



Queensland

# Gene Technology Act 2001

**Reprinted as in force on 12 November 2004  
(includes commenced amendments up to 2004 Act No. 19)**

**Reprint No. 1B**

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This Act is reprinted as at 12 November 2004. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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Queensland

# Gene Technology Act 2001

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# Gene Technology Act 2001

[as amended by all amendments that commenced on or before 12 November 2004]

## **An Act to provide for regulating activities involving gene technology, and for other purposes**

### **Part 1 Preliminary**

#### **1 Short title**

This Act may be cited as the *Gene Technology Act 2001* or the Gene Technology Law of Queensland or simply as the Gene Technology Law.

*Note—*

This section differs from section 1 of the Commonwealth Act.

#### **2 Commencement**

- (1) Subject to subsection (2), this Act commences on a day to be fixed by proclamation.
- (2) If a provision of this Act does not commence before 1 January 2002, it commences on 1 January 2002.

*Note—*

This section differs from section 2 of the Commonwealth Act.

#### **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 the risks by regulating certain dealings with GMOs.

#### **4 Regulatory framework to achieve object**

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

- (aa) 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
- (a) provides an efficient and effective system for the application of gene technologies; and
- (b) operates in conjunction with other Commonwealth and State regulatory schemes relevant to GMOs and GM products.

*Note—*

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

#### **5 Nationally consistent scheme**

It is the intention of the Parliament 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 binds all persons**

- (1) This Act binds all persons, including the State, and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) Nothing in this Act makes the Commonwealth or a State liable to be prosecuted for an offence.

#### **7 External Territories**

*Note—*

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

## **8 Offences and penalties**

*Notes—*

- 1 The Commonwealth Act includes a provision applying chapter 2 of the *Criminal Code* (Cwlth) to offences against the Commonwealth Act and construing penalty provisions in that Act. The Criminal Code of Queensland applies for the purposes of this Act.
- 2 Penalties prescribed under this Act are expressed in Queensland penalty units. The number of penalty units in each case is as close as possible to the Commonwealth monetary penalty, rounded down to the next penalty unit.

## **8A Numbering**

- (1) In order to maintain consistent numbering between this Act and the Commonwealth Act—
  - (a) if the Commonwealth Act contains a section not required 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.

*Notes—*

- 1 A note appears under each heading of a kind mentioned in subsection (1)(a) describing the omitted section of the Commonwealth Act.
- 2 A note appears under each section of a kind mentioned in subsection (1)(b) highlighting the non-appearance of an equivalent section in the Commonwealth Act.
- 3 This section does not appear in the Commonwealth Act.

**8B Notes**

Notes do not form part of this Act.

*Note—*

This section does not appear in the Commonwealth Act.

**8C Outlines**

The provisions appearing at the beginning of parts 2 to 12, outlining the parts, are intended only as a guide to readers as to 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 1 Simplified outline****9 Simplified outline of pt 2**

In outline, this part—

- (a) provides for the definitions used in this Act; and
- (b) contains provisions to facilitate the nationally consistent regulatory scheme mentioned in section 5; and
- (c) enables the Ministerial council to issue policy principles, policy guidelines and codes of practice.

*Note—*

This section differs from section 9 of the Commonwealth Act.

## Division 2                      Definitions

### 10            Definitions

- (1) The dictionary in schedule 3 defines particular words used in this Act.
- (2) If this Act requires or permits the Ministerial council to do a thing, the Ministerial council must do the thing under the gene technology agreement.

*Note—*

Subsection (1) differs from section 10(1) of the Commonwealth Act.

### 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.

### 12A          Meaning of *reckless*

- (1) A person is *reckless* in relation to a circumstance if—
  - (a) the person is aware of a substantial risk that the circumstance exists or will exist; and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (2) A person is *reckless* in relation to a result if—
  - (a) the person is aware of a substantial risk that the result will happen; and

- (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (3) It is a question of fact as to whether taking a risk is unjustifiable.

*Note—*

This section does not appear in the Commonwealth Act.

## **Division 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 by a State.

### **15                      Relationship to other State laws**

This Act is in addition to, and not in substitution for, any other law of the State, 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 4                    Provisions to facilitate a nationally consistent scheme**

### **Subdivision 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 the Commonwealth Act.

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

*Note—*

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

#### **18            No doubling-up of liabilities**

(1) If—

- (a) an act or omission is an offence against this Act and is also an offence against the Commonwealth Act; and
- (b) the offender has been punished for the offence under the Commonwealth Act;

the offender is not liable to be punished for the offence under this Act.

(2) 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 for the same conduct.

#### **19            Review of certain decisions**

(1) A person may apply to the Administrative Appeals Tribunal established under the Administrative Appeals Tribunal Act for review of a reviewable State decision.

- (2) A decision made by the regulator in performing a function or exercising a power under this Act is a reviewable State decision if—
- (a) this Act provides for review by the Administrative Appeals Tribunal; and
  - (b) the decision is declared under a regulation made under the Commonwealth Act to be a reviewable State decision for the Commonwealth Act, section 19.
- (3) The Administrative Appeals Tribunal Act, other than part IVA, and the regulations in force under that Act apply as laws of the State for reviewable State decisions.
- (4) For this section, a reference in a provision of the Administrative Appeals Tribunal Act, as the provision applies as a law of the State, to all or any part of part IVA of that Act is taken to be a reference to all or part of that part as it has effect as a law of the Commonwealth.

*Notes—*

- 1 This section differs from section 19 of the Commonwealth Act.
- 2 The regulations in force mentioned in subsection (3) are those in force from time to time. See the *Acts Interpretation Act 1954*, section 14H(2) and the *Statutory Instruments Act 1992*, section 14(1) and schedule 1.

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

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

## **Subdivision 2 Policy principles, policy guidelines and codes of practice**

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

- (1) The Ministerial council may issue policy principles for any of the following—
- (a) ethical issues about dealings with GMOs;

- (aa) recognising areas, if any, designated under a law of the State for the purpose of preserving the identity of 1 or both of the following—
  - (i) GM crops;
  - (ii) non-GM crops;
 for marketing purposes;
- (b) matters about dealings with GMOs prescribed under a regulation for this paragraph.
- (2) Before issuing a policy principle, the Ministerial council must be satisfied the policy principle was developed under the Commonwealth Act, section 22.
- (3) A regulation for subsection (1)(b) may be about 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.

*Notes—*

- 1 Section 57 provides that the regulator must not issue a licence if to do so would be inconsistent with a policy principle.
- 2 The *Acts Interpretation Act 1954*, section 24AA, and the *Statutory Instruments Act 1992*, section 14(1) and schedule 1, confer power to amend or repeal an instrument or decision made under an Act.
- 3 This section differs from section 21 of the Commonwealth Act.

## **22 Consultation on policy principles**

*Note—*

The Commonwealth Act includes a provision about how policy principles must be developed.

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

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

*Notes—*

- 1 Section 56 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.

- 2 The *Acts Interpretation Act 1954*, section 24AA, and the *Statutory Instruments Act 1992*, section 14(1) and schedule 1, confer power to amend or repeal any instrument or decision made under an Act.

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

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

*Notes—*

- 1 The *Acts Interpretation Act 1954*, section 24AA, and the *Statutory Instruments Act 1992*, section 14(1) and schedule 1, confer power to amend or repeal any instrument or decision made under an Act.
- 2 Section 24 of the Commonwealth Act includes provisions about how codes of practice must be developed and making them disallowable instruments.

# **Part 3 The gene technology regulator**

## **25 Simplified outline of pt 3**

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

*Note—*

This section differs from section 25 of the Commonwealth Act.

## **26 The gene technology regulator**

*Note—*

Section 26 of the Commonwealth Act creates the office of gene technology regulator.

## **27 Functions of the regulator**

The regulator has the following functions—

- (a) to perform 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 regulating 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 regulating GMOs, including about possible amendment 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 State;
- (l) to perform other functions conferred on the regulator under this Act or any other law.

## **28 Powers of the regulator**

Subject to this Act, the regulator has power to do all things necessary or convenient to be done for or in connection with performing the regulator's functions under this Act.

**29 Delegation**

- (1) The regulator may, in writing, delegate any of the regulator's powers or functions under this Act to any of the following—
  - (a) a public service employee;
  - (b) if the functions of a State agency relate, directly or indirectly, to GMOs or GM products—an officer or employee of the State agency;
  - (c) if the functions of a Commonwealth authority relate, directly or indirectly, to GMOs or GM products—an employee of the Commonwealth authority.
- (2) In exercising powers or performing functions under a delegation, the delegate must comply with any directions of the regulator.

