated reasonable steps relating to the thing to comply with this Act.

- (3) A person must not intentionally fail to take the steps stated in a notice under subsection (1) or (2) within the time stated in the notice.

Maximum penalty:

- (a) for an aggravated offence—2 000 penalty units; or  
(b) in any other case—500 penalty units.

*Note* **Aggravated offence** is defined in s 38 (1).

- (4) If the licence holder or the person does not take the steps stated in the notice within the time stated in the notice, the regulator may arrange for those steps to be taken.
- (5) If the regulator incurs costs because of arrangements made by the regulator under subsection (4), the licence holder or the person is liable to pay to the Territory an amount equal to the cost.

*Note* The *Legislation Act 2001*, s 177 (Recovery of amounts owing under laws) applies to the recovery of the amount.

- (6) A time stated in a notice under subsection (1) or (2) must be reasonable having regard to the circumstances.

*Note* This section differs from the Commonwealth Act, s 146.

## 147 Injunctions

- (1) If a person has engaged, is engaging, or is about to engage in any conduct that is or would be an offence against this Act, the Supreme Court may, on the application of the regulator or any other aggrieved person, grant an injunction restraining the person from engaging in the conduct.

- (2) If—
- (a) a person has failed, is failing, or is about to fail, to do a thing; and
  - (b) the failure is, or would be, an offence against this Act;
- the Supreme Court may, on the application of the regulator or any other aggrieved person, grant an injunction requiring the person to do the thing.
- (3) The power of the Supreme Court to grant an injunction may be exercised—
- (a) whether or not it appears to the court that the person intends to engage, or to continue to engage, in conduct of that kind; and
  - (b) whether or not the person has previously engaged in conduct of that kind.
- (4) The Supreme Court may discharge or vary an injunction granted under this section.
- (5) The Supreme Court may grant an interim injunction pending deciding an application under subsection (1).
- (6) The powers under this section are in addition to any other powers of the Supreme Court.

*Note* The Commonwealth Act, s 147 gives a similar power to grant injunctions on the Federal Court.

#### **148 Forfeiture**

- (1) If a court finds a person guilty of an offence against this Act, the court may order forfeiture to the Territory of anything used or otherwise involved in the commission of the offence.
- (2) A thing ordered by a court to be forfeited under this section becomes the property of the Territory and may be sold or otherwise dealt with in accordance with the regulator's directions.

- (3) Until the regulator gives a direction, the thing must be kept in the custody the regulator directs.

*Note* This section differs from the Commonwealth Act, s 148.

## **Part 11 Powers of inspection**

### **Division 11.1 Simplified outline of part 11**

#### **149 Simplified outline—pt 11**

In outline, this part—

- (a) provides for powers of inspection for monitoring and offences; and
- (b) provides for the appointment of inspectors (see division 11.2); and
- (c) deals with the powers and obligations of inspectors and the rights and responsibilities of an occupier of premises when an inspector seeks to exercise powers (see divisions 11.3 to 11.9); and
- (d) sets out procedures relating to monitoring warrants and offence-related warrants (see division 11.10); and
- (e) does not limit the conditions to which a licence can be subject, and section 64 imposes a condition about monitoring dealings with GMOs.

### **Division 11.2 Appointment of inspectors and identity cards**

#### **150 Appointment of inspectors**

- (1) The regulator may, in writing, appoint any of the following people as inspectors:
  - (a) a public servant;
  - (b) a person who is appointed or employed by the Commonwealth.

- (2) In exercising functions as an inspector, an inspector must comply with any directions of the regulator.

*Note* This section differs from the Commonwealth Act, s 150.

### **151 Identity card**

- (1) The regulator must issue an identity card to an inspector.
- (2) The identity card—
- (a) must be in the form approved under section 192E; and
  - (b) must contain a recent photograph of the inspector.
- (3) If a person to whom an identity card has been issued ceases to be an inspector, the person must return the identity card to the regulator as soon as practicable.

Maximum penalty: 1 penalty unit.

- (4) An offence against subsection (3) is an offence of strict liability.

*Note* For offences of strict liability, see the Criminal Code, s 17.

- (5) An inspector must carry his or her identity card at all times when exercising functions as an inspector.

*Note* This section differs from the Commonwealth Act, s 151.

## **Division 11.3 Monitoring powers**

### **152 Powers available to inspectors for monitoring compliance**

- (1) For monitoring compliance with this Act, an inspector may—
- (a) enter any premises; and
  - (b) exercise the monitoring powers stated in section 153.
- (2) An inspector may enter premises under subsection (1) only if—
- (a) the occupier of the premises has consented to the entry; or
  - (b) the entry is made under a warrant under section 172; or

- (c) the occupier of the premises is a licence holder, or a person covered by a licence, and the entry is at a reasonable time.
- (3) However, subsection (2) (c) does not authorise entry into any part of premises that is being used solely for residential purposes.

### **153 Monitoring powers**

- (1) The monitoring powers an inspector may exercise under section 152 (1) (b) are as follows:
  - (a) to search the premises and anything on the premises;
  - (b) to inspect, examine, take measurements of, conduct tests on, or take samples of, anything on the premises that relates to a GMO;
  - (c) to take photographs, make video or audio recordings or make sketches of the premises or anything on the premises;
  - (d) if the inspector was authorised to enter the premises by a warrant under section 172, to require anyone in or on the premises to—
    - (i) answer any questions put by the inspector; and
    - (ii) produce any document requested by the inspector;
  - (e) to inspect any document on the premises;
  - (f) to take extracts from or make copies of any document;
  - (g) to take onto the premises the equipment and materials the inspector requires to exercise powers relating to the premises;
  - (h) to secure a thing, until a warrant is obtained to seize it, if the inspector—
    - (i) finds the thing during the exercise of monitoring powers on the premises; and
    - (ii) believes on reasonable grounds the thing is evidential material; and

- (iii) believes on reasonable grounds the thing would be lost, destroyed or tampered with before the warrant can be obtained.
- (2) The monitoring powers include the power to operate equipment at premises to see whether—
  - (a) the equipment; or
  - (b) a disk, tape or other storage device that—
    - (i) is at the premises; and
    - (ii) can be used with the equipment or is associated with it;contains information relevant to deciding whether there has been compliance with this Act.
- (3) If the inspector, after operating equipment at the premises, finds that the equipment, or a tape, disk or other storage device at the premises, contains information mentioned in subsection (2), the inspector may—
  - (a) operate facilities at the premises to put the information in documentary form and copy the document so produced; or
  - (b) if the information can be transferred to a tape, disk or other storage device that—
    - (i) is brought to the premises; or
    - (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;operate the equipment or other facilities to copy the information to the storage device, and remove the storage device from the premises.

