



Queensland

Gene Technology Amendment Act 2008

Act No. 3 of 2008



Queensland

Gene Technology Amendment Act 2008

Contents

		Page
1	Short title	6
2	Act amended	6
3	Amendment of s 31 (Simplified outline of pt 4)	6
4	Replacement of s 32 (Person not to deal with a GMO without a licence with full knowledge or recklessness)	6
	32 Person not to deal with a GMO without a licence with full knowledge or recklessness	6
5	Amendment of s 33 (Person not to deal with a GMO without a licence)	7
6	Amendment of s 34 (Person must not breach conditions of a GMO licence with full intention and knowledge or recklessness)	7
7	Insertion of new ss 35A and 35B	8
	35A Person must not breach conditions of emergency dealing determination with full intention and knowledge or recklessness	8
	35B Person must not breach conditions of emergency dealing determination	9
8	Insertion of new s 40A	9
	40A Licences relating to inadvertent dealings	9
9	Amendment of s 42 (Regulator may require applicant to give further information)	10
10	Amendment of s 43 (Regulator must consider applications except in certain circumstances)	10
11	Insertion of new s 46A	10
	46A Division does not apply to an application relating to inadvertent dealings	10
12	Replacement of s 49 (Dealings that may pose significant risks to the health and safety of people or the environment)	11
	49 Division does not apply to an application relating to inadvertent dealings	11

13	Amendment of s 50 (Regulator must prepare risk assessment and risk management plan)	11
14	Insertion of new s 50A	11
	50A Limited and controlled release applications	12
15	Amendment of s 51 (Matters regulator must take into account in preparing risk assessment and risk management plan)	13
16	Amendment of s 52 (Public notification of risk assessment and risk management plan)	13
17	Amendment of s 56 (Regulator must not issue the licence unless satisfied as to risk management)	14
18	Amendment of s 57 (Other circumstances in which regulator must not issue the licence)	14
19	Amendment of s 60 (Period of licence)	15
20	Amendment of s 67 (Protection of persons who give information)	15
21	Amendment of s 71 (Variation of licence)	15
22	Amendment of s 72 (Regulator to notify of proposed suspension, cancellation or variation)	17
23	Amendment of s 72A (GMO licence—annual charge)	17
24	Insertion of new pt 5A.	17
	Part 5A Emergency dealing determinations	
	Division 1 Simplified outline	
	72A Simplified outline of pt 5A.	18
	Division 2 Making of emergency dealing determination	
	72B Minister may make emergency dealing determination	18
	72C Period of effect of emergency dealing determination .	18
	Division 3 Effect and conditions of emergency dealing determination	
	72D Emergency dealing determination authorises dealings, subject to conditions	20
	Division 4 Variation, suspension and revocation of emergency dealing determination	
	72E Variation, suspension and revocation of emergency dealing determination.	22
25	Amendment of s 78 (Regulator may include dealings with GMOs on GMO register)	23
26	Amendment of s 82 (Simplified outline of pt 7)	23
27	Amendment of s 83 (Application for certification)	23
28	Amendment of s 89 (Regulator to notify of proposed suspension, cancellation or variation)	23
29	Insertion of new s 89A	24
	89A Transfer of certification	24

30	Amendment of s 91 (Application for accreditation)	24
31	Amendment of s 92 (Regulator may accredit organisations)	25
32	Amendment of s 97 (Regulator to notify of proposed suspension, cancellation or variation)	25
33	Replacement of s 107 (Function of consultative committee)	26
	107 Function of ethics and community committee	26
34	Replacement of ss 110 and 110A and pt 8, div 4.	26
	110 Membership and procedures	27
	111 Subcommittees.	27
	112 Expert advisers	27
35	Amendment of s 136A (Quarterly reports)	27
36	Amendment of s 138 (Record of GMO and GM product dealings)	27
37	Amendment of s 145 (Simplified outline of pt 10).	28
38	Amendment of s 146 (Regulator may give directions)	28
39	Amendment of s 149 (Simplified outline of pt 11).	30
40	Amendment of s 152 (Powers available to inspectors for monitoring compliance)	30
41	Amendment of s 177 (Part does not limit power to impose licence conditions)	30
42	Amendment of s 182 (Deadlines for making reviewable decisions)	31
43	Amendment of s 185 (Regulator may declare that information is confidential commercial information)	31
44	Amendment of s 192A (Interference with dealings with GMOs) . .	32
45	Replacement of s 194 (Review of operation of Act)	32
	194 Review of operation of Act	32
46	Amendment of sch 1 (Reviewable decisions and eligible persons)	32
47	Amendment of sch 3 (Dictionary)	33
Schedule	Minor amendments	35



Queensland

Gene Technology Amendment Act 2008

Act No. 3 of 2008

An Act to amend the *Gene Technology Act 2001*

[Assented to 20 February 2008]

The Parliament of Queensland enacts—**1 Short title**

This Act may be cited as the *Gene Technology Amendment Act 2008*.