*Note—*

This section differs from section 29 of the Commonwealth Act.

**30 Independence of the regulator**

- (1) Subject to this Act and other laws of the State, the regulator has discretion in performing or exercising the regulator's functions or powers 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.



- (d) knows the dealing is not an exempt dealing or is reckless as to whether or not the dealing is an exempt dealing; and
- (e) knows the dealing is not included on the GMO register or is reckless as to whether or not the dealing is included on the GMO register.

Maximum penalty—

- (a) for an aggravated offence—5 years imprisonment or 2 933 penalty units; or
- (b) otherwise—2 years imprisonment or 733 penalty units.

*Notes—*

- 1 This section differs from section 32 of the Commonwealth Act.
- 2 For provisions corresponding to section 32(4) of the Commonwealth Act, see the *Statutory Instruments Act 1992*, section 25.

### **33 Person not to deal with a GMO without a licence**

- (1) A person commits an offence if—
  - (a) the person deals with a GMO, knowing 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—293 penalty units; or
  - (b) otherwise—73 penalty units.
- (2) An offence against this section may be charged in the alternative to an offence against section 32 that is dealt with summarily.

*Notes—*

- 1 This section differs from section 33 of the Commonwealth Act.
- 2 This section does not affect the Criminal Code, sections 23 and 24.

**34 Person must not breach conditions of a GMO licence with full intention and knowledge or recklessness**

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

Maximum penalty—

- (a) for an aggravated offence—5 years imprisonment or 2 933 penalty units; or
  - (b) otherwise—2 years imprisonment or 733 penalty units.
- (2) A person covered by a GMO licence commits an indictable offence if the person—
- (a) intentionally takes an action or omits to take an action; and
  - (b) knows the action or omission contravenes the licence or is reckless as to 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—5 years imprisonment or 2 933 penalty units; or
  - (b) otherwise—2 years imprisonment or 733 penalty units.
- (3) A contravention of subsection (1) or (2) continues as long as the action continues to be taken or the omission continues and may be charged as a continuing offence in 1 or more complaints for periods for which the offence continues.

Maximum penalty for each day the offence continues after a conviction against the subsection—

- (a) for an aggravated offence—293 penalty units; or

- (b) otherwise—73 penalty units.

*Note—*

This section differs from section 34 of the Commonwealth Act.

### **35 Person must not breach conditions of a GMO licence**

- (1) The holder of a GMO licence commits an offence if—
- (a) the holder 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—293 penalty units; or
- (b) otherwise—73 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—293 penalty units; or
- (b) otherwise—73 penalty units.

- (3) An offence against this section may be charged in the alternative to an offence against section 34 that is dealt with summarily.

*Notes—*

- 1 This section differs from section 35 of the Commonwealth Act.
- 2 This section does not affect the Criminal Code, sections 23 and 24.

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

A person commits an offence if—

- (a) the person deals with a GMO knowing 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—73 penalty units.

*Note—*

This section differs from section 36 of the Commonwealth Act and does not affect the Criminal Code, sections 23 and 24.

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

A person commits an offence if—

- (a) the person deals with a GMO, knowing 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—73 penalty units.

*Notes—*

- 1 Notifiable low risk dealings are specified in the regulations—see part 6.
- 2 This section differs from section 37 of the Commonwealth Act.
- 3 This section does not affect the Criminal Code, sections 23 and 24.

### **38 Aggravated offences—significant damage to health or safety of people or to the 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) In order to prove an aggravated offence, the prosecution must prove that the person who committed the offence—
  - (a) intended the person's conduct to cause significant damage to the health and safety of people or to the environment; or
  - (b) was reckless as to whether the conduct would cause significant damage to the health and safety of people or to the environment.

## **Part 5                      Licensing system**

### **Division 1                Simplified outline**

#### **39            Simplified outline of pt 5**

In outline, this part—

- (a) provides a licensing system under which a person may apply to the regulator for a licence authorising dealings with GMOs; and
- (b) states the processes the regulator must follow for applications involving the following kinds of dealings—
  - (i) dealings involving the intentional release of a GMO into the environment;
  - (ii) dealings not involving the intentional release of a GMO into the environment; and
- (c) provides that a licence may cover dealings by persons other than the licence holder and requires the licence holder to inform the persons of any conditions of the licence applying to the persons.

### **Division 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 by a person or persons.
- (2) The application must be in writing and must contain—
  - (a) the information, if any, prescribed under a regulation; and
  - (b) the information specified in writing by the regulator.
- (3) The application must state whether any of the proposed dealings 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 persons; or
  - (b) a stated class of person; or
  - (c) all persons.
- (6) The application must be accompanied by the application fee, if any, prescribed under a regulation.

#### **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 under this part.

- (2) However, the regulator is not required to consider the application if—
- (a) it does not contain the information specified by the regulator or prescribed under a regulation; or
  - (b) it does not satisfy section 40(3); or
  - (c) it is not accompanied by the application fee, if any, prescribed under a regulation; or
  - (d) the applicant did not provide the 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 a regulation.

#### **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 the information into account in considering an application by another person for a GMO licence, unless the first person has given written consent for the information to be so taken into account.

## **Division 3                      Initial consideration of licences for dealings not involving intentional release of a GMO into the environment**

### **46            Applications to which div 3 applies**

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

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

- (1) Before issuing the licence, the regulator must prepare a risk assessment and a risk management plan for the proposed dealings.
- (2) In preparing the risk assessment, the regulator must take into account the risks posed by the 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 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 government the regulator considers appropriate;
  - (e) any other person the regulator considers appropriate.

## **Division 4                    Initial consideration of licences for dealings involving intentional release of a GMO into the environment**

### **48            Applications to which div 4 applies**

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

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

- (1) If the regulator is satisfied at least 1 of the proposed dealings may pose significant risks to the health and safety of people or the environment, the regulator must publish a notice about the application—
  - (a) in the gazette; and
  - (b) in a newspaper circulating generally in the State; and
  - (c) on the regulator's website, if any.
- (2) For satisfying himself or herself as to whether the dealings may pose significant risks to the health and safety of people or 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 occurred, or will occur, 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) any other matter prescribed under a regulation for this paragraph.
- (3) The notice mentioned in subsection (1) must state—
- (a) that the application has been made; and
  - (b) that a person may request further information about the application under section 54; and
  - (c) an invitation for persons to make written submissions on whether the licence should be issued, being submissions about matters the regulator is required to take into account—
    - (i) under section 51(1)(a) in preparing a risk assessment about the proposed dealings; and
    - (ii) under section 51(2)(a) in preparing a risk management plan about the proposed dealings; and
  - (d) the closing date for submissions, which must not be earlier than 30 days after the date on which the notice was published.

## **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 for the proposed dealings.
- (2) The regulator must prepare the risk assessment and 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 risk management plan from the following—
  - (a) the States;
  - (b) the gene technology technical advisory committee;
  - (c) each Commonwealth authority or agency prescribed under a regulation for this paragraph;

- (d) the Commonwealth Environment Minister;
- (e) any local government 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, 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 (g);
  - (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;
    - (ii) a local government;
  - (d) any other matter prescribed under a regulation 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 entities 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;
  - (ii) a local government;
- (d) any other matter prescribed under a regulation for this paragraph.
- (3) To avoid doubt, it is declared that 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,<sup>1</sup> may take into account other information, including, but not limited to, 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 publish a notice—
- (a) in the gazette; and
  - (b) in a newspaper circulating generally in the State; and
  - (c) on the regulator's website, if any.
- (2) The notice must state—
- (a) that a risk assessment and a risk management plan have been prepared for the proposed dealings; and
  - (b) that a person may request further information about the risk assessment and risk management plan under section 54; and

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<sup>1</sup> Section 45 (Regulator not to use certain information in considering licence application)

- (c) an invitation for persons to make written submissions about the risk assessment and risk management plan; and
  - (d) the closing date for submissions, which must not be earlier than 30 days after the date on which the notice was published.
- (3) The regulator must also seek advice on the risk assessment and risk management plan from the following—
- (a) the States;
  - (b) the gene technology technical advisory committee;
  - (c) each Commonwealth authority or agency prescribed under a regulation for this paragraph;
  - (d) the Commonwealth Environment Minister;
  - (e) any local government the regulator considers appropriate.