## Division 11.4 Offence-related powers

### 154 Searches and seizures related to offences

- (1) This section applies if an inspector has reasonable grounds for suspecting there may be evidential material on any premises.
- (2) The inspector may—
  - (a) enter the premises, with the consent of the occupier or under a warrant issued under section 173; and
  - (b) exercise the powers set out in subsection (3) and section 155; and
  - (c) if the entry is under a warrant and the inspector finds evidential material on the premises—seize the material.
- (3) If—
  - (a) in the course of searching, under a warrant, for a particular thing, an inspector finds another thing that the inspector believes, on reasonable grounds, to be evidential material; and
  - (b) the inspector believes, on reasonable grounds, that it is necessary to seize that other thing to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating an offence against this Act;

the warrant is taken to authorise the inspector to seize the other thing.

### 155 Offence-related powers of inspectors for premises

The powers an inspector may exercise under section 154 (2) (b) are as follows:

- (a) to search the premises and anything on the premises for the evidential material;
- (b) to inspect, examine, take measurements of, conduct tests on, or take samples of the evidential material;



- (c) to take photographs, make video or audio recordings or make sketches of the premises or the evidential material;
- (d) to take onto the premises the equipment and materials the inspector needs to exercise powers relating to the premises.

### **156 Use of equipment at premises**

- (1) The inspector may operate equipment at the premises to see whether evidential material is accessible by doing so, if the inspector believes, on reasonable grounds, that the equipment can be operated without damaging the equipment.
- (2) If the inspector, after operating the equipment, finds that evidential material is accessible by doing so, the inspector may—
  - (a) seize the equipment and any disk, tape or other associated device; or
  - (b) if the material can, by using facilities at the premises, be put in documentary form—operate the facilities to put the material in documentary form and seize the documents so produced; or
  - (c) if the material can be transferred to a disk, tape or other storage device that—
    - (i) is brought to the premises; or
    - (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;operate the equipment or other facilities to copy the material to the storage device and take the storage device from the premises.
- (3) An inspector may seize equipment under subsection (2) (a) only if—
  - (a) it is not practicable to put the material in documentary form as mentioned in subsection (2) (b) or to copy the material as mentioned in subsection (2) (c); or

- (b) possession by the occupier of the equipment could constitute an offence.
- (4) An inspector may seize equipment under subsection (2) (a) or documents under subsection (2) (b) only if the inspector entered the premises under a warrant.

## **Division 11.5 Expert assistance**

### **157 Expert assistance to operate thing**

- (1) If an inspector believes on reasonable grounds that—
  - (a) information relevant to deciding whether there has been compliance with this Act, or evidential material, may be accessible by operating a thing at particular premises; and
  - (b) expert assistance is required to operate the thing; and
  - (c) the information or material may be destroyed, altered or otherwise interfered with if the inspector does not take action under this subsection;the inspector may do whatever is necessary to secure the thing, whether by locking it up, placing it under guard or otherwise.
- (2) The inspector must give notice to the occupier of the premises of the inspector's intention to secure the thing and of the fact that the thing may be secured for up to 24 hours.
- (3) The thing may be secured—
  - (a) for a period of not longer than 24 hours; or
  - (b) until the thing has been operated by the expert;whichever happens first.
- (4) If the inspector believes, on reasonable grounds, that the expert assistance will not be available within 24 hours, the inspector may apply to the Magistrates Court for an extension of the period.

- (5) The inspector must give notice to the occupier of the premises of the inspector's intention to apply for an extension, and the occupier is entitled to be heard on the application.

## **Division 11.6            Emergency powers**

### **158 Powers available to inspectors for dealing with dangerous situations**

- (1) This section applies if—
- (a) an inspector has reasonable grounds for suspecting that there may be on any premises a particular thing in relation to which this Act has not been complied with; and
  - (b) the inspector considers that it is necessary to exercise powers under this section to avoid an imminent risk of death, serious illness, serious injury, or to protect the environment.
- (2) The inspector may do any of the following:
- (a) enter the premises;
  - (b) search the premises for the thing;
  - (c) secure the thing, if the inspector finds it on the premises, until a warrant is obtained to seize the thing;
  - (d) if the inspector has reasonable grounds for suspecting that a person has not complied with this Act in relation to the thing—require the person to take the steps the inspector considers necessary for the person to comply with this Act;
  - (e) take the steps, or arrange for the steps to be taken, in relation to the thing that the inspector considers appropriate.
- (3) The inspector may exercise the powers under subsection (2) only to the extent that it is necessary for avoiding an imminent risk of death, serious illness, serious injury or serious damage to the environment.

- (4) If the regulator incurs costs because of steps reasonably taken or arranged to be taken by an inspector under subsection (2) (e), the person is liable to pay to the Territory an amount equal to the cost.

*Note* The *Legislation Act 2001*, s 177 (Recovery of amounts owing under laws) applies to the recovery of the amount.

## **Division 11.7 Obligations and incidental powers of inspectors**

### **159 Inspector must produce identity card on request**

An inspector is not entitled to exercise a power under this part in relation to premises if—

- (a) the occupier of the premises has required the inspector to produce his or her identity card for inspection by the occupier; and
- (b) the inspector fails to comply with the requirement.

### **160 Consent**

- (1) When seeking the consent of an occupier for section 152 (2) (a) or 154 (2) (a), an inspector must—
- (a) produce his or her identity card; and
  - (b) tell the occupier—
    - (i) the purpose of the entry; and
    - (ii) that anything found and seized under this part may be used in evidence in court; and
    - (iii) that consent may be refused.
- (2) If the occupier consents, the inspector must ask the occupier to sign a written acknowledgment—
- (a) that the occupier was told—
    - (i) the purpose of the entry; and

- (ii) that anything found and seized under this part may be used in evidence in court; and
  - (iii) that consent may be refused; and
- (b) that the occupier consented to the entry; and
- (c) stating the time, and date, when consent was given.
- (3) If the occupier signs an acknowledgment of consent, the inspector must immediately give a copy to the occupier.
- (4) A court must presume that an occupier of premises did not consent to an entry to the premises by an inspector under this part if—
  - (a) the question whether the occupier consented to the entry arises in a proceeding in the court; and
  - (b) an acknowledgment under this section is not produced in evidence for the entry; and
  - (c) it is not proved that the occupier consented to the entry.