2 Act amended

This Act amends the *Gene Technology Act 2001*.

3 Amendment of s 31 (Simplified outline of pt 4)

Section 31(b)—

insert—

‘(ia) the dealing is stated in an emergency dealing determination; or’.

4 Replacement of s 32 (Person not to deal with a GMO without a licence with full knowledge or recklessness)

Section 32—

omit, insert—

‘32 Person not to deal with a GMO without a licence with full knowledge or recklessness

‘A person commits an indictable 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 the person knows or is reckless as to that fact; and
- (c) the dealing with the GMO is not stated in an emergency dealing determination, and the person knows or is reckless as to that fact; and
- (d) the dealing is not a notifiable low risk dealing, and the person knows or is reckless as to that fact; and

- (e) the dealing is not an exempt dealing, and the person knows or is reckless as to that fact; and
- (f) the dealing is not included on the GMO register, and the person knows or is reckless as to that fact.

Maximum penalty—

- (a) for an aggravated offence—5 years imprisonment or 2933 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 24.’.

5 **Amendment of s 33 (Person not to deal with a GMO without a licence)**

Section 33(1)—

insert—

‘(ba) the dealing with the GMO is not stated in an emergency dealing determination; and’.

6 **Amendment of s 34 (Person must not breach conditions of a GMO licence with full intention and knowledge or recklessness)**

Section 34(1) and (2)—

omit, insert—

- ‘(1) The holder of a GMO licence commits an indictable offence if—
 - (a) the holder intentionally takes an action or omits to take an action; and
 - (b) the action or omission contravenes the licence, and the holder knows or is reckless as to that fact.

Maximum penalty—

- (a) for an aggravated offence—5 years imprisonment or 2933 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—
- (a) the person intentionally takes an action or omits to take an action; and
 - (b) the person has knowledge of the conditions of the licence; and
 - (c) the action or omission contravenes a condition of the licence, and the person knows or is reckless as to that fact.
- Maximum penalty—
- (a) for an aggravated offence—5 years imprisonment or 2933 penalty units; or
 - (b) otherwise—2 years imprisonment or 733 penalty units.’.

7 Insertion of new ss 35A and 35B

After section 35—

insert—

‘35A Person must not breach conditions of emergency dealing determination with full intention and knowledge or recklessness

‘A person commits an indictable offence if—

- (a) the person intentionally takes an action or omits to take an action; and
- (b) the person has knowledge of the conditions to which an emergency dealing determination is subject; and
- (c) the action or omission contravenes a condition mentioned in paragraph (b), and the person knows or is reckless as to that fact.

Maximum penalty—

- (a) for an aggravated offence—5 years imprisonment or 2933 penalty units; or

- (b) otherwise—2 years imprisonment or 733 penalty units.

Note—

This section differs from section 35A of the Commonwealth Act.

‘35B Person must not breach conditions of emergency dealing determination

‘A person commits an offence if—

- (a) the person takes an action or omits to take an action; and
- (b) the person has knowledge of the conditions to which an emergency dealing determination is subject; and
- (c) the action or omission by the person contravenes a condition mentioned in paragraph (b).

Maximum penalty—

- (a) for an aggravated offence—293 penalty units; or
- (b) otherwise—73 penalty units.

Notes—

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

8 Insertion of new s 40A

After section 40—

insert—

‘40A Licences relating to inadvertent dealings

- ‘(1) If the regulator is satisfied that a person has come into possession of a GMO inadvertently, the regulator may, with the agreement of the person, treat the person as having made an inadvertent dealings application.
- ‘(2) To remove any doubt, it is declared that subsection (1) does not prevent a person from making an application under section 40 in relation to a GMO that has inadvertently come into the person’s possession.

Note—

Sections 46A and 49 have the effect that the regulator may expedite consideration of an application to dispose of a GMO that has come into a person's possession inadvertently. These sections have effect whether the application is made under section 40, or is taken to have been made under this section.'