### **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 may 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 given under subsection (3).

Maximum penalty for subsection (4)—44 penalty units.

**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 risk management plan prepared under section 50.
- (2) If a person makes a request under subsection (1), the regulator must provide to 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 section 185.

**Division 5 Decision on licence etc.****55 Regulator must make a decision on licence and licence conditions**

After taking the steps required by division 3 or 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 proposed dealings 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 each of 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;
  - (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 or to 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 the applicant is a suitable person to hold the licence.

**58 Matters to be taken into account in deciding whether a person is suitable to hold a 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 State, the Commonwealth, another State or a foreign country, being a law 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 body corporate is a suitable person to hold a licence, the regulator must have regard to—
- (a) any relevant conviction of the body corporate; and
  - (b) if there is a relevant conviction of the body corporate—
    - (i) whether the offence concerned was committed when any person who is presently a director of the body corporate was a director of the body corporate; and
    - (ii) whether the offence was committed when any officer or shareholder of the body corporate who is presently in a position to influence the management of the body corporate was an officer or shareholder of the body corporate; and
  - (c) any revocation or suspension of a licence or permit, however described, held by the body corporate under a law of the State, the Commonwealth, another State or a foreign country, being a law about the health and safety of people or the environment; and
  - (d) the capacity of the body corporate to meet the licence conditions.
- (3) This section does not affect the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

*Note—*

This section differs from section 58 of the Commonwealth Act.

## **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 GMO 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 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 to 65;
- (b) any conditions prescribed under a regulation;
- (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 imposing obligations about GM products derived from a GMO for which particular dealings are licensed.
- (2) Licence conditions may be about, but are not limited to, 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 in case of the release of a GMO from a contained environment;
  - (k) the geographic area in which the dealings authorised by the licence may occur;
  - (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 informing people of obligations**

- (1) It is a condition of a licence that the licence holder inform any person 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 the way in which information is given under subsection (1) may be—
- (a) prescribed under a regulation; or
  - (b) specified by the regulator.
- (3) The requirements may include, but are not limited to, matters about labelling, packaging, conducting training and giving information.

- (4) If the 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 a regulation.

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

- (1) It is a condition of a licence that the licence holder inform the regulator if the licence holder becomes aware of—
- (a) additional information as to 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 as to 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 as to whether the contraventions had occurred, or the unintended effects existed.

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

A person covered by a licence may inform the regulator if the person becomes aware of any of the following—

- (a) additional information as to 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 another person because the first person gave information to the regulator under section 65 or 66.

# **Division 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 reasonably believes a condition of the licence has been contravened, whether by the licence holder or a person covered by the licence; or
- (b) the regulator reasonably believes 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 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 the licence holder is no longer a suitable person to hold the licence.

## **69 Surrender of licence**

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

## **70 Transfer of licences**

- (1) The licence holder and another person (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 a regulation; 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 the transferee is a suitable person to hold the licence.
- (5) The regulator must give written notice of the regulator's 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 under section 60;<sup>2</sup> and
- (c) the licence is subject to the same conditions as those 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 the 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 3.
- (3) Without limiting subsection (1), the regulator may—
  - (a) impose licence conditions or additional licence conditions; or
  - (b) remove or vary licence conditions 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 proposed dealings as varied are able to be managed in a way that protects—
  - (a) the health and safety of people; and
  - (b) the environment.

*Note for subsection (2)—*

Applications may only be considered under division 3 if none of the proposed dealings would involve the intentional release of a GMO into the environment.

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2 Section 60 (Period of licence)

**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).
- (3A) The period must not end earlier than 30 days after the day on which the notice was given.
- (4) In considering whether to suspend, cancel or vary a licence, the regulator must have regard to any submission made under subsection (2)(c).
- (5) This section does not apply to a suspension, cancellation or variation requested by the licence holder.
- (6) This section does not apply to a suspension, cancellation or variation of a licence 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.

## Division 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 that year.
- (2) The amount of the charge for a financial year is the amount prescribed under a regulation.
- (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 and dealings on the GMO register

### Division 1                      Simplified outline

#### 73    **Simplified outline of pt 6**

In outline, this part—

- (a) establishes a mechanism for the regulations to regulate certain dealings with GMOs (***notifiable low risk dealings***) not involving the intentional release of GMOs into the environment (see division 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.

*Note—*

This section differs from section 73 of the Commonwealth Act.

## **Division 2                      Notifiable low risk dealings**

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

- (1) A regulation may declare a dealing with a GMO to be a notifiable low risk dealing for this Act.
- (2) Before the regulation is made, the regulator must be satisfied the dealing would not involve the intentional release of a GMO into the environment.
- (3) Also, before the regulation is made, the regulator must consider the following matters—
- (a) whether the GMO is biologically contained so 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).

*Notes—*

- 1 This section differs from section 74 of the Commonwealth Act.
- 2 For provisions corresponding to section 74(4) of the Commonwealth Act, see the *Statutory Instruments Act 1992*, section 25.

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

- (1) A regulation may regulate—

- (a) a stated notifiable low risk dealing; or
  - (b) a stated class of notifiable low risk dealings;  
for protecting the health and safety of people or the environment.
- (2) A regulation may prescribe different requirements to be complied with in different situations or by different persons, including requirements for the following—
- (a) the class of person 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.

## **Division 3                      The GMO register**

### **76                      GMO register**

*Note—*

Section 76 of the Commonwealth Act 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 must 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, by writing, determine that a dealing with a GMO must be included on the GMO register if the regulator is satisfied—
  - (a) the dealing is, or has been, authorised by a GMO licence; or
  - (b) the GMO concerned—
    - (i) is a GM product; and
    - (ii) is a GMO only because of a regulation made under the definition *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) comes into effect 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—*

Section 78(4) of the Commonwealth Act 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 persons undertaking the dealing to hold, or be covered by, a GMO licence, in order 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 as to 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 another person 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—*

Section 80(3) of the Commonwealth Act provides for determinations to be disallowable instruments.

## **81 Inspection of register**

*Note—*

Section 81 of the Commonwealth Act requires the regulator to permit any person to inspect the GMO register.

## **Part 7                      Certification and accreditation**

### **Division 1                      Simplified outline**

#### **82                      Simplified outline of pt 7**

- (1) In outline, this part establishes a system under which the regulator may certify facilities to stated containment levels under guidelines issued by the regulator.
- (2) Licence conditions may require that facilities be certified to stated containment levels (see division 2).
- (3) Also, this part enables the regulator to accredit organisations under 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 3).

### **Division 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.
- (3) The application must be accompanied by the application fee, if any, prescribed under a regulation.

*Note—*

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

#### **84                      When the regulator may certify the facility**

The regulator may, in writing, certify the facility to a stated containment level if the facility meets the containment

requirements stated 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 any further information about the application as the regulator requires.
- (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 a regulation.

**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 given to the holder of the certification, suspend or cancel the certification of a facility if the regulator reasonably believes a condition of the certification has been contravened.

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

- (1) Before suspending, cancelling or varying a certification, 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 of the certification 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).
- (3A) The period must not end earlier than 30 days after the day on which the notice was given.
- (4) In considering whether to suspend, cancel or vary a certification, the regulator must have regard to any submission made under subsection (2)(c).
- (5) This section does not apply to a suspension, cancellation or variation requested by the holder of the certification.
- (6) 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**

- (1) The regulator may issue written technical or procedural guidelines about the requirements for the certification of facilities to stated containment levels.
- (2) The regulator may, in writing, vary or revoke the guidelines.

**Division 3 Accredited organisations****91 Application for accreditation**

- (1) A person may apply to the regulator for accreditation of an organisation as an accredited organisation.
- (2) The application must be in writing, and must contain the information the regulator requires.

*Note—*

The conditions of a licence may require supervision of dealings by an institutional biosafety committee established by an accredited organisation (see section 62(2)(m)), and a regulation may require supervision by a committee of that kind of notifiable low risk dealings (see section 75(2)(c)).

**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 each of the following—
  - (a) whether the organisation has established, or proposes to establish, an institutional biosafety committee under guidelines issued by the regulator under section 98;
  - (b) whether the organisation will be able to maintain an institutional biosafety committee under the guidelines;
  - (c) whether the organisation has, or will have, appropriate indemnity arrangements for its institutional biosafety committee members;
  - (d) any other matters stated 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 any further information about the application as the regulator requires.
- (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 a regulation.

