

EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

Gene Technology (GM Crop Moratorium) Bill 2003

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Gene Technology (GM Crop Moratorium) Bill 2003

A Bill for

An Act to enable a moratorium to be imposed on the cultivation of certain genetically modified plants, and for other purposes

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

Part 1 Preliminary

1 Name of Act

This Act is the *Gene Technology (GM Crop Moratorium) Act 2003*.

2 Commencement

This Act commences on the day after its notification day.

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

3 Dictionary

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 terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act or in other legislation.

For example, the signpost definition ‘*gene technology*—see the *Gene Technology Act 2003*, dictionary.’ means that the term ‘gene technology’ is defined in the dictionary to that Act and the definition applies to this Act.

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, s 155 and s 156 (1)).

4 Notes

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

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

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5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation 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.

6 Purpose of Act

The purpose of this Act is to designate the ACT as an area in which certain genetically modified plants may not be cultivated, in order to preserve the identity of 1 or both of the following for marketing purposes:

- (a) GM crops;
- (b) non-GM crops.

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Part 2 Moratorium on cultivating certain GM plants

7 Moratorium orders

- (1) The Minister may, in writing, make an order (a *moratorium order*) prohibiting the cultivation in the ACT of a stated GM food plant.
- (2) A moratorium order is a disallowable instrument.

Note A disallowable instrument must be notified under the Legislation Act.

8 Exemptions

- (1) The Minister may, in writing, exempt a person or area from the operation of a moratorium order.
 - (2) An exemption is a disallowable instrument.
- Note* A disallowable instrument must be notified under the Legislation Act.
- (3) An exemption may be subject to conditions.
 - (4) An exemption may form part of a moratorium order or may be a separate instrument.
 - (5) The cultivation of a GM food plant in accordance with an exemption from a moratorium order is not a contravention of the moratorium order.

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9 Offence—contravention of moratorium order

A person commits an offence if—

- (a) the person cultivates a GM food plant; and
- (b) the cultivation is in contravention of a moratorium order; and
- (c) the person is reckless about whether—
 - (i) the plant is a GM food plant; and
 - (ii) the cultivation is in contravention of a moratorium order.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

10 Orders cannot be challenged

- (1) This part does not create a right in relation to the making of a moratorium order or exemption.
- (2) Without limiting subsection (1), a moratorium order or exemption in force under this Act—
 - (a) may not be challenged or called into question in any court; and
 - (b) is not subject to prohibition, mandamus or injunction in any court.

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11 Directions by Minister

- (1) This section applies if—
 - (a) the Minister has a certificate given under section 32 in relation to a plant (the *tested plant*); and
 - (b) the Minister believes on reasonable grounds that the tested plant—
 - (i) is a GM food plant to which a moratorium order applies; and
 - (ii) was not cultivated under an exemption.
- (2) The Minister may, in writing, direct a person who owns or has custody or control of the tested plant, or any plant that is or was part of the crop in which the tested plant was cultivated (the *offending crop*), to do any of the following:
 - (a) keep ownership, custody or control of the plant for a stated period;
 - (b) hold the plant at a particular place for a stated period;
 - (c) destroy the plant in a stated way and within a stated time;
 - (d) take any other stated action in relation to the plant.
- (3) If the Minister reasonably believes that the tested plant or offending crop has been cultivated on any land, the Minister may direct, in writing, the owner or occupier of the land not to cultivate any plant of a stated species or variety on the land for a stated period.

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- (4) A person commits an offence if the person fails to comply with a direction given to the person under this section.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

12 Urgent seizure etc

- (1) This section applies if—
- (a) a person has failed to comply with a direction given to the person under section 11 (2) in relation to a tested plant; and
 - (b) the Minister considers that seizure and disposal or destruction of the plant is required urgently.
- (2) An inspector acting under the written authority of the Minister may seize and dispose of or destroy—
- (a) the tested plant; and
 - (b) any plant that is or was part of the offending crop; and
 - (c) any container in which a plant mentioned in paragraph (a) or (b) is growing or stored.

13 Offence—transfer etc of certain plants

- (1) A person commits an offence if the person—
- (a) owns or has custody or control of a plant; and
 - (b) is reckless about whether the plant—
 - (i) has been cultivated in contravention of a moratorium order; or

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- (ii) is or was part of a crop in which a plant was cultivated in contravention of a moratorium order; and
- (c) does any of the following:
 - (i) transfers ownership, custody or control of the plant;
 - (ii) offers the plant for sale;
 - (iii) offers to supply the plant;
 - (iv) destroys the plant;
 - (v) moves the plant to another place.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

- (2) Subsection (1) does not apply if the person is acting in accordance with—
 - (a) a direction under section 11; or
 - (b) a written permission of the chief executive.
- (3) The regulations may make provision in relation to the giving of a permission mentioned in subsection (2) (b).