*Note* This section differs from the Commonwealth Act, s 160.

### **161 Details of warrant to be given to occupier etc**

- (1) If a warrant in relation to premises is being executed and the occupier of the premises or someone else who apparently represents the occupier is present at the premises, the inspector must make a copy of the warrant available to the person present.
- (2) The inspector must identify himself or herself to the person.
- (3) The copy of the warrant need not include the signature of the magistrate who issued the warrant.

### **162 Announcement before entry**

- (1) An inspector must, before entering premises under a warrant—
  - (a) announce that the inspector is authorised to enter the premises; and

- (b) give anyone at the premises an opportunity to allow entry to the premises.
- (2) An inspector is not required to comply with subsection (1) if the inspector believes, on reasonable grounds, that immediate entry to the premises is required—
  - (a) to ensure the safety of a person; or
  - (b) to prevent serious damage to the environment; or
  - (c) to ensure that the effective execution of the warrant is not frustrated.

### **163 Compensation for damage**

- (1) The owner of a thing is entitled to compensation for damage to the thing if—
  - (a) the damage was caused to the thing because of it being operated as mentioned in this part; and
  - (b) the damage was caused because of—
    - (i) insufficient care being exercised in selecting the person to operate the thing; or
    - (ii) insufficient care being exercised by the person operating the thing.
- (2) Compensation is payable by the regulator.
- (3) In deciding the amount of compensation payable, regard is to be had to whether the occupier of the premises and the occupier's employees and agents, if they were available at the time, had provided any warning or guidance about the operation of the thing that was appropriate in the circumstances.

*Note* The Commonwealth Act, s 163 (2) provides for compensation to be payable out of money appropriated by the Commonwealth Parliament.

## **Division 11.8            Power to search goods, baggage    and containers and seize goods**

### **164    Power to search goods, baggage etc**

- (1) This section applies to any goods that are to be, are being, or have been, taken off an aircraft that flies between a place outside the ACT and a place in the ACT.
- (2) If an inspector believes, on reasonable grounds, that goods are goods to which this section applies, and that the goods may be, or may contain, evidential material, the inspector may—
  - (a) examine the goods; or
  - (b) if the goods are baggage—open and search the baggage; or
  - (c) if the goods are in a container—open and search the container.
- (3) An inspector may ask a person who owns, is carrying or is otherwise associated with, or appears to the inspector to be associated with, goods to which this section applies, any question about the goods.
- (4) A person must not fail to answer a question put to the person under subsection (3).

Maximum penalty: 30 penalty units.

- (5) An offence against subsection (4) is an offence of strict liability.

*Note 1* For offences of strict liability, see the Criminal Code, s 17.

*Note 2* This section differs from the Commonwealth Act, s 164.

### **165    Seizure of goods**

An inspector may seize goods mentioned in section 164 if the inspector has reasonable grounds to suspect that the goods are evidential material.

## **Division 11.9**                      **General provisions relating to search and seizure**

### **166**    **Copies of seized things to be provided**

- (1) If an inspector seizes, under a warrant relating to premises—
- (a) a document, film, computer file or other thing that can be readily copied; or
  - (b) a storage device, the information in which can be readily copied;

the inspector must, if asked to do so by the occupier of the premises, or someone else who apparently represents the occupier and who is present when the warrant is executed, give a copy of the thing or the information to that person as soon as practicable after the seizure.

- (2) Subsection (1) does not apply if—
- (a) the thing that has been seized was seized under section 156 (2) (b) or (c); or
  - (b) possession by the occupier of the document, film, computer file, thing or information could constitute an offence.

### **167**    **Occupier entitled to be present during search**

- (1) If a warrant in relation to premises is being executed and the occupier of the premises, or someone else who apparently represents the occupier is present at the premises, the person is entitled to observe the search being conducted.
- (2) The right to observe the search being conducted ceases if the person impedes the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.



### **168 Receipts for things seized**

- (1) If a thing is seized under this part, the inspector must provide a receipt for the thing.
- (2) If 2 or more things are seized, they may be covered in a single receipt.

### **169 Keeping seized things**

- (1) Subject to any contrary order of a court, if an inspector seizes a thing under this part, the inspector must return it if—
  - (a) the reason for its seizure no longer exists or it is decided that it is not to be used in evidence; or
  - (b) the period of 60 days after its seizure ends;whichever first happens, unless the thing is forfeited or forfeitable to the Territory.
- (2) At the end of the 60 days mentioned in subsection (1) (b), an inspector must take reasonable steps to return the thing to the person from whom it was seized, unless—
  - (a) a proceeding for which the thing may provide evidence was begun before the end of the 60 days and has not been completed (including an appeal to a court in relation to the proceeding); or
  - (b) an inspector may keep the thing because of an order under section 170; or
  - (c) to return the thing could cause an imminent risk of death, serious illness, serious injury or serious damage to the environment; or
  - (d) an inspector is otherwise authorised by a law, or an order of a court, of the Territory or the Commonwealth, to keep, destroy or dispose of the thing.

- (3) The thing may be returned under subsection (2) either unconditionally or on the conditions decided by the regulator.

**170 Magistrates Court may permit thing to be kept**

- (1) An inspector may apply to the Magistrates Court for an order that the inspector may keep the thing for a further period if a proceeding for which the thing may provide evidence has not begun before—
- (a) the end of 60 days after the day of the seizure; or
  - (b) the end of a period previously stated in an order of the Magistrates Court under this section.
- (2) If the Magistrates Court is satisfied that it is necessary for an inspector to continue to keep the thing—
- (a) for an investigation about whether an offence against this Act has been committed; or
  - (b) to allow evidence of an offence against this Act to be secured for a prosecution;

the court may order that an inspector may keep the thing for a period (not longer than 3 years) stated in the order.