9 Amendment of s 42 (Regulator may require applicant to give further information)

Section 42—

insert—

- '(3) The regulator may require information to be given under this section at any time before the regulator decides the application, whether before or after the regulator has begun to consider the application.'

10 Amendment of s 43 (Regulator must consider applications except in certain circumstances)

- (1) Section 43(2), after 'application', first mention—

insert—

‘, or may cease considering the application,’.

- (2) Section 43(2)—

insert—

‘(f) the regulator is satisfied, having regard to the matters mentioned in section 58, that the applicant is not a suitable person to hold the licence.’.

11 Insertion of new s 46A

After section 46—

insert—

‘46A Division does not apply to an application relating to inadvertent dealings

‘Despite section 46, this division does not apply to an application for a GMO licence if the regulator is satisfied that—

- (a) the dealings proposed to be authorised by the licence are limited to dealings to be undertaken for the purposes of, or for purposes relating to, disposing of a GMO; and
- (b) the applicant for the licence came into possession of the GMO inadvertently.’.

12 Replacement of s 49 (Dealings that may pose significant risks to the health and safety of people or the environment)

Section 49—

omit, insert—

‘49 Division does not apply to an application relating to inadvertent dealings

‘Despite section 48, this division does not apply to an application for a GMO licence if the regulator is satisfied that—

- (a) the dealings proposed to be authorised by the licence are limited to dealings to be undertaken for the purposes of, or for purposes relating to, disposing of a GMO; and
- (b) the applicant for the licence came into possession of the GMO inadvertently.’.

13 Amendment of s 50 (Regulator must prepare risk assessment and risk management plan)

(1) Section 50(2)—

omit.

(2) Section 50(3), ‘The’—

omit, insert—

‘Unless section 50A applies in relation to the application for the licence, the’.

14 Insertion of new s 50A

After section 50—

insert—

‘50A Limited and controlled release applications

- ‘(1) This section applies to an application for a licence if the regulator is satisfied that—
- (a) the principal purpose of the application is to enable the licence holder, and persons covered by the licence, to conduct experiments; and
 - (b) the application proposes, in relation to any GMO for which dealings are proposed to be authorised—
 - (i) controls to restrict the dissemination or persistence of the GMO and its genetic material in the environment; and
 - (ii) limits on the proposed release of the GMO; and
 - (c) the controls and limits are of a kind that it is appropriate for the regulator not to seek the advice mentioned in section 50(3).
- ‘(2) In deciding whether the principal purpose of an application is to enable the licence holder, and persons covered by the licence, to conduct experiments, the regulator—
- (a) must have regard to whether the applicant proposes that any or all of the following be authorised by, and done under, the licence—
 - (i) testing hypotheses;
 - (ii) gaining scientific or technical knowledge;
 - (iii) gaining data for regulatory purposes, or for product development or marketing; and
 - (b) may have regard to any other matter the regulator considers to be relevant.
- ‘(3) In this section—
- controls**, in relation to restricting the dissemination or persistence of a GMO and its genetic material in the environment, include the following—
- (a) stated methods for disposal of the GMO or its genetic material;
 - (b) data collection requirements, including studies to be conducted about the GMO or its genetic material;

- (c) a restricted geographic area in which the proposed dealings with the GMO or its genetic material may occur;
- (d) compliance, in relation to dealings with the GMO or its genetic material, with—
 - (i) a code of practice issued under section 24; or
 - (ii) a technical or procedural guideline issued under section 27.

limits, in relation to the release of a GMO that is proposed to be authorised by a licence, includes limits on any of the following—

- (a) the scope of the dealings with the GMO;
- (b) the scale of the dealings with the GMO;
- (c) the locations of the dealings with the GMO;
- (d) the duration of the dealings with the GMO;
- (e) the persons who are to be permitted to conduct the dealings with the GMO.

Note—

This section differs from section 50A of the Commonwealth Act.’.

15 Amendment of s 51 (Matters regulator must take into account in preparing risk assessment and risk management plan)

- (1) Section 51(1)(a), ‘mentioned in section 49(2)(a) to (g)’—
omit, insert—
‘prescribed under a regulation’.
- (2) Section 51(1)(b) and (2)(b)—
omit.

16 Amendment of s 52 (Public notification of risk assessment and risk management plan)

- (1) Section 52(1), ‘49 (if applicable),’—
omit.

- (2) Section 52(2)—

insert—

‘(ba) if the regulator is satisfied that 1 or more dealings proposed to be authorised by the licence may pose a significant risk to the health and safety of people or to the environment—that the regulator is so satisfied; and’.