14 Offence—failing to report contravention of moratorium order

- (1) A person who knows or suspects that a plant has been cultivated in contravention of a moratorium order must, within 2 days of first having the knowledge or suspicion, give the following information to the chief executive:
 - (a) the location of the plant;

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- (b) the location of the land on where the plant has been cultivated;
- (c) the name of the owner or occupier of that land (if known);
- (d) the basis for the person knowing or suspecting that the plant has been cultivated in contravention of a moratorium order;
- (e) contact details for the person;
- (f) anything else prescribed under the regulations.

Maximum penalty: 20 penalty units.

- (2) Subsection (1) does not apply if the person believes on reasonable grounds that the chief executive has already been given the information.
- (3) A person is not excused from giving the chief executive information under this section because of any duty of confidentiality and the giving of the information is not a breach of the duty by the person.
- (4) Also, a person is not excused from giving the chief executive information under this section on the ground that it may tend to incriminate the person.
- (5) However, any information obtained, directly or indirectly, because of the giving of the information is not admissible in evidence against the person in a criminal proceeding, other than a proceeding for an offence against this part or the Criminal Code, part 3.4 (False or misleading statements, information and documents).

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Part 3 Enforcement

Division 3.1 Interpretation

15 Definitions for pt 3

In this part:

connected—a thing is ***connected*** with a particular offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, is being used, or is intended to be used, to commit the offence.

offence includes an offence that there are reasonable grounds for believing has been, is being, or will be committed.

Division 3.2 Inspectors

16 Appointment of inspectors

The chief executive may appoint a person to be an inspector for this Act.

Note 1 For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

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17 Identity cards

- (1) The chief executive must issue an inspector with an identity card that states the person's name and appointment as an inspector, and shows—
 - (a) a recent photograph of the person; and
 - (b) the date of issue of the card; and
 - (c) the date of expiry for the card; and
 - (d) anything else prescribed under the regulations.
- (2) A person commits an offence if the person—
 - (a) was appointed as an inspector under section 16; and
 - (b) ceases to be an inspector; and
 - (c) does not return the person's identity card to the chief executive within 7 days after the day the person ceases to be an inspector.

Maximum penalty: 1 penalty unit.
- (3) An offence against subsection (2) is a strict liability offence.

Division 3.3 Powers of inspectors

18 Power to enter premises

- (1) For this Act, an inspector may—
 - (a) enter premises (other than residential premises) at any reasonable time; or
 - (b) enter premises at any time with the occupier's consent; or
 - (c) enter premises in accordance with a warrant under this part; or

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- (d) enter premises at any time if the inspector believes, on reasonable grounds, that the circumstances are serious and urgent enough to require the immediate entry to the premises without the authority of a warrant.
- (2) An inspector may, without the occupier's consent, enter the land around premises to ask for consent to enter the premises.
- (3) For subsection (1) (d), the inspector may enter the premises with any necessary assistance and force.

19 Production of identity card

An inspector must not remain on premises entered under this part if, when asked by the occupier, the inspector does not produce his or her identity card for inspection by the occupier.

20 Consent to entry

- (1) When seeking the consent of an occupier to enter premises under this part, 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—

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- (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 assume 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.

21 Warrants

- (1) An inspector may apply to a magistrate for a warrant to enter premises.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the inspector gives the magistrate any information the magistrate requires about the application in the way the magistrate requires.

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- (4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—
 - (a) there is a particular thing or activity connected with an offence against this Act; and
 - (b) the thing or activity is at the premises, or may be at the premises within the next 14 days.
- (5) The warrant must state—
 - (a) the offence for which the warrant is sought; and
 - (b) that an inspector may, with necessary assistance and force, enter the premises and exercise the inspector's powers under this part; and
 - (c) the evidence that may be seized under the warrant; and
 - (d) the hours when the premises may be entered; and
 - (e) the date, within 14 days after the day of the warrant's issue, the warrant ends.

22 Warrants—application made other than in person

- (1) An inspector may apply for a warrant by phone, fax, radio or other form of communication if the inspector considers it necessary because of—
 - (a) urgent circumstances; or
 - (b) other special circumstances.
- (2) Before applying for the warrant, the inspector must prepare an application stating the grounds on which the warrant is sought.