**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 on the accreditation; 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 reasonably believes a condition of the accreditation has been contravened.

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

- (1) Before suspending, cancelling or varying an accreditation, 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 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).
- (3A) The period must not end earlier than 30 days after the day on which the notice was given.
- (4) In considering whether to suspend, cancel or vary an accreditation, the regulator must have regard to any submission made under subsection (2)(c).
- (5) This section does not apply to a suspension, cancellation or variation requested by the holder of the accreditation.
- (6) 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 issue written technical or procedural guidelines about requirements that must be met for an organisation to be accredited under this division.
- (2) The guidelines may be about, but are not limited to, matters about establishing and maintaining institutional biosafety committees.
- (3) The regulator may, in writing, vary or revoke the guidelines.

**Part 8                      The gene technology technical advisory committee, the gene technology community consultative committee and the gene technology ethics committee****Division 1                      Simplified outline****99 Simplified outline of pt 8**

In outline, this part states 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 section 99 of the Commonwealth Act.

## **Division 2                      The gene technology technical advisory committee**

### **100      The gene technology technical advisory committee**

*Note—*

Section 100 of the Commonwealth Act provides for the establishment and membership of the gene technology technical advisory committee.

### **101      Function of the 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—*

Section 102 of the Commonwealth Act provides for the appointment of expert advisers to the gene technology technical advisory committee.

### **103      Remuneration**

*Note—*

Section 103 of the Commonwealth Act 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—*

Section 104 of the Commonwealth Act empowers the making of regulations about the membership and operation of the gene technology technical advisory committee.

**105 Subcommittees**

*Note—*

Section 105 of the Commonwealth Act deals with the establishment of subcommittees by the gene technology technical advisory committee.

**Division 3                      The gene technology community  
consultative committee****106 The gene technology community consultative committee**

*Note—*

Section 106 of the Commonwealth Act 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—

- (aa) matters of general concern identified by the regulator about applications made under this Act;
- (a) matters of general concern about GMOs;
- (b) 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.

**108 Membership**

*Note—*

Section 108 of the Commonwealth Act provides for the membership of the consultative committee.

**109 Remuneration**

*Note—*

Section 109 of the Commonwealth Act provides for the payment of remuneration and allowances to members of the consultative committee.

**110 Regulations**

*Note—*

Section 110 of the Commonwealth Act empowers the making of regulations about the membership and operation of the consultative committee.

**110A Subcommittees**

*Note—*

Section 110A of the Commonwealth Act deals with the establishment of subcommittees by the consultative committee.

**Division 4                      The gene technology ethics committee****111 The gene technology ethics committee**

*Note—*

Section 111 of the Commonwealth Act provides for the establishment and membership of the gene technology ethics committee.

**112 Function of the gene technology ethics committee**

The function of the gene technology 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—*

Section 113 of the Commonwealth Act provides for the appointment of expert advisers to the ethics committee.

**114 Remuneration**

*Note—*

Section 114 of the Commonwealth Act provides for the payment of remuneration and allowances to members of, and expert advisers to, the ethics committee.

**115 Members and procedures**

*Note—*

Section 115 of the Commonwealth Act empowers the making of regulations about the membership and operation of the ethics committee.

**116 Subcommittees**

*Note—*

Section 116 of the Commonwealth Act deals with the establishment of subcommittees by the ethics committee.

**Part 9 Administration****Division 1 Simplified outline****117 Simplified outline of pt 9**

In outline, this part—

- (a) provides for financial matters (see division 3); and
- (b) states reporting requirements (see division 5); and

- (c) requires the regulator to ensure certain information is entered on a record of GMOs and GM products (see division 6); and
- (d) permits the regulator to review notifiable low risk dealings and exemptions (see division 7).

*Note—*

This section differs from section 117 of the Commonwealth Act.

## **Division 2                      Appointment and conditions of regulator**

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

*Note—*

Section 118 of the Commonwealth Act provides for the appointment of the regulator.

### **119      Termination of appointment**

*Note—*

Section 119 of the Commonwealth Act states the circumstances in which the regulator's appointment may be terminated.

### **120      Disclosure of interests**

*Note—*

Section 120 of the Commonwealth Act requires the regulator to disclose his or her interests to the Minister.

### **121      Acting appointment**

*Note—*

Section 121 of the Commonwealth Act deals with the appointment of a person to act as the regulator.

**122 Terms and conditions**

*Note—*

Section 122 of the Commonwealth Act deals with the terms and conditions of appointment of the regulator.

**123 Outside employment**

*Note—*

Section 123 of the Commonwealth Act prohibits the regulator from engaging in paid outside employment without the approval of the Minister.

**124 Remuneration**

*Note—*

Section 124 of the Commonwealth Act provides for the payment of remuneration and allowances to the regulator.

**125 Leave of absence**

*Note—*

Section 125 of the Commonwealth Act deals with the entitlement of the regulator to leave of absence.

**126 Resignation**

*Note—*

Section 126 of the Commonwealth Act deals with the procedure for resignation by the regulator.

**Division 3 Money****127 Regulator may charge for services**

The regulator may charge for services provided by, or for, the regulator in performing the regulator's functions under this Act.

**128 Notional payments by the State**

- (1) The purpose of this section is to ensure that fees and charges under this Act are notionally payable by the State and entities representing the State.
- (2) The Minister responsible for administering the *Financial Administration and Audit Act 1977* may give written directions for this section, including directions about transferring amounts within, or between, accounts operated by the State.

*Note—*

This section differs from section 128 of the Commonwealth Act.

**129 Gene technology account**

*Note—*

Section 129 of the Commonwealth Act provides for the establishment of the gene technology account.

**130 Credits to gene technology account**

- (1) 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 State under part 5, division 8;<sup>3</sup>
  - (b) amounts equal to fees received by the State under sections 40(6) and 83(3);<sup>4</sup>
  - (c) amounts equal to amounts received by the State for the performance of the regulator's functions under this Act;
  - (d) amounts equal to amounts recovered by the State under section 146(5) or 158(4)<sup>5</sup> to the extent the amounts are referable to costs paid out of the gene technology account.

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3 Part 5 (Licensing system), division 8 (Annual charge)

4 Sections 40 (Person may apply for a licence) and 83 (Application for certification)

5 Section 146 (Regulator may give directions) or 158 (Powers available to inspectors for dealing with dangerous situations)

- (2) The consolidated fund is appropriated to the extent necessary to enable payment of amounts to the Commonwealth under subsection (1).

*Note—*

This section differs from section 130 of the Commonwealth Act.

### **131 Recovery of amounts**

The following amounts may be recovered as debts due to the State—

- (a) amounts payable to the State under part 5, division 8;
- (b) fees payable to the State under this Act;
- (c) amounts payable to the State for the performance of the regulator's functions under this Act.

### **132 Purposes of account**

*Note—*

Section 132 of the Commonwealth Act states the purposes for which money in the gene technology account may be spent.

## **Division 4 Staffing**

### **133 Staff assisting the regulator**

*Note—*

Section 133 of the Commonwealth Act provides for staff to be made available to assist the regulator.

### **134 Consultants**

*Note—*

Section 134 of the Commonwealth Act enables the regulator to engage consultants.

**135 Seconded officers**

*Note—*

Section 135 of the Commonwealth Act provides for staff to be seconded to the regulator.

**Division 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 cause a copy of the report to be laid before the Legislative Assembly within 14 sitting days after the Minister receives the report.

*Notes—*

- 1 Section 136(2) of the Commonwealth Act refers to 15 sitting days.
- 2 Section 136(3) of the Commonwealth Act requires the regulator to give a copy of the regulator's 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 cause a copy of the report to be laid before the Legislative Assembly within 14 sitting days after the Minister receives the report.

- (4) In this section—

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

*Notes—*

- 1 For subsection (2)(c) auditing and monitoring may include spot checks
- 2 Section 136A(3) of the Commonwealth Act refers to 15 sitting days.

### **137 Reports to parliament**

- (1) The regulator may at any time cause a report about matters relating to the regulator's functions under this Act to be laid before the Legislative Assembly.
- (2) The regulator must give a copy of the report to the Minister.

*Note—*

Section 137(2) of the Commonwealth Act requires the regulator to give a copy of the regulator's report under that section to each State.