- (3) Section 52(2)(d), from ‘than’—

omit, insert—

‘than—

(i) if the notice states that the regulator is satisfied that the dealings proposed to be authorised by the licence may pose a significant risk to the health and safety of people or to the environment—50 days after the date on which the notice was published; or

(ii) otherwise—30 days after the date on which the notice was published.’.

17 **Amendment of s 56 (Regulator must not issue the licence unless satisfied as to risk management)**

- (1) Section 56(2)(a) and (b)—

omit, insert—

‘(a) the risk assessment prepared under section 47 or 50 in relation to the dealings;

(b) the risk management plan prepared under section 47 or 50 in relation to the dealings;’.

- (2) Section 56(2)—

insert—

‘*Note—*

Subsection (2)(a), (b) and (c) does not apply to an inadvertent dealings application.’.

18 **Amendment of s 57 (Other circumstances in which regulator must not issue the licence)**

Section 57—

insert—

- ‘(3) Subsection (2) does not apply to an inadvertent dealings application.’.

19 Amendment of s 60 (Period of licence)

Section 60—

insert—

- ‘(3) A licence issued as a result of an inadvertent dealings application must not be expressed to be in force for a period of longer than 1 year.’.

20 Amendment of s 67 (Protection of persons who give information)

Section 67, ‘or 66’—

omit, insert—

‘, 66 or 72D(2)(h)’.

21 Amendment of s 71 (Variation of licence)

- (1) Section 71(1)—

omit, insert—

- ‘(1) The regulator may vary a licence by notice in writing given to the licence holder—

- (a) at any time, on the regulator’s own initiative; or
- (b) on application by the licence holder.

- ‘(1A) An application for a variation 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.’.

- (2) Section 71(2), ‘However, the’—

omit, insert—

‘The’.

(3) Section 71—

insert—

‘(2A) The regulator must not vary a licence if the original application for the licence was an application to which section 50A applied, unless—

(a) the regulator is satisfied the principal purpose of the licence as proposed to be varied is to enable the licence holder and persons covered by the licence to conduct experiments; and

(b) the application for variation proposes, in relation to any GMO for which dealings are proposed to be authorised as a result of the variation—

(i) controls to restrict the dissemination or persistence of the GMO and its genetic material in the environment; and

(ii) limits on the proposed release of the GMO; and

(c) the regulator is satisfied the controls and limits are of a kind that it is appropriate for the regulator not to seek the advice mentioned in section 50(3).

Note—

Section 50A applies to an application that proposes controls and limits on the dissemination, persistence and release of the GMO concerned and is for the purpose of conducting experiments.

‘(2B) The regulator must not vary a licence if the regulator is satisfied the risk assessment and the risk management plan in relation to the original application for the licence did not cover the risks posed by the dealings proposed to be authorised by the licence as varied.’.

(4) Section 71(4), ‘However, the regulator must not vary the’—

omit, insert—

‘The regulator must not vary a’.

(5) Section 71—

insert—

- ‘(5) The regulator must not vary a licence unless any local government the regulator considers appropriate has been consulted on the proposed variation.
- ‘(6) The regulator must not vary a licence in the circumstances, if any, prescribed under a regulation.
- ‘(7) If an application has been made for variation of a licence, the regulator must vary the licence, or refuse to vary the licence, within the period, if any, prescribed under a regulation.
- ‘(8) In this section—

controls see section 50A(3).

limits see section 50A(3).

Note—

This section differs from section 71 of the Commonwealth Act.’.

22 Amendment of s 72 (Regulator to notify of proposed suspension, cancellation or variation)

Section 72—

insert—

- ‘(7) This section does not apply to a variation of a licence if the regulator is satisfied the variation is of minor significance or complexity.’.

23 Amendment of s 72A (GMO licence—annual charge)

Section 72A—

renumber as section 72AA.

24 Insertion of new pt 5A

After section 72AA, as renumbered—

insert—

‘Part 5A Emergency dealing determinations

‘Division 1 Simplified outline

‘72A Simplified outline of pt 5A

‘In outline, this part provides a system under which the Minister may make determinations relating to dealings with GMOs in emergencies.

Note—

This section differs from section 72A of the Commonwealth Act.

‘Division 2 Making of emergency dealing determination

‘72B Minister may make emergency dealing determination

- ‘(1) The Minister may, by gazette notice (an *emergency dealing determination*), state dealings with a GMO for this part.
- ‘(2) The Minister may make an emergency dealing determination only if the Minister administering section 72B of the Commonwealth Act has made, or is proposing to make, a corresponding Commonwealth emergency dealing determination.