- (3) Before making the application, the inspector must—
- (a) take reasonable steps to discover who has an interest in the retention of the thing; and
  - (b) if it is practicable to do so, notify each person whom the inspector believes to have an interest of the proposed application.

*Note* This section differs from the Commonwealth Act, s 170.

**171 Disposal of goods if there is no owner or owner cannot be located**

If—

- (a) a thing is seized under this part; and

(b) apart from this section, the Territory is required to return the thing to the owner; and

(c) there is no owner or the regulator cannot, despite making reasonable efforts, locate the owner;

the regulator may dispose of the thing in the way the regulator considers appropriate.

## **Division 11.10      Warrants**

### **172    Monitoring warrants**

(1) An inspector may apply to a magistrate for a warrant under this section for premises.

(2) The magistrate may issue the warrant if the magistrate is satisfied, by evidence on oath, that it is reasonably necessary that 1 or more inspectors should have access to the premises for monitoring compliance with this Act.

(3) However, the magistrate may issue the warrant only if the inspector or someone else has given to the magistrate, either orally or by affidavit, the further information (if any) that the magistrate requires about the grounds on which the issue of the warrant is being sought.

(4) The warrant must—

(a) authorise 1 or more inspectors (whether or not named in the warrant), with any necessary and reasonable assistance and force—

(i) to enter the premises; and

(ii) to exercise the powers mentioned in section 153 (Monitoring powers) in relation to the premises; and

(b) state whether the entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and

(c) specify the day (not later than 6 months after the issue of the warrant) the warrant ceases to have effect; and

- (d) state the purpose for which the warrant is issued.

### **173 Offence-related warrants**

- (1) An inspector may apply to a magistrate for a warrant under this section for premises.
- (2) The magistrate may issue the warrant if the magistrate is satisfied, by evidence on oath, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, evidential material in or on the premises.
- (3) However, the magistrate may issue the warrant only if the inspector or someone else has given to the magistrate, either orally or by affidavit, the further information (if any) that the magistrate requires about the grounds on which the issue of the warrant is being sought.
- (4) The warrant must—
  - (a) name 1 or more inspectors; and
  - (b) authorise the named inspectors, with any necessary and reasonable assistance and force—
    - (i) to enter the premises; and
    - (ii) to exercise the powers mentioned in section 154 (3) (Searches and seizures related to offences) and section 155 (Offence-related powers of inspectors for premises); and
    - (iii) to seize the evidential material; and
  - (c) state whether the entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and
  - (d) state the day (not later than 1 week after the issue of the warrant) the warrant ceases to have effect; and
  - (e) state the purpose for which the warrant is issued.

**174 Offence-related warrants by telephone, telex, fax etc**

- (1) If, in an urgent case, an inspector considers it necessary to do so, the inspector may apply to a magistrate by telephone, telex, fax or other electronic means for a warrant under section 173 for premises.
- (2) The magistrate may require communication by voice to the extent that it is practicable in the circumstances.
- (3) Before applying for the warrant, the inspector must prepare an affidavit in relation to the premises stating the grounds on which the warrant is sought.
- (4) If it is necessary to do so, the inspector may apply for the warrant before the affidavit is sworn.
- (5) If the magistrate is satisfied—
  - (a) after having considered the terms of the affidavit; and
  - (b) after having received the further information (if any) that the magistrate requires about the grounds on which the issue of the warrant is being sought;

that there are reasonable grounds for issuing the warrant, the magistrate may complete and sign the same warrant that the magistrate would issue under section 173 if the application had been made under that section.

- (6) If the magistrate completes and signs the warrant—
  - (a) the magistrate must—
    - (i) tell the inspector what the terms of the warrant are; and
    - (ii) tell the inspector the date and time the warrant was signed; and
    - (iii) tell the inspector the day (not later than 1 week after the magistrate completes and signs the warrant) the warrant ceases to have effect; and

- (iv) record on the warrant the reasons for issuing the warrant; and
- (b) the inspector must—
  - (i) complete a form of warrant in the same terms as the warrant completed and signed by the magistrate; and
  - (ii) write on the form the name of the magistrate and the day and time the warrant was signed.
- (7) The inspector must also, not later than the day after the day of expiry or execution of the warrant, whichever is the earlier, send to the magistrate—
  - (a) the form of warrant completed by the inspector; and
  - (b) the affidavit mentioned in subsection (3), which must have been properly sworn.
- (8) When the magistrate receives the documents mentioned in subsection (7), the magistrate must—
  - (a) attach them to the warrant that the magistrate completed and signed; and
  - (b) deal with them how the magistrate would have dealt with the affidavit if the application had been made under section 173.
- (9) A form of warrant completed under subsection (6) is authority for any entry, search, seizure or other exercise of a power that the warrant signed by the magistrate authorises.
- (10) If—
  - (a) it is material, in a proceeding, for a court to be satisfied that an exercise of a power was authorised by this section; and
  - (b) the warrant signed by the magistrate authorising the exercise of the power is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.

- (11) A reference in this part to a warrant under section 173 includes a reference to a warrant signed by a magistrate under this section.

### **175 Offences relating to warrants**

- (1) An inspector must not make, in an application for a warrant, a statement that the inspector knows to be false or misleading in a material particular.

Maximum penalty: 120 penalty units , imprisonment for 2 years or both.

- (2) An inspector must not—
- (a) state a magistrate's name in a document purporting to be a form of warrant under section 174 unless the magistrate issued the warrant; or
  - (b) state on a form of warrant under section 174 a matter that, to the inspector's knowledge, departs in a material particular from the form authorised by the magistrate; or
  - (c) purport to execute, or present to someone, a document purporting to be a form of warrant under section 174 that the inspector knows—
    - (i) has not been approved by a magistrate under that section; or
    - (ii) departs in a material particular from the terms authorised by a magistrate under that section; or
  - (d) give to a magistrate a form of warrant under section 174 that is not the form of warrant that the inspector purported to execute.

Maximum penalty: 120 penalty units , imprisonment for 2 years or both.