## **Division 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 persons covered by the licence;
  - (c) the dealings authorised by the licence and the GMO to which the dealings relate;
  - (d) any licence conditions;
  - (e) the date on which 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 section 75(2)(b)<sup>6</sup>—

- (a) the name of the person who notified the dealing;
  - (b) the particulars of the dealing as are prescribed under a regulation for this paragraph.
- (3) The GM record must contain the information prescribed under a regulation, other than confidential commercial information, about GM products mentioned in a designated notification 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 subsections (1) to (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 a law applying as a law of the State by force of an Act.

*Note—*

This section differs from section 138 of the Commonwealth Act.

## **139 Inspection of GM record**

*Note—*

Section 139 of the Commonwealth Act requires the regulator to permit any person to inspect the GM record.

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6 Section 75 (Regulation of notifiable low risk dealings)

## **Division 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);<sup>7</sup> 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.
- (1A) 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 date on which the notice was published.

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<sup>7</sup> Section 74 (Notifiable low risk dealings)

- (2) If the regulator publishes a notice under subsection (1), the regulator must also give written notice, stating the matters mentioned in subsection (1A)(a), to the following—
  - (a) each State;
  - (b) the gene technology technical advisory committee;
  - (c) each Commonwealth authority or agency prescribed under a regulation for this paragraph.
- (3) 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**

Nothing in this division requires the regulator to consider a matter under section 140 or 141.

**Part 10 Enforcement****145 Simplified outline of pt 10**

In outline, this part—

- (a) enables 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) empowers the Supreme Court to issue injunctions, and contains a forfeiture provision.

*Note—*

This section differs from section 145 of the Commonwealth Act.

**146 Regulator may give directions**

- (1) If the regulator reasonably believes—
  - (a) a licence holder is not complying with this Act about 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, by written notice, may direct the licence holder, within the time stated in the notice, to take the steps relating to the thing as are reasonable in the circumstances for the licence holder to comply with this Act.

- (2) If the regulator reasonably believes—

- (a) a person covered by a GMO licence is not complying with this Act about 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, by written notice, may direct the person to take the steps relating to the thing as are reasonable in the circumstances for the person to comply with this Act.

- (3) A person must 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—2 933 penalty units;
  - (b) otherwise—733 penalty units.
- (4) If the licence holder or person does not take the steps stated in the notice within the time stated in the notice, the regulator may arrange for the steps to be taken.
  - (5) If the regulator incurs costs because of arrangements made by the regulator under subsection (4), the licence holder or person is liable to pay to the State an amount equal to the cost, and the amount may be recovered by the State as a debt due to the State.
  - (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 section 146 of the Commonwealth Act.

## **147 Injunctions**

- (1) If a person has engaged, is engaging, or is about to engage in conduct that is or would be an offence against this Act, the Supreme Court (the *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 refused or failed, is refusing or failing, or is about to refuse or fail, to do a thing; and

- (b) the refusal or failure is, or would be, an offence against this Act;

the 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 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 court may discharge or vary an injunction granted under this section.
- (5) The court may grant an interim injunction pending a determination of an application under subsection (1).
- (6) The powers granted by this section are in addition to, and not in derogation of, any other powers of the court.

*Note—*

Section 147 of the Commonwealth Act confers 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 State of any thing 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 State and may be sold or otherwise dealt with as directed by the regulator.
- (3) Until the regulator gives a direction, the thing must be kept in custody as the regulator directs.

*Note—*

This section differs from section 148 of the Commonwealth Act.

## **Part 11 Powers of inspection**

### **Division 1 Simplified outline**

#### **149 Simplified outline of 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 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 3 to 9); and
- (d) states procedures for monitoring warrants and offence-related warrants (see division 10); and
- (e) does not limit the conditions to which a licence may be subject, and section 64<sup>8</sup> imposes a condition about monitoring dealings with GMOs.

### **Division 2 Appointment of inspectors and identity cards**

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

- (1) The regulator may, in writing, appoint any of the following persons as an inspector—
  - (a) a public service employee;
  - (b) a person who is appointed or employed by the Commonwealth.

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8 Section 64 (Condition about monitoring and audits)

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

*Note—*

This section differs from section 150 of the Commonwealth Act.

### **151 Identity card**

- (1) The regulator must issue an identity card to an inspector.
- (2) The identity card—
- (a) must be in the approved form; 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 inspector must carry his or her identity card at all times when exercising powers or performing functions as an inspector.

*Note—*

This section differs from section 151 of the Commonwealth Act in that the form is approved by the chief executive under section 192G.

## **Division 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) it is a licence holder's place of business mentioned in the licence and is—
  - (i) open for carrying on the business; or
  - (ii) otherwise open for entry; or
  - (iii) required to be open for inspection under the licence.
- (3) For the purpose of asking the occupier of premises for consent to enter, an inspector may, without the occupier's consent or a warrant—
  - (a) enter land around the premises to an extent that is reasonable to contact the occupier; or
  - (b) enter part of the place the inspector reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.
- (4) For subsection (2)(c), a place of business does not include a part of the premises where a person resides.

*Note—*

This section differs from section 152 of the Commonwealth Act.

### **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 relating 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 any person 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 on the premises;
  - (g) to take onto the premises the equipment and materials the inspector requires for the purpose of exercising powers relating to the premises;
  - (h) to secure a thing, until a warrant is obtained to seize it, being a thing the inspector—
    - (i) finds during the exercise of monitoring powers on the premises; and
    - (ii) reasonably believes is evidential material; and
    - (iii) reasonably believes would be lost, destroyed or tampered with before the warrant can be obtained.
- (2) 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 this Act has been complied with.
- (3) If the inspector, after operating equipment at the premises, finds 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 4                      Offence-related powers**

### **154      Searches and seizures related to offences**

- (1) This section applies if an inspector reasonably suspects there may be evidential material on any premises.
- (2) The inspector may—
  - (a) enter the premises, with the occupier's consent or under a warrant issued under section 173; and
  - (b) exercise the powers stated 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 reasonably believes to be evidential material; and
  - (b) the inspector reasonably believes it is necessary to seize the 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 requires for exercising 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 reasonably believes 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 do any of the following—
  - (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 5                      Expert assistance**

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

- (1) If an inspector reasonably believes—
- (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) if the inspector does not take action under this subsection, the information or material may be destroyed, altered or otherwise interfered with;
- the inspector may do whatever is necessary to secure the thing, whether by locking it up, placing a 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 until the first of the following happens—
- (a) 24 hours passes after the thing is secured;
  - (b) the equipment has been operated by the expert.
- (4) If the inspector reasonably believes the expert assistance will not be available within 24 hours, the inspector may apply to a 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 in relation to the application.

## **Division 6                      Emergency powers**

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

- (1) This section applies if—
- (a) an inspector reasonably suspects 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 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 reasonably suspects a person has not complied with this Act about 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, relating to the thing as the inspector considers appropriate.
- (3) The inspector may exercise the powers in subsection (2) only to the extent 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 mentioned in subsection (2)(d) is

liable to pay to the State an amount equal to the cost, and the amount may be recovered by the State as a debt due to the State.

## **Division 7                      Obligations and incidental powers of inspectors**

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

An inspector is not entitled to exercise any powers under this part relating to premises if—

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

### **160      Consent**

- (1) Before obtaining the consent of a person for an entry to premises under section 152(2)(a) or 154(2)(a),<sup>9</sup> the inspector must inform the person that the person may refuse consent.
- (2) An entry of an inspector with the consent of a person is not lawful unless the person voluntarily consented to the entry.

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

- (1) If a warrant relating to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the inspector must make available to the person present a copy of the warrant.
- (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.

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<sup>9</sup> Section 152 (Powers available to inspectors for monitoring compliance) or 154 (Searches and seizures related to offences)

**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 any person 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 reasonably believes 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 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 as a result of it being operated under this part; and
  - (b) the damage was caused as a result of—
    - (i) insufficient care being exercised in selecting the person who was 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 must 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 as to the operation of the thing that was appropriate in the circumstances.

*Note—*

Section 163(2) of the Commonwealth Act provides for compensation to be payable out of money appropriated by the Commonwealth Parliament.