Notes—

- 1 This section differs from section 72B of the Commonwealth Act.
- 2 Section 72B(3) of the Commonwealth Act deals with threats of a kind mentioned in section 72B(2) of the Commonwealth Act.
- 3 For provisions corresponding to section 72B(4) of the Commonwealth Act, see the *Statutory Instruments Act 1992*, section 24.

‘72C Period of effect of emergency dealing determination

- ‘(1) An emergency dealing determination takes effect—

- (a) on the day on which the emergency dealing determination is made; or
 - (b) on a later day stated in the emergency dealing determination.
- ‘(2) An emergency dealing determination ceases to have effect—
- (a) subject to subsection (3), at the end of the 6 month period starting when the emergency dealing determination takes effect; or
 - (b) at the end of the period stated by the Minister in the emergency dealing determination; or
 - (c) when the emergency dealing determination is revoked; whichever happens first.
- ‘(3) The Minister may, by gazette notice, extend the period of effect of an emergency dealing determination.
- ‘(4) The Minister may extend the period of effect of an emergency dealing determination under subsection (3) more than once, but each single extension must not exceed 6 months.
- ‘(5) The Minister may extend the period of effect of an emergency dealing determination only if the Minister administering section 72C of the Commonwealth Act has under that section extended, or is proposing to extend under that section, the period of effect of the corresponding Commonwealth emergency dealing declaration.
- ‘(6) A notice extending the period of effect of an emergency dealing determination takes effect when the determination would have ceased to have effect but for the extension.

Note—

This section differs from section 72C of the Commonwealth Act.

‘Division 3 Effect and conditions of emergency dealing determination

‘72D Emergency dealing determination authorises dealings, subject to conditions

- ‘(1) If an emergency dealing determination is in force in relation to dealings with a GMO, the dealings are authorised, subject to the conditions, if any, stated in the emergency dealing determination.
- ‘(2) Conditions may relate to, but are not limited to, the following—
- (a) the quantity of GMO in relation to which dealings are covered;
 - (b) the scope of the dealings covered;
 - (c) the purposes for which the dealings may be undertaken;
 - (d) variations to the scope or purposes of the dealings;
 - (e) the source of the GMO;
 - (f) the persons who may deal with the GMO;
 - (g) the information required to be given by a person and the person to whom the information must be given;
 - (h) obligations about informing the regulator if—
 - (i) a person becomes aware of additional information as to any risks to the health and safety of people, or to the environment, associated with the dealings stated in the emergency dealing determination; or
 - (ii) a person becomes aware of any contraventions, by any person, of the conditions to which the emergency dealing determination is subject; or
 - (iii) a person becomes aware of any unintended effects of the dealings stated in the emergency dealing determination;
 - (i) the storage and security of the GMO;

- (j) the required level of containment in relation to the dealings, including requirements relating to the certification of facilities to stated containment levels;
 - (k) waste disposal requirements;
 - (l) the way in which any quantity of the GMO must be dealt with if a condition of the emergency dealing determination is breached;
 - (m) measures to manage risks posed to the health and safety of people or to the environment;
 - (n) data collection, including studies to be conducted;
 - (o) auditing and reporting;
 - (p) the keeping and disclosure of, and access to, records about the GMO;
 - (q) actions to be taken in case of the release of the GMO from a contained environment;
 - (r) the geographic area in which the dealings stated in the emergency dealing determination may occur;
 - (s) requirements for compliance with a code of practice issued under section 24, or a technical or procedural guideline issued under section 27;
 - (t) supervision by, and monitoring by, institutional biosafety committees;
 - (u) contingency planning in relation to unintended effects of the dealings stated in the emergency dealing determination;
 - (v) limiting the dissemination or persistence of the GMO or its genetic material in the environment;
 - (w) any other matters the Minister considers appropriate.
- ‘(4) It is a condition of an emergency dealing determination that if—
- (a) a dealing with a GMO is stated in the emergency dealing determination; and
 - (b) a particular condition of the emergency dealing determination applies to the dealing by a 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.

- ‘(5) Subsection (4) does not limit the conditions that may be stated in an emergency dealing determination.

Notes—

- 1 This section differs from section 72D of the Commonwealth Act.
- 2 For provisions corresponding to section 72D(3) of the Commonwealth Act, see the *Statutory Instruments Act 1992*, section 24.

