



# Gene Technology Act 2001

Current as at 2 November 2009—2nd revised version

## Reprint note

Powers under the *Reprints Act 1992* have been used in this reprint to bring the legislation into line with current drafting practice or to make minor editorial changes.

This is the last reprint before repeal. Repealed on 1 March 2017 by 2016 Act No. 54 s 23.





Queensland

# Gene Technology Act 2001

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# Gene Technology Act 2001

**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 nation ally 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.

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## 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.

[s 8B]

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- 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

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- (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.

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## **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.

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## **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.

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## **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.



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*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.

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

### **Division 1 Simplified outline**

#### **31 Simplified outline of pt 4**

In outline, this part—

- (a) deals with the regulation of dealings with GMOs; and
- (b) prohibits dealings with GMOs unless—
  - (i) the person undertaking the dealing is authorised to do so by a GMO licence; or
  - (ia) the dealing is stated in an emergency dealing determination; or
  - (ii) the dealing is a notifiable low risk dealing; or
  - (iii) the dealing is an exempt dealing; or

- (iv) the dealing is included in the GMO register under part 6, division 3; and
- (c) imposes heavier penalties on unlawful dealings that cause, or are likely to cause, significant damage to the health and safety of people or to the environment.

## **Division 2 Dealings with GMOs must be licensed**

### **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 2200 penalty units; or
- (b) otherwise—2 years imprisonment or 550 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.

### **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
  - (ba) the dealing with the GMO is not stated in an emergency dealing determination; 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—220 penalty units; or
  - (b) otherwise—55 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—
- (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 2200 penalty units; or
  - (b) otherwise—2 years imprisonment or 550 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 2200 penalty units; or
  - (b) otherwise—2 years imprisonment or 550 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—220 penalty units; or
- (b) otherwise—55 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—220 penalty units; or

(b) otherwise—55 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—220 penalty units; or

(b) otherwise—55 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.

### **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—

[s 35B]

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- (a) for an aggravated offence—5 years imprisonment or 2200 penalty units; or
- (b) otherwise—2 years imprisonment or 550 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—220 penalty units; or
- (b) otherwise—55 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.

### **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—55 penalty units.

*Note—*

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

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### 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—55 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.



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- (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.

#### **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.

**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.
- (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.

**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, or may cease considering 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; or
  - (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.
- (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.

### **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.

### **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            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.

**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.
- (3) Unless section 50A applies in relation to the application for the licence, 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.

**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.

## **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 prescribed under a regulation;
  - (c) any advice about the risk assessment given by the following in response to a request under section 50(3)—
    - (i) a State;
    - (ii) the gene technology technical advisory committee;
    - (iii) a Commonwealth authority or agency;
    - (iv) the Commonwealth Environment Minister;
    - (v) a local 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;



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- (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;
    - (v) 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, 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 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

- (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
  - (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—
    - (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.
- (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)—33 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) 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;
  - (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.

*Note—*

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

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

**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.
- (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.

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## **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, 66 or 72D(2)(h).

# **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; 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 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) 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.

*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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- (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.
- (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) The regulator must not vary a 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.
- (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.

## **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.
- (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.

## **Division 8                      Annual charge**

### **72AA    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 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.

[s 72E]

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- (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,

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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.

## **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.

*Note—*

Section 78(4) of the Commonwealth Act provides for determinations to be disallowable instruments.



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**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, or conditions to which an emergency dealing determination is subject, 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, or conditions to which an emergency dealing determination is subject, may state that dealings must be supervised by an institutional biosafety committee established by an accredited organisation (see division 3).

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## **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, or conditions to which an emergency dealing determination is subject, 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.

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- (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.
  - (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.

## **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.

## **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.

*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)).

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## **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 an institutional biosafety committee under guidelines issued by the regulator under section 98;
  - (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;
  - (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.
- (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.

## **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 and the gene technology ethics and community consultative 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 ethics and community consultative 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 ethics and community consultative committee**

### **106 The gene technology ethics and community consultative committee**

*Note—*

Section 106 of the Commonwealth Act establishes the gene technology ethics and community consultative committee.

### **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.

## **108 Membership**

*Note—*

Section 108 of the Commonwealth Act provides for the membership of the ethics and community committee.