## **Division 8                      Power to search goods, baggage etc.**

### **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 a ship that voyages, or an aircraft that flies, between a place outside the State and a place in the State.
- (2) If an inspector reasonably believes the goods are goods to which this section applies, and that the goods may be, or may contain, evidential material, the inspector may do any of the following—
  - (a) examine the goods;
  - (b) if the goods are baggage—open and search the baggage;
  - (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 refuse or fail to answer a question put to the person under subsection (3) without a reasonable excuse.

Maximum penalty for subsection (4)—44 penalty units.

*Note—*

This section differs from section 164 of the Commonwealth Act.

### **165      Seizure of goods**

An inspector may seize goods mentioned in section 164 if the inspector reasonably suspects the goods are evidential material.

## **Division 9                      General provisions relating to search and seizure**

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

- (1) Subject to subsection (2), 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 another person 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);<sup>10</sup> 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 relating to premises is being executed and the occupier of the premises, or another person 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 ends 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.

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<sup>10</sup> Section 156 (Use of equipment at premises)

**168 Receipts for things seized**

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

**169 Retention of 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 occurs, unless the thing is forfeited or forfeitable to the State.
- (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) proceedings for which the thing may afford evidence were started before the end of the 60 days and have not ended, including an appeal to a court in relation the proceedings; or
  - (b) an inspector may retain 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 State or the Commonwealth to retain, destroy or dispose of the thing.
- (3) The thing may be returned under subsection (2) either unconditionally or on the terms and conditions decided by the regulator.

**170 Magistrates Court may permit a thing to be retained**

- (1) An inspector may apply to a Magistrates Court for an order that the inspector may retain the thing for a further period if—

- (a) before the end of 60 days after the seizure; or
- (b) before the end of a period previously stated in an order of a Magistrates Court under this section;

proceedings for which the thing may afford evidence have not started.

- (2) If the court is satisfied that it is necessary for an inspector to continue to retain the thing—
  - (a) for an investigation as to whether an offence against this Act has been committed; or
  - (b) to enable evidence of an offence against this Act to be secured for a prosecution;

the court may order that an inspector may retain the thing for a period, not exceeding 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 thing's retention; and
  - (b) if it is practicable to do so, notify each person whom the inspector believes to have an interest in the thing's retention of the proposed application.

*Note—*

This section differs from section 170 of the Commonwealth Act.

## **171 Disposal of goods if there is no owner or owner can not be located**

If—

- (a) a thing is seized under this part; and
- (b) apart from this section, the State is required to return the thing to its owner; and
- (c) there is no owner or the regulator can not, despite making reasonable efforts, locate the owner;

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

## **Division 10                      Warrants**

### **172      Monitoring warrants**

- (1) An inspector may apply to a magistrate for a warrant under this section relating to premises.
- (2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by sworn evidence, that it is reasonably necessary that 1 or more inspectors should have access to the premises for monitoring compliance with this Act.
- (3) The magistrate must not issue the warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, the further information, if any, 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 the help and by the force that is necessary and reasonable—
    - (i) to enter the premises; and
    - (ii) to exercise the powers stated in section 153<sup>11</sup> relating 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) state the day, being not more than 6 months after the issue of the warrant, on which 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 relating to premises.

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11 Section 153 (Monitoring powers)

- (2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by sworn evidence, that there are reasonable grounds for suspecting there is, or there may be within the next 72 hours, evidential material in or on the premises.
- (3) The magistrate must not issue the warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, the further information, if any, 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 the help and by the force that is necessary and reasonable—
    - (i) to enter the premises; and
    - (ii) to exercise the powers stated in sections 154(3) and 155;<sup>12</sup> 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, being not more than 1 week after the issue of the warrant, on which 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 relating to premises.

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<sup>12</sup> Sections 154 (Searches and seizures related to offences) and 155 (Offence-related powers of inspectors 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 relating 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, 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 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 day on which and the time at which the warrant was signed; and
    - (iii) tell the inspector the day, being not more than 1 week after the magistrate completes and signs the warrant, on which 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 magistrate's name and the day on which and the time at which 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) that has been duly sworn.
- (8) When the magistrate receives the documents mentioned in subsection (7)(a) and (b), the magistrate must—
- (a) attach the documents to the warrant that the magistrate completed and signed; and
  - (b) deal with the documents in the way in which 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 authorised by the warrant signed by the magistrate.
- (10) If—
- (a) it is material, in any proceedings, 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 the inspector knows to be false or misleading in a material particular.

Maximum penalty—2 years imprisonment or 176 penalty units.

- (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 another person, 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 the section; or
    - (ii) departs in a material particular from the terms authorised by a magistrate under the section; or
  - (d) give to a magistrate a form of warrant under section 174 that is not the form of warrant the inspector purported to execute.

Maximum penalty—2 years imprisonment or 176 penalty units.

- (3) An offence against subsection (1) or (2) is an indictable offence.

## **Division 11            Other matters**

### **176    Part not to abrogate privilege against self-incrimination**

Nothing in this part affects the right of a person to refuse to answer a question, give information, or produce a document, on the ground that the answer to the question, the information, or the production of the document, might tend to incriminate the person or make the person liable to a penalty.

### **177    Part does not limit power to impose licence conditions**

This part is not to be taken to limit the regulator's power to impose licence conditions.

## Part 12                      Miscellaneous

### Division 1                      Simplified outline

#### 178      Simplified outline of pt 12

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

- (a) review of decisions;
- (b) provisions about confidential commercial information;
- (c) making regulations;
- (d) reviewing the operation of this Act.

### Division 2                      Review of decisions

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

- (1) A decision mentioned in schedule 1, column 1, is a *reviewable decision*.
- (2) A person mentioned in schedule 1, column 2, opposite a reviewable decision is an *eligible person* for the decision.

*Note—*

This section differs from section 179 of the Commonwealth Act.

#### 180      Notification of decisions and review rights

- (1) The regulator must, as soon as practicable after making a reviewable decision, cause a written notice to be given to each eligible person for the decision containing the following—
  - (a) the terms of the decision;
  - (b) the reasons for the decision;
  - (c) a statement setting out particulars of the person's review rights.

- (2) A failure to comply with subsection (1) 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 a review of the decision.
- (2) The application must be made within 30 days after the day on which the decision first came to the applicant's notice, or within any further period as the regulator, before or after the end of the 30 days, allows.
- (3) The regulator must, on receiving the application, review the decision personally.
- (4) The regulator may—
  - (a) make a decision affirming, varying or revoking the reviewable decision; and
  - (b) if the regulator revokes the decision, make any other decision the regulator thinks 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 reject the application.

### **183 Review of decisions by Administrative Appeals Tribunal**

- (1) Subject to the Administrative Appeals Tribunal Act, an eligible person may apply under that Act for a review of a following decision—

- (a) a reviewable decision made by the regulator personally;
  - (b) a decision made by the regulator under section 181.
- (2) In this section—
- decision* see the Administrative Appeals Tribunal Act, section 3(3).<sup>13</sup>

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

*Note—*

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

## **Division 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.

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<sup>13</sup> *Administrative Appeals Tribunal Act 1975* (Cwlth), section 3 (Interpretation)—

- (3) A reference in this Act to a decision includes a reference to:
- (a) making, suspending, revoking or refusing to make an order or determination;
  - (b) giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission;
  - (c) issuing, suspending, revoking or refusing to issue a licence, authority or other instrument;
  - (d) imposing a condition or restriction;
  - (e) making a declaration, demand or requirement;
  - (f) retaining, or refusing to deliver up, an article;
  - (g) doing or refusing to do any other act or thing.

- (2) The application must be in the approved form.

*Note—*

This section differs from section 184 of the Commonwealth Act in that the form is approved by the chief executive under section 192G.

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

- (1) Subject to subsection (2), if the applicant satisfies the regulator that the information stated in the application is—
- (a) a trade secret; or
  - (b) 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) The regulator may refuse to declare that the information is confidential commercial information if the regulator is satisfied the public interest in disclosure outweighs the prejudice the disclosure would cause to any person.
- (2A) The regulator must refuse to declare that information is confidential commercial information if the information relates to 1 or more locations at which field trials involving GMOs are occurring, or are proposed to occur, unless the regulator is satisfied that significant damage to the health and safety of people, the environment or property would be likely to occur if the locations were disclosed.
- (3) The regulator must give the applicant written notice of the regulator's decision about the application.