## Division 11.11 Other matters

### 176 Pt 11 not to abrogate privilege against selfincrimination

*Note* The Commonwealth Act, s 176 preserves the privilege against selfincrimination. This provision is unnecessary in the ACT. The *Legislation Act 2001*, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

#### 176A Damage etc to be minimised

- (1) In the exercise, or purported exercise, of a function under this part, an inspector must take all reasonable steps to ensure that the inspector, and any person assisting the inspector, causes as little inconvenience, detriment and damage as is practicable.
- (2) If an inspector, or a person assisting an inspector, damages anything in the exercise or purported exercise of a function under this part, the inspector must give written notice of the particulars of the damage to the person whom the inspector believes, on reasonable grounds, is the owner of the thing.
- (3) If the damage happens on premises entered under this part in the absence of the occupier, the notice may be given by securing it in a conspicuous place on the premises.

*Note* This section does not appear in the Commonwealth Act.

#### 176B Compensation to be paid in certain circumstances

- (1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by an inspector or a person assisting an inspector.
- (2) Compensation may be claimed and ordered in a proceeding for—
  - (a) compensation brought in a court of competent jurisdiction; or
  - (b) an offence against this Act brought against the person making the claim for compensation.



- (3) A court may order the payment of reasonable compensation for the loss or expense only if satisfied it is just to make the order in the circumstances of the particular case.
- (4) The regulations may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

*Note* This section does not appear in the Commonwealth Act.

**177 Pt 11 does not limit power to impose licence conditions**

This part does not limit the regulator's power to impose licence conditions.

## Part 12 Miscellaneous

### Division 12.1 Simplified outline of part 12

#### 178 Simplified outline—pt 12

In outline, this part provides for miscellaneous matters, including the following:

- (a) review of decisions;
- (b) provisions relating to confidential commercial information;
- (c) the making of regulations;
- (d) transitional provisions;
- (e) review of the operation of the Act.

### Division 12.2 Review of decisions

#### 179 Meaning of *reviewable decision* and *eligible person*

The following table sets out—

- (a) decisions that are *reviewable decisions*; and
- (b) each *eligible person* for a reviewable decision.

column 1 item	column 2 reviewable decision	column 3 eligible person for reviewable decision
1	to refuse to issue a licence under section 55	the applicant for the licence
2	to impose a licence condition under section 55	the licence holder
3	to suspend or cancel a licence under section 68	the licence holder
4	to refuse to transfer a licence under section 70	the licence holder the transferee

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<b>column 1 item</b>	<b>column 2 reviewable decision</b>	<b>column 3 eligible person for reviewable decision</b>
5	to vary a licence under section 71	the licence holder
6	to refuse to determine that a dealing with a GMO is to be included on the GMO register under section 78	the applicant for the determination
7	to vary the register in relation to a dealing under section 80	a person undertaking the dealing
8	to refuse to certify a facility under section 84	the applicant for certification
9	to state a condition of a certification under section 86	the holder of the certification
10	to vary a certification under section 87	the holder of the certification
11	to suspend or cancel a certification under section 88	the holder of the certification
12	to refuse to accredit an organisation under section 92	the applicant for accreditation
13	to state a condition of an accreditation under section 94	the holder of the accreditation
14	to vary an accreditation under section 95	the holder of the accreditation
15	to suspend or cancel an accreditation under section 96	the holder of the accreditation
16	to refuse to declare information to be confidential commercial information under section 185	the person who made an application under section 184 in relation to the information

<b>column 1 item</b>	<b>column 2 reviewable decision</b>	<b>column 3 eligible person for reviewable decision</b>
17	to revoke a declaration that information is confidential commercial information under section 186	the person who made an application under section 184 in relation to the information

*Note* This section differs from the Commonwealth Act, s 179.

### **180 Notification of decisions and review rights**

- (1) As soon as practicable after making a reviewable decision, the regulator must give written notice of the decision to each eligible person.
- (2) The notice must contain—
  - (a) the terms of the decision; and
  - (b) the reasons for the decision; and
  - (c) a statement setting out particulars of the person's review rights.
- (3) A failure to comply with this section in relation to a decision does not affect the validity of the decision.

### **181 Internal review**

- (1) An eligible person for a reviewable decision (other than a decision made by the regulator personally) may apply in writing to the regulator for review of the decision.
- (2) The application must be made within 30 days after the day the reviewable decision first came to the notice of the applicant, or within any period that the regulator, before or after the end of that period, allows.
- (3) On receiving the application, the regulator must review the reviewable decision personally.

- (4) The regulator may—
- (a) make a decision confirming, varying or revoking the reviewable decision; and
  - (b) if the regulator revokes the decision—make any other decision the regulator considers appropriate.

### **182 Deadlines for making reviewable decisions**

If—

- (a) this Act provides for a person to apply to the regulator to make a reviewable decision; and
- (b) a period is stated under this Act for giving notice of the decision to the applicant; and
- (c) the regulator has not notified the applicant of the regulator's decision within the period;

the regulator is taken, for this Act, to have made a decision to refuse the application.

### **183 Review of decisions by Commonwealth administrative appeals tribunal**

- (1) Subject to the Commonwealth Administrative Appeals Tribunal Act, an eligible person may apply under that Act for a review of—
- (a) a reviewable decision made by the regulator personally; or
  - (b) a decision made by the regulator under section 181.

- (2) In this section:

*decision*—see the Commonwealth Administrative Appeals Tribunal Act, section 3.

### **183A Extended standing for judicial review**

*Note*        The Commonwealth Act, s 183A requires that a State be taken to be a person aggrieved for the application of the *Administrative Decisions (Judicial Review) Act 1977* (Cwlth) in relation to certain decisions, failures or conduct under the Commonwealth Act.

## **Division 12.3                      Confidential commercial information**

### **184 Application for protection of confidential commercial information**

- (1) A person may apply to the regulator for a declaration that stated information to which this Act relates is confidential commercial information for this Act.
- (2) An application under subsection (1) must be in writing in the form approved under section 192E.

*Note*        This section differs from the Commonwealth Act, s 184 in that the form is approved by the regulator under s 192E.

### **185 Regulator may declare information is confidential commercial information**

- (1) If the applicant satisfies the regulator that the information stated in the application is—
  - (a) a trade secret; or
  - (b) any other information that has a commercial or other value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed; or
  - (c) other information that—
    - (i) concerns the lawful commercial or financial affairs of a person, organisation or undertaking; and
    - (ii) if it were disclosed, could unreasonably affect the person, organisation or undertaking;

the regulator must declare that the information is confidential commercial information for this Act.