## **109 Remuneration**

*Note—*

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

## **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.

## **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 Accountability Act 2009* 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;
  - (b) amounts equal to fees received by the State under sections 40(6) and 83(3);
  - (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) to the extent the amounts are referable to costs paid out of the gene technology account.
- (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.

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### 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;
  - (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;
  - (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).
- (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.
- (2) The GM record must contain the following information, other than confidential commercial information, about each

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notifiable low risk dealing notified to the regulator under section 75(2)(b)—

- (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.

## 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); 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.
- (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 or for certain other reasons; and
- (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
- (b) empowers the Supreme Court to issue injunctions, and contains a forfeiture provision.

*Note—*

This section differs from section 145 of the Commonwealth Act.



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## 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) 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;

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) 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;

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.

- (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.
- (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—2200 penalty units;
  - (b) otherwise—550 penalty units.

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- (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

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- (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 or an emergency dealing determination may be subject, and section 64 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.
- (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; or
  - (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.

- (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.

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- (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), 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.

## **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)—33 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); or
  - (b) possession by the occupier of the document, film, computer file, thing or information could constitute an offence.



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**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.

**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 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.
- (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; and
    - (iii) to seize the evidential material; and

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- (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.
- (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 132 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 132 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 conditions**

This part is not to be taken to limit the regulator's power to impose licence conditions or the Minister's power to impose conditions on an emergency dealing determination.

## **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 make an application of any kind to the regulator; 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 reviewable decision to reject the application, and the person may seek internal review of the reviewable decision under section 181.

## **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).

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## **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.
- (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

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and safety of people, the environment or property would be likely to occur if the locations were disclosed.

(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.

- (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 132 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
  - (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 132 penalty units.

(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 or surrendered under section 69.

(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—
  - (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 66 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 132 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

- (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
- (b) notifiable low risk dealings; or
- (c) exempt dealings; or
- (d) dealings 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, 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

- 
- (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 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.



## Schedule 1      Reviewable decisions and eligible persons

section 179

<b>Column 1 Reviewable decision</b>	<b>Column 2 Eligible person</b>
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
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
3A to refuse to transfer a licence under section 70	an applicant for the transfer
4 to vary a licence under section 71	the licence holder
4A to refuse 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
7A to refuse to transfer a certification under section 89A	an applicant for the transfer

	<b>Column 1 Reviewable decision</b>	<b>Column 2 Eligible person</b>
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
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

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## 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.

**containment level**, for a facility, means the degree of physical confinement of GMOs provided by the facility, having regard to the design of the facility, the equipment located or installed

in the facility and the procedures generally used within the facility.

**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.

**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;
- (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).

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

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

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

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

***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;
- (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.

***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.

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

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

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

***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.

***institutional biosafety committee*** means a committee established as an institutional biosafety committee in accordance with written guidelines issued by the regulator under section 98.

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

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

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

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

***officer***, 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;
- (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 \$5000 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 2008* 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.

## 1 Index to endnotes

- 2 Key
- 3 Table of reprints
- 4 List of legislation
- 5 List of annotations

## 2 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
amd	= amendment	prov	= provision
t			
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	renu	= renumbered
		m	
ins	= inserted	rep	= repealed
lap	= lapsed	(retro	= retrospectively
		)	
notf	= notified	rv	= revised version
d			
num	= numbered	s	= section

<b>Key</b>	<b>Explanation</b>	<b>Key</b>	<b>Explanation</b>
<b>o in c</b>	= order in council	<b>sch</b>	= schedule
<b>om</b>	= omitted	<b>sdiv</b>	= subdivision
<b>orig</b>	= original	<b>SIA</b>	= Statutory Instruments Act 1992
<b>p</b>	= page	<b>SIR</b>	= Statutory Instruments Regulation 2012
<b>para</b>	= paragraph	<b>SL</b>	= subordinate legislation
<b>prec</b>	= preceding	<b>sub</b>	= substituted
<b>pres</b>	= present	<b>unnum</b>	= unnumbered
		<b>m</b>	
<b>prev</b>	= previous		

### 3 Table of reprints

A new reprint of the legislation is prepared by the Office of the Queensland Parliamentary Counsel each time a change to the legislation takes effect.