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- (3) The inspector may apply for the warrant before the application is sworn.
- (4) If the magistrate issues the warrant, the magistrate must immediately fax a copy to the inspector if it is practicable to do so.
- (5) If it is not practicable to fax a copy to the inspector—
 - (a) the magistrate must—
 - (i) tell the inspector the terms of the warrant; and
 - (ii) tell the inspector the date and time the warrant was issued; and
 - (b) the inspector must complete a form of warrant (*warrant form*) and write on it—
 - (i) the magistrate's name; and
 - (ii) the date and time the magistrate issued the warrant; and
 - (iii) the warrant's terms.
- (6) The faxed copy of the warrant, or the warrant form properly completed by the inspector, authorises the entry and the exercise of the inspector's powers under this part.
- (7) The inspector must, at the first reasonable opportunity, send to the magistrate—
 - (a) the sworn application; and
 - (b) if the inspector completed a warrant form—the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the warrant.

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- (9) A court must assume that a power exercised by an inspector was not authorised by a warrant under this section if—
- (a) the question arises in a proceeding before the court whether the exercise of power was authorised by a warrant; and
 - (b) the warrant is not produced in evidence; and
 - (c) it is not proved that the exercise of power was authorised by a warrant under this section.

23 General powers on entry to premises

- (1) An inspector who enters premises under this part may, for this Act, do any of the following in relation to the premises or anything on the premises:
- (a) inspect or examine;
 - (b) take measurements or conduct tests;
 - (c) take samples of or from anything on the premises;
 - (d) take photographs, films, or audio, video or other recordings;
 - (e) subject to section 25 (Power to seize things), seize a thing;
 - (f) require the occupier, or a person on the premises, to give the inspector reasonable help to exercise a power under this part.
- (2) A person commits an offence if the person intentionally contravenes a requirement under subsection (1) (f).

Maximum penalty: 50 penalty units.

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24 Power to require name and address

- (1) An inspector may require a person to state the person's name and address if the inspector—
 - (a) finds the person committing an offence against this Act; or
 - (b) believes on reasonable grounds that the person has just committed an offence against this Act.
- (2) If an inspector makes a requirement of a person under subsection (1), the inspector must—
 - (a) tell the person the reasons for the requirement; and
 - (b) as soon as practicable, record those reasons.
- (3) A person commits an offence if the person contravenes a requirement under subsection (1).

Maximum penalty: 5 penalty units.
- (4) However, a person is not required to comply with a requirement under subsection (1) if, when asked by the person, the inspector does not produce his or her identity card for inspection by the person.
- (5) An offence against this section is a strict liability offence.

25 Power to seize things

- (1) An inspector who enters premises under a warrant under this part may seize the evidence for which the warrant was issued.
- (2) An inspector who enters premises under this part with the occupier's consent may seize a thing on the premises if—

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- (a) the inspector is satisfied on reasonable grounds that the thing is connected with an offence against this Act; and
 - (b) seizure of the thing is consistent with the purpose of the entry as told to the occupier when seeking the occupier's consent.
- (3) An inspector may also seize anything on premises entered under this part if satisfied on reasonable grounds that—
 - (a) the thing is connected with an offence against this Act; and
 - (b) the seizure is necessary to prevent the thing from being—
 - (i) concealed, lost or destroyed; or
 - (ii) used to commit, continue or repeat the offence.
- (4) Having seized a thing, an inspector may—
 - (a) remove the thing from the premises where it was seized; or
 - (b) leave the thing at the premises where it was seized but restrict access to it.
- (5) A person commits an offence if the person intentionally interferes with a thing to which access has been restricted under subsection (4) (b).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.
- (6) Subsection (5) does not apply if the Minister approved the interference.

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26 Receipt for things seized

- (1) As soon as practicable after a thing is seized by an inspector under this part, the inspector must give a receipt for it to the occupier of the premises where it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the inspector must leave the receipt, secured conspicuously at the place of seizure.

27 Access to things seized

A person who would, apart from the seizure of a thing under this part, be entitled to the thing may—

- (a) inspect it; and
- (b) if it is a document—take extracts from it or make copies of it.

28 Return of things seized

- (1) A thing seized under this part must be returned to its owner, or reasonable compensation must be paid to the owner by the Territory for the loss of the thing, if—
 - (a) a prosecution for an offence relating to the thing is not begun within 90 days after the day of the seizure; or
 - (b) if a prosecution is begun within the 90 days—the court does not find the offence proved.
- (2) A thing seized under this part is forfeited to the Territory if a court—
 - (a) finds an offence relating to the thing to be proved; and
 - (b) orders the forfeiture.

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- (3) If subsection (2) (a) applies, but the court does not order the forfeiture of the thing seized, the chief executive must return the thing to its owner or the Territory must pay reasonable compensation to the owner for the loss of the thing.
- (4) For subsections (1) and (3), if the thing seized was a plant that has deteriorated or perished since it was seized, the owner is entitled to reasonable compensation for the deterioration or loss.