- (2) However, the regulator may refuse to declare that the information is confidential commercial information if satisfied that the public interest in disclosure outweighs the prejudice that the disclosure would cause to anyone.
- (3) Also, the regulator must refuse to declare that information is confidential commercial information if the information relates to 1 or more locations where field trials involving GMOs are happening, or are proposed to happen, unless satisfied that significant damage to the health and safety of people, the environment or property would be likely to happen if the locations were disclosed.

*Note* This means that, in general, information about sites where dealings with GMOs are happening will be required to be disclosed under s 54 and s 138, unless the regulator is satisfied that disclosure would involve significant risks to health and safety.

- (4) The regulator must give the applicant written notice of the regulator's decision about the application.
- (5) If—
  - (a) the regulator declares that particular information is confidential commercial information; and
  - (b) the information relates to 1 or more locations where field trials involving GMOs are happening, or are proposed to happen;

the regulator must make publicly available a statement of reasons for the making of the declaration, including, for example—

- (c) the reasons why the regulator was satisfied as mentioned in subsection (1); and
- (d) the reasons why the regulator was not satisfied under subsection (2) that the public interest in disclosing the information outweighed the prejudice that the disclosure would cause; and

- (e) the reasons why the regulator was satisfied under subsection (3) that significant damage to the health and safety of people, the environment or property would be likely to happen if the locations were disclosed.
- (6) If the regulator refuses an application under section 184 (1) in relation to information, the information is to be treated as confidential commercial information until any review rights under section 181 or 183 in relation to the application are exhausted.

### **186 Revocation of declaration**

- (1) The regulator may, by written notice given to the applicant for a declaration under section 185, revoke the declaration if the regulator is satisfied—
  - (a) that the information concerned no longer satisfies section 185 (1) (a), (b) or (c); or
  - (b) that the public interest in disclosing the information outweighs the prejudice that disclosure would cause to any person.
- (2) The revocation does not take effect until any review rights under section 181 or 183 in relation to the revocation are exhausted.

### **187 Confidential commercial information must not be disclosed**

- (1) A person who—
  - (a) has confidential commercial information; and
  - (b) has the information only because of exercising functions under this Act or under the Commonwealth Act or a corresponding State law within the meaning of the Commonwealth Act; and



(c) knows that the information is confidential commercial information;

must not disclose the information.

Maximum penalty: 120 penalty units , imprisonment for 2 years or both.

(2) A person who—

(a) has confidential commercial information; and

(b) has it because of a disclosure mentioned in subsection (3); and

(c) knows that the information is confidential commercial information;

must not disclose the information.

Maximum penalty: 120 penalty units , imprisonment for 2 years or both.

(3) This section does not apply to a disclosure of information—

(a) to any of the following entities in the course of carrying out functions under this Act, the Commonwealth Act or a corresponding State law:

(i) a Territory agency;

(ii) the Commonwealth or a Commonwealth authority;

(iii) the gene technology technical advisory committee; or

(b) by order of a court; or

(c) with the consent of the person who applied to have the information treated as confidential commercial information.

(4) The *Freedom of Information Act 1989*, section 43 (Documents relating to business affairs etc) applies to information to which subsection (1) or (2) applies.

(5) This section has effect despite anything to the contrary in the *Freedom of Information Act 1989*.

(6) In this section:

*corresponding State law*—see the Commonwealth Act, section 12.

*court* includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

*disclose*, in relation to information, means give or communicate in any way.

*Note* This section differs from the Commonwealth Act, s 187.

## **Division 12.4 Conduct by directors, employees and agents**

### **188 Conduct by directors, employees and agents**

- (1) If, in a proceeding for an offence against this Act, it is necessary to establish the state of mind of a corporation in relation to particular conduct, it is enough to show—
- (a) that the conduct was engaged in by a director, employee or agent of the corporation within the scope of his or her actual or apparent authority; and
  - (b) that the director, employee or agent had the state of mind.

*Note* A reference to an offence against a Territory law includes a reference to an offence against the *Crimes Act 1900*, pt 9 (Aiding and abetting, accessories, attempts, incitement and conspiracy) that relates to the law (see *Legislation Act 2001*, s 189).

- (2) Any conduct engaged in for a corporation by a director, employee or agent of the corporation within the scope of his or her actual or apparent authority is taken, for a prosecution for an offence against this Act, to have been engaged in also by the corporation, unless the corporation establishes that the corporation took reasonable precautions and exercised proper diligence to avoid the conduct.
- (3) If, in a proceeding for an offence against this Act, it is necessary to establish the state of mind of an individual in relation to particular conduct, it is enough to show—

- (a) that the conduct was engaged in by an employee or agent of the individual within the scope of his or her actual or apparent authority; and
  - (b) that the employee or agent had the state of mind.
- (4) Any conduct engaged in for an individual by an employee or agent of the individual, within the scope of the actual or apparent authority of the employee or agent is taken, for a prosecution for an offence against this Act, to have been engaged in also by the individual unless the individual establishes that he or she took reasonable precautions and exercised proper diligence to avoid the conduct.
- (5) If—
- (a) an individual is convicted of an offence; and
  - (b) the individual would not have been convicted of the offence if subsections (3) and (4) had not been enacted;
- the individual is not liable to be punished by imprisonment for the offence.
- (6) In this section:
- director*, of a corporation—see section 189 (2).
- engage in conduct*—see section 189 (3).
- state of mind*, of a person—see section 189 (1).

## 189 Meaning of terms in s 188

- (1) A reference in section 188 (1) or (3) to the *state of mind* of a person includes a reference to—
- (a) the person's knowledge, intention, opinion, belief or purpose; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

- (2) A reference in section 188 to a *director* of a corporation includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Territory, the Commonwealth or a State.
- (3) A reference in section 188 to *engaging in conduct* includes a reference to failing or refusing to engage in conduct.