‘Division 4 **Variation, suspension and revocation of emergency dealing determination**

‘72E **Variation, suspension and revocation of emergency dealing determination**

- ‘(1) The Minister may, by gazette notice, vary the conditions to which an emergency dealing determination is subject, including by imposing new conditions, if the Minister administering section 72E of the Commonwealth Act has made, or is proposing to make, the same variation to the corresponding Commonwealth emergency dealing determination.
- ‘(2) The Minister may, by gazette notice, suspend or revoke an emergency dealing determination if the Minister administering section 72E of the Commonwealth Act has suspended or revoked, or is proposing to suspend or revoke, the corresponding Commonwealth emergency dealing determination.

Note—

Section 72E of the Commonwealth Act includes a subsection (3) dealing with consultation with the States in relation to the variation, suspension or revocation of an emergency dealing determination.

- ‘(4) A variation, suspension or revocation of an emergency dealing determination takes effect—

- (a) if the Minister states in the variation, suspension or revocation that the variation, suspension or revocation is necessary to prevent imminent risk of death, serious illness, serious injury or serious environmental damage—on the day on which the variation, suspension or revocation is made; or
- (b) otherwise—on the day stated by the Minister in the variation, suspension or revocation.
- ‘(5) The day stated as mentioned in subsection (4)(b) must not be earlier than 30 days after the day on which the variation, suspension or revocation is made.

Note—

This section differs from section 72E of the Commonwealth Act.’

25 Amendment of s 78 (Regulator may include dealings with GMOs on GMO register)

Section 78(4), other than note—
omit.

26 Amendment of s 82 (Simplified outline of pt 7)

Section 82(2) and (4), after ‘Licence conditions’—
insert—

‘, or conditions to which an emergency dealing determination is subject,’.

27 Amendment of s 83 (Application for certification)

Section 83, note, after ‘licence’—
insert—

‘, or conditions to which an emergency dealing determination is subject,’.

28 Amendment of s 89 (Regulator to notify of proposed suspension, cancellation or variation)

Section 89—

insert—

- ‘(7) This section does not apply to a variation of a licence if the regulator is satisfied the variation is of minor significance or complexity.’

29 Insertion of new s 89A

After section 89—

insert—

‘89A Transfer of certification

- ‘(1) The holder of a certification and another person (the *transferee*) may jointly apply to the regulator for the certification to be transferred from the holder of the certification 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 certification unless the regulator is satisfied that, if the certification is transferred, any conditions to which the certification is subject will continue to be met.
- ‘(4) The regulator must give written notice of his or her decision on the application to the holder of the certification and the transferee.
- ‘(5) If the regulator decides to transfer the certification—
- (a) the transfer takes effect on the date stated in the notice; and
 - (b) the certification continues in force; and
 - (c) the certification is subject to the same conditions as those in force immediately before the transfer.’

30 Amendment of s 91 (Application for accreditation)

Section 91, note—

omit, insert—

Notes—

- 1 The conditions of a licence may require supervision of dealings by an institutional biosafety committee (see section 62(2)(m)), and a regulation may require supervision of notifiable low risk dealings by an institutional biosafety committee (see section 75(2)(c)).
- 2 The conditions to which an emergency dealing determination is subject may require supervision of dealings by an institutional biosafety committee (see section 72D(2)(t)).

31 Amendment of s 92 (Regulator may accredit organisations)

- (1) Section 92(2)(a), ‘, or proposes to establish,’—

omit.

- (2) Section 92(2)(b) and (c)—

omit, insert—

- ‘(b) if the organisation has established an institutional biosafety committee—whether the organisation will be able to maintain the institutional biosafety committee in accordance with the guidelines mentioned in paragraph (a);
- (c) if the organisation has established an institutional biosafety committee—whether the organisation has appropriate indemnity arrangements for its institutional biosafety committee members;
- (ca) if the organisation has not established an institutional biosafety committee as mentioned in paragraph (a)—whether the organisation will be in a position to use an institutional biosafety committee established by an accredited organisation;’.

32 Amendment of s 97 (Regulator to notify of proposed suspension, cancellation or variation)

Section 97—

insert—

- ‘(7) This section does not apply to a variation of an accreditation if the regulator is satisfied the variation is of minor significance or complexity.’.