The notes column for this reprint gives details of any discretionary editorial powers under the **Reprints Act 1992** used by the Office of the Queensland Parliamentary Counsel in preparing it. Section 5(c) and (d) of the Act are not mentioned as they contain mandatory requirements that all amendments be included and all necessary consequential amendments be incorporated, whether of punctuation, numbering or another kind. Further details of the use of any discretionary editorial power noted in the table can be obtained by contacting the Office of the Queensland Parliamentary Counsel by telephone on 3003 9601 or email [legislation.queries@oqpc.qld.gov.au](mailto:legislation.queries@oqpc.qld.gov.au).

From 29 January 2013, all Queensland reprints are dated and authorised by the Parliamentary Counsel. The previous numbering system and distinctions between printed and electronic reprints is not continued with the relevant details for historical reprints included in this table.

<b>Reprint No.</b>	<b>Amendments to</b>	<b>Effective</b>	<b>Reprint date</b>
1	none	1 November 2001	2 November 2001

<b>Reprint No.</b>	<b>Amendments included</b>	<b>Effective</b>	<b>Notes</b>
1A	2003 Act No. 7	5 December 2003	
1B	2004 Act No. 19	12 November 2004	
1C	2008 Act No. 3	20 February 2008	R1C withdrawn, see R2
2	—	20 February 2008	
2A	2008 Act No. 66	1 January 2009	
2B	2009 Act No. 9 2009 Act No. 13	1 July 2009	
2C	2009 Act No. 25	2 November 2009	

<b>Current as at</b>	<b>Amendments included</b>	<b>Notes</b>
2 November 2009 2rv	2009 Act No. 25	RA ss 43, 44

## 4 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 (2001 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)

### **Gene Technology Amendment Act 2008 No. 3**

date of assent 20 February 2008  
commenced on date of assent

**Penalties and Sentences and Other Acts Amendment Act 2008 No. 66 ss 1–2(1), 4 sch pt 1**

date of assent 1 December 2008  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 January 2009 (see s 2(1))

**Financial Accountability Act 2009 No. 9 ss 1, 2(2), 136 sch 1**

date of assent 28 May 2009  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 July 2009 (2009 SL No. 80)

**Right to Information Act 2009 No. 13 ss 1–2, 213 sch 5**

date of assent 12 June 2009  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 July 2009 (2009 SL No. 132)

**Criminal Code and Other Legislation (Misconduct, Breaches of Discipline and Public Sector Ethics) Amendment Act 2009 No. 25 pt 1, s 83 sch**

date of assent 11 August 2009  
ss 1–2 commenced on date of assent  
remaining provisions commenced 2 November 2009 (2009 SL No. 241)