## **Division 12.5                      Transitional provisions**

### **190      Transitional provision—dealings covered by genetic manipulation advisory committee advice to proceed**

- (1) The prohibitions in this Act apply to a dealing with a GMO by a person at a particular time during the transition period (the *dealing time*) with the modifications set out in subsection (2) if—
  - (a) immediately before the commencement of part 4 (Regulation of dealings with GMOs), an advice to proceed was in force in relation to the dealing with the GMO by the person; and
  - (b) the advice to proceed is in force at the dealing time; and
  - (c) the dealing is in accordance with the advice to proceed.
- (2) Unless the dealing is a notifiable low risk dealing, an exempt dealing or a dealing on the GMO register—
  - (a) the advice to proceed is taken for this Act to be a GMO licence; and
  - (b) the holder of the advice to proceed is taken to be the licence holder; and
  - (c) the licence is taken to be subject to any conditions to which the advice to proceed is subject; and
  - (d) the licence is taken to remain in force for the period ending at the earliest of the following times:
    - (i) the time when the advice to proceed expires;

- (ii) the end of the transition period;
- (iii) when the licence is cancelled under section 68 or surrendered under section 69.

(3) In this section:

*advice to proceed* means an advice to proceed issued by the Genetic Manipulation Advisory Committee in accordance with guidelines issued by the committee.

*transition period* means the period, not longer than 2 years, prescribed under the regulations for this section.

*Note* The Commonwealth Act, s 190 (3) defines the ‘transition period’ as being 2 years from the commencement of part 4 of that Act.

## **191 Regulations may relate to transitional matters**

Regulations may be made in relation to transitional matters arising from the enactment of this Act.

### **191A Expiry of div 12.5**

- (1) This division expires 2 years after it commences.
- (2) Section 190 is a law to which the *Legislation Act 2001*, s 88 (Repeal does not end transitional or validating effect etc) applies.

*Note* This section does not appear in the Commonwealth Act.

## **Division 12.6 Other provisions**

### **192 False or misleading information or document**

A person must not—

- (a) in connection with an application made to the regulator under this Act; or
  - (b) in compliance or purported compliance with this Act;
- do either of the following:

- (c) give information (whether orally or in writing) that the person knows is false or misleading in a material particular;
- (d) produce a document that the person knows is false or misleading in a material particular without—
  - (i) indicating to the person to whom the document is produced that it is false or misleading, and how it is false or misleading; and
  - (ii) providing correct information to the person to whom the document is produced, if the person producing the document is in possession of, or can reasonably acquire, the correct information.

Maximum penalty: 60 penalty units, imprisonment for 1 year or both.

### **192A Interference with dealings with GMOs**

- (1) A person commits an offence if—
  - (a) the person engages in conduct; and
  - (b) the conduct—
    - (i) results in damage to, destruction of, or interference with, premises or a facility where dealings with GMOs are being undertaken; or
    - (ii) involves damaging, destroying, or interfering with, a thing at, or removing a thing from, the premises or facility; and
  - (c) the owner or occupier of the premises or facility, or the owner of the thing (as the case requires), has not consented to the conduct; and
  - (d) in engaging in the conduct, the person intends to prevent or hinder authorised GMO dealings that are being undertaken at the premises or facility; and

- (e) the person knows, or is reckless about, the matters mentioned in paragraphs (b) and (c).

Maximum penalty: 120 penalty units, imprisonment for 2 years or both.

- (2) In this section—

*authorised GMO dealings*, for premises or a facility, means dealings with GMOs being undertaken at the premises or facility—

- (a) that are authorised to be undertaken at the premises or facility by a GMO licence; or
- (b) that are notifiable low risk dealings; or
- (c) that are exempt dealings; or
- (d) that are included on the GMO register.

*Note* This section differs from the Commonwealth Act, s 192A.

### **192B Cloning of human beings is prohibited**

*Note* The Commonwealth Act, s 192B prohibits the cloning of whole human beings.

### **192C Certain experiments involving animal eggs prohibited**

*Note* The Commonwealth Act, s 192C prohibits experiments or research involving putting human cells, or a combination of human cells and animal cells, into animal eggs.

### **192D Certain experiments involving putting human and animal cells into human uterus prohibited**

*Note* The Commonwealth Act, s 192D prohibits experiments or research involving putting a combination of human cells and animal cells into a human uterus.

### **192E Approved forms**

- (1) The regulator may, in writing, approve forms for this Act.

- (2) If the regulator approves a form for a particular purpose, the approved form must be used for the purpose.
- (3) An approved form is a notifiable instrument.

*Note*     A notifiable instrument must be notified under the *Legislation Act 2001*.

### **193 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note*     Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The regulations may require a person to comply with codes of practice or guidelines issued under this Act as in force at a particular time or from time to time.
- (3) The regulations may apply, adopt or incorporate a law or instrument, or a provision of a law or instrument, as in force from time to time.

*Note 1*    A statutory instrument may also apply, adopt or incorporate (with or without change) a law or instrument (or a provision of a law or instrument) as in force at a particular time (see *Legislation Act 2001*, s 47 (2) and (3)).

*Note 2*    If a statutory instrument applies, adopts or incorporates a law or instrument (or a provision of a law or instrument), the law, instrument or provision may be taken to be a notifiable instrument that must be notified under the *Legislation Act 2001* (see s 47 (5)-(7)).

*Note 3*    This section differs from the Commonwealth Act, s 193.

### **194 Review of operation of Act**

- (1) The Minister must arrange for an independent review of the operation of this Act to be undertaken as soon as practicable after 4 years after the commencement of this Act.
- (2) A person who undertakes the review must give the Minister a written report of the review.



- (3) The Minister must present a copy of the report of the review to the Legislative Assembly within 5 years after the commencement of this Act.
- (4) In this section:
- independent review* means a review undertaken by people who—
- (a) the Minister considers have appropriate qualifications to undertake the review; and
  - (b) include 1 or more people who are not employed by the Territory, a Territory agency, the Commonwealth or a Commonwealth authority.
- Note* This section differs from the Commonwealth Act, s 194.
- (5) This section expires 5 years after it commences.

## Dictionary

(see s 10 (1))

*Note* The definitions in this dictionary have equivalent definitions in the Commonwealth Act, s 10 (1).

**accredited organisation** means an organisation accredited under division 7.3.

**aggravated offence**—see section 38 (1).

**Commonwealth Act** means the *Gene Technology Act 2000* (Cwlth).

**Commonwealth authority** means—

- (a) a corporation established for a public purpose under a Commonwealth Act; or
- (b) a company in which a controlling interest is held by any 1 of the following, or by 2 or more of the following together:
  - (i) the Commonwealth;
  - (ii) a corporation mentioned in paragraph (a);
  - (iii) an entity mentioned in subparagraph (i) or (ii).