33 Replacement of s 107 (Function of consultative committee)

Section 107—

omit, insert—

‘107 Function of ethics and community committee

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

- (a) ethical issues relating to gene technology;
- (b) the need for, and content of, codes of practice in relation to ethics for conducting dealings with GMOs;
- (c) the need for, and content of, policy principles in relation to dealings with GMOs that should not be conducted for ethical reasons;
- (d) the need for policy principles, policy guidelines, codes of practice and technical and procedural guidelines in relation to GMOs and GM products and the content of the principles, guidelines and codes;
- (e) community consultation in relation to the process for applications for licences covering dealings involving the intentional release of a GMO into the environment;
- (f) risk communication matters in relation to dealings involving the intentional release of a GMO into the environment;
- (g) matters of general concern identified by the regulator in relation to applications made under this Act;
- (h) matters of general concern in relation to GMOs.’.

34 Replacement of ss 110 and 110A and pt 8, div 4

Sections 110 and 110A and part 8, division 4—

omit, insert—

‘110 Membership and procedures

‘Note—

Section 110 of the Commonwealth Act empowers the making of regulations about the membership and procedures of the ethics and community committee.

‘111 Subcommittees

‘Note—

Section 111 of the Commonwealth Act deals with the establishment of subcommittees by the ethics and community committee.

‘112 Expert advisers

‘Note—

Section 112 of the Commonwealth Act provides for the appointment of expert advisers to the ethics and community committee.’.

35 Amendment of s 136A (Quarterly reports)

Section 136A(2)—

insert—

‘(ba) emergency dealing determinations made by the Minister during the quarter;

(bb) any breaches of conditions of an emergency dealing determination that have come to the regulator’s attention during the quarter;’.

36 Amendment of s 138 (Record of GMO and GM product dealings)

Section 138—

insert—

‘(1A) The GM record must contain the following information, other than confidential commercial information, in relation to each emergency dealing determination made under section 72B—

- (a) the dealings stated in the emergency dealing determination and the GMO to which the dealings relate;
- (b) any conditions to which the emergency dealing determination is subject;
- (c) the date on which the emergency dealing determination takes effect;
- (d) the date on which the emergency dealing determination will cease to have effect.’.

37 Amendment of s 145 (Simplified outline of pt 10)

- (1) Section 145(a)(ii), after ‘environment’—

insert—

‘or for certain other reasons’.

- (2) Section 145—

insert—

‘(aa) enables the regulator to give directions to a person permitted by an emergency dealing determination to deal with a GMO if—

- (i) the regulator believes the person is not complying with this Act; and
- (ii) the regulator believes it is necessary to do so in order to protect the health and safety of people or to protect the environment or for certain other reasons; and’.

38 Amendment of s 146 (Regulator may give directions)

- (1) Section 146(1)(b)—

omit, insert—

‘(b) either of the following applies—

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

- (ii) it is desirable in the public interest, having regard to the matters mentioned in subsection (2A), for the regulator to exercise powers under this section;’.

(2) Section 146(2)(a) and (b)—

omit, insert—

‘(a) 1 of the following kinds of persons is not complying with this Act in relation to a thing—

- (i) a person covered by a GMO licence;
- (ii) a person dealing with, or who has dealt with, a GMO stated in an emergency dealing determination; and

(b) either of the following applies—

- (i) it is necessary to exercise powers under this section in order to protect the health and safety of people or to protect the environment;
- (ii) it is desirable in the public interest, having regard to the matters mentioned in subsection (2A), for the regulator to exercise powers under this section;’.

(3) Section 146—

insert—

‘(2A) For deciding under subsection (1)(b)(ii) or (2)(b)(ii) whether it is desirable to exercise powers under this section to give directions to a licence holder or another person, the regulator must have regard to the following—

- (a) the types of dealings with GMOs authorised by the licence or stated in the emergency dealing determination concerned, and, in particular, whether the dealings are ongoing;
- (b) whether measures have been, or are being, taken to address the noncompliance with this Act that the regulator believes is occurring (the ***suspected noncompliance***);
- (c) the likelihood of the licence holder or other person not complying with this Act at a future time;

- (d) the severity of the suspected noncompliance;
- (e) whether, on 1 or more occasions, the licence holder or other person—
 - (i) has been charged with or convicted of an offence against this Act; or
 - (ii) has been given a direction under this section;
- (f) other means available to the regulator to address the suspected noncompliance, including, but not limited to, by cancelling, varying or suspending a licence, accreditation or certification;
- (g) whether, in the regulator’s opinion, the suspected noncompliance was deliberate;
- (h) the desirability of deterring future noncompliance with this Act.’.

39 Amendment of s 149 (Simplified outline of pt 11)

Section 149(e), after ‘licence’—

insert—

‘or an emergency dealing determination’.