(3A) If—

- (a) the regulator declares that particular information is confidential commercial information; and
- (b) the information relates to 1 or more locations at which field trials involving GMOs are occurring, or are proposed to occur;

the regulator must make publicly available a statement of reasons for the making of the declaration, including, but not limited to the following—

- (c) the reasons that the regulator was satisfied as mentioned in subsection (1);
  - (d) the reasons that the regulator was not satisfied under subsection (2) that the public interest in disclosing the information outweighed the prejudice the disclosure would cause;
  - (e) the reasons that the regulator was satisfied under subsection (2A) that significant damage to the health and safety of people, the environment or property would be likely to occur if the locations were disclosed.
- (4) If the regulator refuses the application, the information for which the application was made must be treated as confidential commercial information until any review rights under section 181 or 183 about the application are exhausted.

*Note—*

Subsection (2A) means that, in general, information about sites where dealings with GMOs are occurring will be required to be disclosed under sections 54 and 138, unless the regulator is satisfied that disclosure would involve significant risks to health and safety.

## **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) the information concerned no longer satisfies section 185(1)(a), (b) or (c); or

- (b) the public interest in disclosing the information outweighs the prejudice disclosure would cause to any person.
- (2) The revocation does not take effect until any review rights under section 181 or 183 relating 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 it only because of performing functions under this Act, the Commonwealth Act or a corresponding State law; and
  - (c) knows the information is confidential commercial information;must not disclose the information other than—
  - (d) 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 State agency;
    - (ii) the Commonwealth or a Commonwealth authority;
    - (iii) the gene technology technical advisory committee; or
  - (e) by order of a court; or
  - (f) with the consent of the person who applied to have the information treated as confidential commercial information.

Maximum penalty—2 years imprisonment or 176 penalty units.

- (2) A person who—
  - (a) has confidential commercial information; and
  - (b) has it because of a disclosure under subsection (1) or under this subsection; and

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(c) knows the information is confidential commercial information;

must not disclose the information other than—

(d) 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 State agency;

(ii) the Commonwealth or a Commonwealth authority;

(iii) the gene technology technical advisory committee;  
or

(e) by order of a court; or

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

Maximum penalty—2 years imprisonment or 176 penalty units.

(3) The *Freedom of Information Act 1992* does not apply to confidential commercial information.

(4) An offence against subsection (1) or (2) is an indictable offence.

(5) 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***, information, means give or communicate the information in any way.

*Note*—

This section differs from section 187 of the Commonwealth Act.

## Division 4                      **Conduct by directors, employees and agents**

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

- (1) If, in proceedings for an offence against this Act, or an ancillary offence against this Act, it is necessary to establish a body corporate's state of mind for particular conduct, it is enough to show that—
  - (a) the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and
  - (b) the director, employee or agent had the state of mind.
- (2) Any conduct engaged in for a body corporate by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority is taken, for a prosecution for—
  - (a) an offence against this Act; or
  - (b) an ancillary offence against this Act;to have been engaged in also by the body corporate, unless the body corporate establishes that the body corporate took reasonable precautions and exercised proper diligence to avoid the conduct.
- (3) If, in proceedings for an ancillary offence against this Act, it is necessary to establish the state of mind of a person other than a body corporate for particular conduct, it is enough to show that—
  - (a) the conduct was engaged in by an employee or agent of the person within the scope of his or her actual or apparent authority; and
  - (b) the employee or agent had the state of mind.
- (4) Any conduct engaged in for a person (the *first person*), other than a body corporate, by an employee or agent of the first person, within the scope of the actual or apparent authority of the employee or agent is taken, for a prosecution for—
  - (a) an offence against this Act; or

(b) an ancillary offence against this Act;

to have been engaged in also by the first person unless the first person establishes that he or she took reasonable precautions and exercised proper diligence to avoid the conduct.

(5) If—

(a) a person other than a body corporate is convicted of an offence; and

(b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;

the person is not liable to be punished by imprisonment for the offence.

## **189 Meaning of terms**

(1) A reference in section 188(1) or (3) to a person's state of mind 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 body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the State, the Commonwealth or another State.

(3) A reference in section 188 to engaging in conduct includes a reference to failing or refusing to engage in conduct.

(4) A reference in section 188 to an ancillary offence against this Act is a reference to an offence—

(a) against section 192E(1); or

(b) for which a person may be charged because the person—

(i) enabled or aided another person to commit an offence; or

(ii) aided another person in committing an offence; or

- (iii) counselled or procured another person to commit an offence; or
- (iv) conspired with another person to commit an offence.

*Note—*

This section differs from section 189 of the Commonwealth Act.

## **Division 5                      Transitional provisions**

### **190      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 (the *dealing time*) during the transition period with the modifications stated in subsection (2) if—
  - (a) immediately before the commencement of part 4, an advice to proceed was in force for 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<sup>14</sup> or surrendered under section 69.<sup>15</sup>

(3) In this section—

***advice to proceed*** means an advice to proceed issued by the Genetic Manipulation Advisory Committee, under guidelines issued by the committee.

***transition period*** means the period, not exceeding 2 years, prescribed under a regulation for this section.

*Note—*

Section 190(3) of the Commonwealth Act defines the *transition period* as being 2 years from the commencement of part 4 of that Act.

## 191 Regulations may relate to transitional matters

*Note—*

Section 191 of the Commonwealth Act provides for regulations to be made under that Act for transitional matters arising under that Act.

## Division 6 Other

### 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—

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14 Section 68 (Suspension and cancellation of licence)

15 Section 69 (Surrender of licence)

- (i) indicating to the person to whom the document is produced that it is false or misleading, and the way in which 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—1 year's imprisonment or 88 penalty units.

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

- (1) A person commits an indictable 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 at which 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 as to, the matters mentioned in paragraphs (b) and (c).

Maximum penalty—2 years imprisonment or 176 penalty units.

- (2) In this section—

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

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

*Note—*

This section differs from section 192A of the Commonwealth Act which contains a note about the general principles of criminal responsibility under the *Criminal Code* (Cwlth).

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

*Note—*

The Commonwealth Act, section 192B was repealed by the *Prohibition of Human Cloning Act 2002* (Cwlth), schedule 1.

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

*Note—*

The Commonwealth Act, section 192C was repealed by the *Prohibition of Human Cloning Act 2002* (Cwlth), schedule 1.

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

*Note—*

The Commonwealth Act, section 192D was repealed by the *Prohibition of Human Cloning Act 2002* (Cwlth), schedule 1.

## **192E Attempts to commit offences against Act**

- (1) A person who attempts to commit an offence (the *attempted offence*) against this Act commits an offence.

Maximum penalty—the maximum penalty for committing the attempted offence.

- (2) The Criminal Code, section 4,<sup>16</sup> applies to subsection (1).
- (3) If the attempted offence is an indictable offence, the offence against subsection (1) is an indictable offence.

*Note—*

This section is not required in the Commonwealth Act.

## **192F Proceedings for an offence**

- (1) Subject to subsection (2), a proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886* within the later of the following—
  - (a) 1 year after the offence is committed;
  - (b) 6 months after the commission of the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.
- (2) A proceeding for an indictable offence may, at the election of the prosecution, be taken—
  - (a) subject to subsection (5), by way of summary proceedings under subsection (1); or
  - (b) on indictment.
- (3) A proceeding against a person for an indictable offence must be before a magistrate if it is a proceeding—
  - (a) for the summary conviction of the person; or
  - (b) for an examination of witnesses relating to the charge.
- (4) If a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.
- (5) If—
  - (a) a person charged with an indictable offence asks at the start of a summary proceeding for the offence that the charge be prosecuted on indictment; or

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16 Criminal Code, section 4 (Attempts to commit offences)

- (b) the magistrate hearing a charge of an indictable offence considers the charge should be prosecuted on indictment;  
the magistrate—
  - (c) must not decide the charge as a summary offence; and
  - (d) must proceed by way of a committal proceeding.
- (6) If a magistrate acts under subsection (5)—
  - (a) any plea of the person charged, made at the start of the proceeding, must be disregarded; and
  - (b) any evidence brought in the proceeding before the magistrate decided to act under subsection (5) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and
  - (c) before committing the person for trial or sentence, the magistrate must make a statement to the person under the *Justices Act 1886*, section 104(2)(b).
- (7) The maximum penalty that may be imposed on a summary conviction of an indictable offence is 100 penalty units or 1 year's imprisonment.

*Note—*

This section does not appear in the Commonwealth Act. The *Crimes Act 1914* (Cwlth), section 4J, contains a general provision authorising indictable offences to be dealt with summarily.