**Commonwealth administrative appeals tribunal** means the Administrative Appeals Tribunal established under the Commonwealth Administrative Appeals Tribunal Act.

**Commonwealth Administrative Appeals Tribunal Act** means the *Administrative Appeals Tribunal Act 1975* (Cwlth).

**Commonwealth Environment Minister** means the Commonwealth Minister responsible for environment and conservation.

**confidential commercial information** means information declared under section 185 to be confidential commercial information.

**consultative committee** means the gene technology community consultative committee.

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**containment level**, for a facility, means the degree of physical confinement of GMOs provided by the facility, having regard to the design of the facility, the equipment located or installed in the facility and the procedures generally used within the facility.

**deal with** a GMO means any of the following:

- (a) conduct experiments with the GMO;
- (b) make, develop, produce or manufacture the GMO;
- (c) breed the GMO;
- (d) propagate the GMO;
- (e) use the GMO in the course of manufacturing a thing that is not the GMO;
- (f) grow, raise or culture the GMO;
- (g) import the GMO;

and includes the possession, supply, use, transport or disposal of the GMO for, or in the course of, a dealing mentioned in any of paragraphs (a) to (g).

**eligible person**, for a reviewable decision—see section 179.

**environment** includes—

- (a) ecosystems and their constituent parts; and
- (b) natural and physical resources; and
- (c) the qualities and characteristics of locations, places and areas.

**ethics committee** means the gene technology ethics committee.

**evidential material** means any of the following:

- (a) a thing in relation to which an offence against this Act has been committed or is suspected, on reasonable grounds, to have been committed;

- (b) a thing that there are reasonable grounds for suspecting will provide evidence about the commission of an offence mentioned in paragraph (a);
- (c) a thing that there are reasonable grounds for suspecting is intended to be used for committing an offence against this Act.

***exempt dealing*** means a dealing prescribed under the regulations as an exempt dealing.

***facility*** includes, but is not limited to, the following:

- (a) a building or part of a building;
- (b) a laboratory;
- (c) an aviary;
- (d) a glasshouse;
- (e) an insectary;
- (f) an animal house;
- (g) an aquarium or tank.

***gene technology*** means any technique for modifying genes or other genetic material, but does not include—

- (a) sexual reproduction; or
- (b) homologous recombination; or
- (c) any other technique prescribed under the regulations for this paragraph.

***gene technology account*** means the Gene Technology Account established under the Commonwealth Act, section 129.

***gene technology agreement*** means the Gene Technology Agreement made for the purposes of this Act between the Commonwealth and at least 4 States, as in force from time to time.

***gene technology community consultative committee*** means the Gene Technology Community Consultative Committee established under the Commonwealth Act, section 106.

***gene technology ethics committee*** means the Gene Technology Ethics Committee established under the Commonwealth Act, section 111.

***gene technology regulator*** means the Gene Technology Regulator appointed under the Commonwealth Act, section 118.

***gene technology technical advisory committee*** means the Gene Technology Technical Advisory Committee established under the Commonwealth Act, section 100.

***genetically modified organism*** means—

- (a) an organism that has been modified by gene technology; or
- (b) an organism that has inherited particular traits from an organism (the ***initial organism***), if the traits occurred in the initial organism because of gene technology; or
- (c) anything declared under the regulations to be a genetically modified organism;

but does not include—

- (d) a human being, if the human being is an organism mentioned in paragraph (a) only because the human being has undergone somatic cell gene therapy; or
- (e) an organism declared under the regulations not to be a genetically modified organism.

***GMO*** means a genetically modified organism.

***GMO licence*** means a licence issued under section 55.

***GMO register*** means the GMO Register established under the Commonwealth Act, section 76.

**GM product** means a thing (other than a GMO) derived or produced from a GMO.

**GM record** means the Record of GMO and GM Product Dealings mentioned in the Commonwealth Act, section 138.

**institutional biosafety committee** means a committee established by an accredited organisation as an institutional biosafety committee.

**intentional release of a GMO into the environment**—see section 11.

**licence holder** means the holder of a GMO licence.

**Ministerial council** means the Ministerial Council within the meaning of the gene technology agreement.

**notifiable low risk dealing** means a dealing declared to be a notifiable low risk dealing under section 74.

**officer**, of the Commonwealth, includes the following:

- (a) a Commonwealth Minister;
- (b) a person who holds—
  - (i) an office established under a Commonwealth Act; or
  - (ii) an appointment made under a Commonwealth Act; or
  - (iii) an appointment made by the Governor-General or a Commonwealth Minister other than under a Commonwealth Act;
- (c) a person who is a member or officer of a Commonwealth authority;
- (d) a person who is in the service or employment of the Commonwealth or of a Commonwealth authority, or is employed or engaged under a Commonwealth Act.

**organism** means any biological entity that is—

- (a) viable; or

- (b) capable of reproduction; or
- (c) capable of transferring genetic material.

***person covered by a GMO licence*** means a person authorised by a GMO licence to deal with a GMO.

***premises*** includes the following:

- (a) a building;
- (b) a place, including an area of land;
- (c) a vehicle;
- (d) a vessel;
- (e) an aircraft;
- (f) a facility;
- (g) any part of premises, including premises mentioned in paragraphs (a) to (f).

***regulator*** means the gene technology regulator.

***reviewable decision***—see section 179.

***State*** includes the Territory.

*Note* ***State*** also includes the Northern Territory (see *Legislation Act 2001*, dict, pt 1).

***Territory agency*** means—

- (a) the Territory; or
- (b) a Minister; or
- (c) an administrative unit; or
- (d) a Territory instrumentality, and any other corporation established for a public purpose under a Territory law; or
- (e) a company in which a controlling interest is held by any 1 of the following, or by 2 or more of the following together:

- (i) the Territory;
- (ii) a Minister;
- (iii) a corporation mentioned in paragraph (d);
- (iv) an entity mentioned in subparagraphs (i) to (iii).

**thing** includes a substance, and a thing in electronic or magnetic form.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 21 February 2002.

**2 Notification**

Notified under the Legislation Act on 5 December 2003.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Gene Technology Bill 2003, which originated in the Assembly as the Gene Technology Bill 2002 and was passed by the Legislative Assembly on 27 November 2003.

Clerk of the Legislative Assembly

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