40 Amendment of s 152 (Powers available to inspectors for monitoring compliance)

Section 152(2)—

insert—

‘(d) the occupier of the premises is a person dealing with, or who has dealt with, a GMO stated in an emergency dealing determination, and the entry is at a reasonable time.’.

41 Amendment of s 177 (Part does not limit power to impose licence conditions)

(1) Section 177, heading, ‘licence’—

omit.

(2) Section 177, ‘conditions.’—

omit, insert—

‘conditions or the Minister’s power to impose conditions on an emergency dealing determination.’.

42 Amendment of s 182 (Deadlines for making reviewable decisions)

(1) Section 182(a)—

omit, insert—

‘(a) this Act provides for a person to make an application of any kind to the regulator; and’.

(2) Section 182, ‘decision to reject the application’—

omit, insert—

‘reviewable decision to reject the application, and the person may seek internal review of the reviewable decision under section 181’.

43 Amendment of s 185 (Regulator may declare that information is confidential commercial information)

Section 185—

insert—

‘(3B) If—

(a) a person has made an application under section 184 for a declaration that stated information is confidential commercial information; and

(b) the regulator has not yet made a decision on the application;

the information must be treated as confidential commercial information until the regulator makes a decision on the application.’.

44 Amendment of s 192A (Interference with dealings with GMOs)

(1) Section 192A(2), definition *authorised GMO dealings*—

insert—

‘(aa) stated in an emergency dealing determination and are not prohibited from being undertaken at the premises or facility by a condition of the determination; or’.

(2) Section 192A(2), definition *authorised GMO dealings*, paragraph (d), before ‘included’—

insert—

‘dealings’.

45 Replacement of s 194 (Review of operation of Act)

Section 194—

omit, insert—

‘194 Review of operation of Act

‘(1) The Minister must cause a review of the operation of this Act to be undertaken whenever a review of the Commonwealth Act is undertaken under section 194 of the Commonwealth Act.

‘(2) The review of this Act must be undertaken—

(a) as part of the review of the Commonwealth Act; or

(b) after the review of the Commonwealth Act.’.

46 Amendment of sch 1 (Reviewable decisions and eligible persons)

(1) Schedule 1, before item 1—

insert—

‘1A To refuse to consider an application on the basis that the applicant is not a suitable person to hold a licence under section 43(2)(f) the applicant’.

(2) Schedule 1—

insert—

- | | | |
|-----|---|---------------------------------|
| ‘3A | To refuse to transfer a licence under section 70 | an applicant for the transfer |
| 4A | To refuse to vary a licence under section 71 | the licence holder |
| 7A | To refuse to transfer a certification under section 89A | an applicant for the transfer’. |

47 Amendment of sch 3 (Dictionary)

(1) Schedule 3, definitions *consultative committee* and *ethics committee*—

omit.

(2) Schedule 3—

insert—

‘corresponding Commonwealth emergency dealing determination, in relation to an emergency dealing determination under this Act, means a determination under section 72B of the Commonwealth Act that specifies the same kind of dealings as those proposed to be stated in, or stated in, the emergency dealing determination under this Act.

emergency dealing determination means a determination in force under section 72B.

ethics and community committee means the Gene Technology Ethics and Community Consultative Committee established under the Commonwealth Act, section 106.

inadvertent dealings application means an application for a GMO licence to which part 5, division 3 or 4 does not apply because of the operation of section 46A or 49.’.

(3) Schedule 3, definition *deal with*, from ‘and includes’—

omit, insert—

‘(h) transport the GMO;

(i) dispose of the GMO;

and includes the possession, supply or use of the GMO for the purposes of, or in the course of, a dealing mentioned in any of paragraphs (a) to (i).’

- (4) Schedule 3, definition *institutional biosafety committee*, from ‘by’—

omit, insert—

‘as an institutional biosafety committee in accordance with written guidelines issued by the regulator under section 98.’.

Schedule Minor amendments

section 2

1 Part 8, heading—

omit, insert—

**‘Part 8 The gene technology technical
advisory committee and the
gene technology ethics and
community consultative
committee’.**

2 Section 99(b) and (c)—

omit, insert—

‘(b) the gene technology ethics and community consultative
committee.’.

3 Part 8, division 3, heading, after ‘technology’—

insert—

‘ethics and’.

**4 Section 106, including note, ‘community consultative
committee’—**

omit, insert—

‘ethics and community consultative committee’.

5 Sections 108 and 109, note, ‘consultative committee’—

omit, insert—

‘ethics and community committee’.

© State of Queensland 2008