## **192G Approved forms**

The chief executive may approve forms for use under this Act.

*Note—*

This section does not appear in the Commonwealth Act.

## **193 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.

- (2) Without limiting subsection (1), a regulation may require a person to comply with a code of practice or guideline issued under this Act.

*Note—*

This section differs from section 193 of the Commonwealth Act.

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

- (1) The Minister must cause an independent review of the operation of this Act to be undertaken as soon as possible after the fourth anniversary of 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 cause a copy of the report to be laid before the Legislative Assembly within 12 months after the fourth anniversary of the commencement.
- (4) In this section—

***independent review*** means a review undertaken by persons who—

- (a) the Minister considers have appropriate qualifications to undertake the review; and
- (b) include 1 or more persons who are not employed by the State, a State agency, the Commonwealth or a Commonwealth authority.

*Note—*

This section differs from section 194 of the Commonwealth Act.

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## **Schedule 1      Reviewable decisions and eligible persons**

section 179

|    | <b>Column 1<br/>Reviewable decision</b>                   | <b>Column 2<br/>Eligible person</b> |
|----|---|-------------------------------------|
| 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 vary a licence under section 71                        | the licence holder                  |
| 5  | To refuse to certify a facility under section 84          | the applicant for certification     |
| 6  | To state a condition of a certification under section 86  | the holder of the certification     |
| 7  | To vary a certification under section 87                  | the holder of the certification     |
| 8  | To suspend or cancel a certification under section 88     | the holder of the certification     |
| 9  | To refuse to accredit an organisation under section 92    | the applicant for accreditation     |
| 10 | To state a condition of an accreditation under section 94 | the holder of the accreditation     |
| 11 | To vary an accreditation under section 95                 | the holder of the accreditation     |
| 12 | To suspend or cancel an accreditation under section 96    | the holder of the accreditation     |

## Schedule 1 (continued)

| <b>Column 1</b><br><b>Reviewable decision</b>  | <b>Column 2</b><br><b>Eligible person</b>                                |
|--|--|
| 13 To refuse to declare information to be confidential commercial information under section 185      | the person who made an application under section 184 for the information |
| 14 To revoke a declaration that information is confidential commercial information under section 185 | the person who made an application under section 184 for the information |

## Schedule 3      Dictionary

### section 10

**accredited organisation** means an organisation accredited under part 7, division 3.

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

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

**ancillary offence**, for section 188, see section 189(4).

**approved form** means a form approved by the chief executive.

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

**Commonwealth authority** means—

- (a) a body corporate 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 persons, or by 2 or more of the following persons together—
  - (i) the Commonwealth;
  - (ii) a body corporate mentioned in paragraph (a);
  - (iii) an entity mentioned in subparagraph (i) or (ii).

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

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

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

**containment level**, for a facility, means the degree of physical confinement of GMOs provided by the facility, having regard

## Schedule 3 (continued)

to the design of the facility, the equipment located or installed in the facility and the procedures generally used within the facility.

***deal with***, for 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).

***director***, of a body corporate, for section 188, see section 189(2).

***eligible person***, for a reviewable decision, see section 179(2).

***engage in conduct***, for section 188, see section 189(3).

***environment*** includes the following—

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

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

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

- (a) a thing relating to which an offence against this Act has been committed or is reasonably suspected to have been committed;

## Schedule 3 (continued)

- (b) a thing that is reasonably suspected will afford evidence as to the commission of an offence mentioned in paragraph (a);
- (c) a thing that is reasonably suspected is intended to be used for committing an offence mentioned in paragraph (a).

***exempt dealing*** means a dealing prescribed under a regulation 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 the following—

- (a) sexual reproduction;
- (b) homologous recombination;
- (c) any other technique prescribed under a regulation 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 regulator*** means the Gene Technology Regulator appointed under the Commonwealth Act, section 118.

## Schedule 3 (continued)

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

**genetically modified organism** means any of the following—

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

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 a regulation not to be a genetically modified organism, or that belongs to a class of organisms declared under a regulation not to be genetically modified organisms.

**GMO** means a genetically modified organism.

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

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

**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.

**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.

## Schedule 3 (continued)

**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**, in relation to 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 but not 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;

## Schedule 3 (continued)

- (d) a vessel;
- (e) an aircraft;
- (f) a facility;
- (g) any part of premises, including premises mentioned in paragraphs (a) to (f).

***proposed dealings*** means dealings proposed to be authorised by a GMO licence.

***reasonably believes*** means believes on grounds that are reasonable in the circumstances.

***reasonably suspects*** means suspects on grounds that are reasonable in the circumstances.

***reckless*** see section 12A.

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

***relevant conviction*** means a conviction for an offence against a law of the State, the Commonwealth, another State or a foreign country, being a law 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 a term of imprisonment of 1 year or more.

***reviewable decision*** see section 179(1).

***State agency*** means—

- (a) the State; or
- (b) a Minister; or
- (c) an entity declared under the *Public Service Act 1996* to be a department of government; or
- (d) an instrumentality of the State, including a body corporate established for a public purpose under a law of the State; or

- (e) a company in which a controlling interest is held by any 1 of the following persons, or by 2 or more of the following persons together—
  - (i) the State;
  - (ii) a Minister, or a State instrumentality mentioned in paragraph (d);
  - (iii) an entity mentioned in subparagraph (i) or (ii).

*state of mind*, of a person, for section 188, see section 189(1).

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

## Endnotes

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 12 November 2004. Future amendments of the Gene Technology Act 2001 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

| Key    | Explanation                    | Key     | Explanation                             |
|--------|--------------------------------|---------|---|
| AIA    | = Acts Interpretation Act 1954 | (prev)  | = previously                            |
| amd    | = amended                      | proc    | = proclamation                          |
| amdt   | = amendment                    | prov    | = provision                             |
| ch     | = chapter                      | pt      | = part                                  |
| def    | = definition                   | pubd    | = published                             |
| div    | = division                     | R[X]    | = Reprint No.[X]                        |
| exp    | = expires/expired              | RA      | = Reprints Act 1992                     |
| gaz    | = gazette                      | reloc   | = relocated                             |
| hdg    | = heading                      | renum   | = renumbered                            |
| ins    | = inserted                     | rep     | = repealed                              |
| lap    | = lapsed                       | (retro) | = retrospectively                       |
| notfd  | = notified                     | rv      | = revised edition                       |
| o in c | = order in council             | s       | = section                               |
| om     | = omitted                      | sch     | = schedule                              |
| orig   | = original                     | sdiv    | = subdivision                           |
| p      | = page                         | SIA     | = Statutory Instruments Act 1992        |
| para   | = paragraph                    | SIR     | = Statutory Instruments Regulation 2002 |
| prec   | = preceding                    | SL      | = subordinate legislation               |
| pres   | = present                      | sub     | = substituted                           |
| prev   | = previous                     | unnum   | = unnumbered                            |

## 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

| Reprint No. | Amendments included | Effective        | Reprint date                                      |
|-------------|---------------------|------------------|---|
| 1           | none                | 1 November 2001  | 2 November 2001<br>(Column discontinued)<br>Notes |
| 1A          | 2003 Act No. 7      | 5 December 2003  |   |
| 1B          | 2004 Act No. 19     | 12 November 2004 |   |

## 5 List of legislation

### **Gene Technology Act 2001 No. 68 (may also be cited as Gene Technology Law of Queensland or Gene Technology Law)**

date of assent 25 October 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 November 2001 (see SL No. 198)

amending legislation—

### **Research Involving Human Embryos and Prohibition of Human Cloning Act 2003 No. 7 ss 1–2(1), pt 6 div 2**

date of assent 18 March 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 5 December 2003 (2003 SL No. 309)

### **Biodiscovery Act 2004 No. 19 ss 1–2, 132–133**

date of assent 24 August 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 12 November 2004 (2004 SL No. 244)

## 6 List of annotations

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

s 187 amd 2004 No. 19 s 133

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

s 192B amd 2003 No. 7 s 57

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

s 192C amd 2003 No. 7 s 58

**Certain experiments involving putting human and animal cells into a human uterus  
prohibited**

**s 192D** amd 2003 No. 7 s 59

**Act amended**

**s 195** om R1 (see RA s 40)

**SCHEDULE 2—CONSEQUENTIAL AMENDMENT**

om R1 (see RA s 40)