Division 3.4 Miscellaneous

29 Selfincrimination etc

- (1) A person is not excused from giving information or producing a document when required to do so under this part on the ground that it may tend to incriminate the person.
- (2) However, any information, document or thing obtained, directly or indirectly, because of the giving of the information or document is not admissible in evidence against the person in a criminal proceeding, other than a proceeding for an offence against this part or the Criminal Code, part 3.4 (False or misleading statements, information and documents).

30 Damage etc to be minimised

- (1) In the exercise, or purported exercise, of a function under this Act, an inspector must take reasonable steps to ensure that the inspector, and anyone helping the inspector, causes as little inconvenience, detriment and damage as is practicable.
- (2) If an inspector, or anyone helping an inspector, damages anything in the exercise, or purported exercise, of a function under this Act, the

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inspector must give written notice of the particulars of the damage to the person whom the inspector believes is the owner of the thing.

Note For how documents may be served, see Legislation Act, pt 19.5.

- (3) If the damage happens on premises entered under this Act, the notice may be given—
- (a) to the occupier; or
 - (b) if the occupier is not present—by securing it in a conspicuous place on the premises.

31 Compensation—actions by inspectors

- (1) A person may claim reasonable compensation from the Territory if the person incurs loss or expense because of the exercise, or purported exercise, of a function under this part by an inspector or anyone helping 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) The 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.

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Part 4 Miscellaneous

32 Certificate

- (1) The person in charge of an approved laboratory may give a certificate, signed by the person, stating that—
 - (a) an approved test has been conducted on a plant; and
 - (b) the test shows that the plant has been genetically modified.
- (2) For this Act, a certificate given under subsection (1) is conclusive proof that the plant has been genetically modified.
- (3) In this section:

approved laboratory means—

- (a) a laboratory accredited by the National Association of Testing Authorities, Australia; or
- (b) another laboratory prescribed under the regulations.

approved test means—

- (a) a polymerase chain reaction test; or
- (b) another test prescribed under the regulations.

33 Review of decisions

Application may be made to the administrative appeals tribunal for review of a decision of the Minister to give a direction under section 11.

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34 Compensation—safety net

- (1) This section applies if, apart from this section and section 31—
 - (a) the operation of any provision of this Act would result in the acquisition of property from a person otherwise than on just terms; and
 - (b) the acquisition would be unlawful because of the Self-Government Act, section 23 (1).
- (2) The person acquiring the property (the *acquirer*) is liable to pay reasonable compensation to the other person for the acquisition.
- (3) If the acquirer and the other person do not agree on the amount of compensation, the other person may, by proceeding in a court of competent jurisdiction, recover from the acquirer the reasonable compensation that the court decides.

35 Delegation by Minister

- (1) The Minister must exercise the Minister's functions under any of the following provisions personally:
 - (a) section 7 (Moratorium orders);
 - (b) section 8 (Exemptions);
 - (c) section 11 (Directions by Minister).
- (2) The Minister may delegate any other function of the Minister under this Act only to—
 - (a) a public servant; or

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- (b) a person prescribed under the regulations.

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

- (3) The Legislation Act, section 254A (Delegation by Minister) does not apply to a function under this Act.

36 Determination of fees

- (1) The Minister may, in writing, determine fees for this Act.

Note The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3)

- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

37 Regulation-making power

The Executive may make regulations for this Act.

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

38 Expiry of Act

This Act expires on 17 June 2006.

39 Administrative Decisions (Judicial Review) Act 1989, schedule 1, new clause 7

insert

- 7 This Act does not apply to decisions of the Minister under the *Gene Technology (GM Crop Moratorium) Act 2003*, section 7 (Moratorium orders) or section 8 (Exemptions).

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Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- chief executive
- function.

connected, for part 3 (Enforcement)—see section 15.

cultivate a plant includes plant, tend, nurture or harvest the plant.

exemption means an exemption under section 8.

food plant means a species or variety of plant that is, when grown in the ACT, primarily grown to be used (whether or not after processing) as, or as an ingredient of, food for human consumption.

GM food plant means a food plant that—

- (a) has been modified by gene technology; or
- (b) has inherited from another plant particular traits that happened in that other plant because of gene technology.

gene technology—see the *Gene Technology Act 2003*, dictionary.

moratorium order—see section 7.

occupier, of premises, includes—

- (a) a person believed on reasonable grounds to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

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offence, for part 3 (Enforcement)—see section 15.

offending crop—see section 11 (2).

plant includes the seed or any part of a plant, whether living or dead and whether attached to a plant or not.

premises includes a building of any description, or a part of a building, a vehicle, and land (whether built on or not).

tested plant—see section 11 (1).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2003.

2 Notification

Notified under the Legislation Act on 2003.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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