## 5 List of annotations

**Simplified outline of pt 4**

s 31 amd 2008 No. 3 s 3

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

s 32 sub 2008 No. 3 s 4  
amd 2008 No. 66 s 4 sch pt 1

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

s 33 amd 2008 No. 3 s 5; 2008 No. 66 s 4 sch pt 1

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

s 34 amd 2008 No. 3 s 6; 2008 No. 66 s 4 sch pt 1

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

s 35 amd 2008 No. 66 s 4 sch pt 1

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

s 35A ins 2008 No. 3 s 7  
amd 2008 No. 66 s 4 sch pt 1

**Person must not breach conditions of emergency dealing determination**

s 35B ins 2008 No. 3 s 7

amd 2008 No. 66 s 4 sch pt 1

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

s 36 amd 2008 No. 66 s 4 sch pt 1

**Offence relating to notifiable low risk dealings**

s 37 amd 2008 No. 66 s 4 sch pt 1

**Licences relating to inadvertent dealings**

s 40A ins 2008 No. 3 s 8

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

s 42 amd 2008 No. 3 s 9

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

s 43 amd 2008 No. 3 s 10

**Division does not apply to an application relating to inadvertent dealings**

s 46A ins 2008 No. 3 s 11

**Division does not apply to an application relating to inadvertent dealings**

s 49 sub 2008 No. 3 s 12

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

s 50 amd 2008 No. 3 s 13

**Limited and controlled release applications**

s 50A ins 2008 No. 3 s 14

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

s 51 amd 2008 No. 3 s 15

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

s 52 amd 2008 No. 3 s 16

**Regulator may take other actions**

s 53 amd 2008 No. 66 s 4 sch pt 1

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

s 56 amd 2008 No. 3 s 17

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

s 57 amd 2008 No. 3 s 18

**Period of licence**

s 60 amd 2008 No. 3 s 19

**Protection of persons who give information**

s 67 amd 2008 No. 3 s 20

**Variation of licence**

s 71 amd 2008 No. 3 s 21

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

s 72 amd 2008 No. 3 s 22

**GMO licence—annual charge**

s 72AA renum 2008 No. 3 s 23

**PART 5A—EMERGENCY DEALING DETERMINATIONS**

pt hdg ins 2008 No. 3 s 24

**Division 1—Simplified outline**

div 1 (s 72A) ins 2008 No. 3 s 24

**Division 2—Making of emergency dealing determination**

div 2 (ss 72B–72C) ins 2008 No. 3 s 24

**Division 3—Effect and conditions of emergency dealing determination**

div 3 (s 72D) ins 2008 No. 3 s 24

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

div 4 (s 72E) ins 2008 No. 3 s 24

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

s 78 amd 2008 No. 3 s 25

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s 82 amd 2008 No. 3 s 26

**Application for certification**

s 83 amd 2008 No. 3 s 27

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

s 89 amd 2008 No. 3 s 28

**Transfer of certification**

s 89A ins 2008 No. 3 s 29

**Application for accreditation**

s 91 amd 2008 No. 3 s 30

**Regulator may accredit organisations**

s 92 amd 2008 No. 3 s 31

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

s 97 amd 2008 No. 3 s 32

**PART 8—THE GENE TECHNOLOGY TECHNICAL ADVISORY COMMITTEE AND THE GENE TECHNOLOGY ETHICS AND COMMUNITY CONSULTATIVE COMMITTEE**

pt hdg sub 2008 No. 3 s 2 sch

**Simplified outline of pt 8**

s 99 amd 2008 No. 3 s 2 sch

**Division 3—The gene technology ethics and community consultative committee**

div hdg amd 2008 No. 3 s 2 sch

**The gene technology ethics and community consultative committee**

s 106 amd 2008 No. 3 s 2 sch

**Function of ethics and community committee**

s 107 sub 2008 No. 3 s 33

**Membership**

s 108 amd 2008 No. 3 s 2 sch

**Remuneration**

s 109 amd 2008 No. 3 s 2 sch

**Membership and procedures**

s 110 sub 2008 No. 3 s 34

**Subcommittees**

s 110A om 2008 No. 3 s 34

**Subcommittees**

s 111 sub 2008 No. 3 s 34

**Expert advisers**

s 112 sub 2008 No. 3 s 34

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**Expert advisers**

s 113 om 2008 No. 3 s 34

**Expert advisers**

s 114 om 2008 No. 3 s 34

**Members and procedures**

s 115 om 2008 No. 3 s 34

**Subcommittees**

s 116 om 2008 No. 3 s 34

**Notional payments by the State**

s 128 amd 2009 No. 9 s 136 sch 1

**Quarterly reports**

s 136A amd 2008 No. 3 s 35

**Record of GMO and GM product dealings**

s 138 amd 2008 No. 3 s 36

**Simplified outline of pt 10**

s 145 amd 2008 No. 3 s 37

**Regulator may give directions**

s 146 amd 2008 No. 3 s 38; 2008 No. 66 s 4 sch pt 1

**Simplified outline of pt 11**

s 149 amd 2008 No. 3 s 39

**Powers available to inspectors for monitoring compliance**

s 152 amd 2008 No. 3 s 40



**Power to search goods, baggage etc.**

s 164 amd 2008 No. 66 s 4 sch pt 1

**Offences relating to warrants**

s 175 amd 2008 No. 66 s 4 sch pt 1

**Part does not limit power to impose conditions**

s 177 amd 2008 No. 3 s 41

**Deadlines for making reviewable decisions**

s 182 amd 2008 No. 3 s 42

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

s 185 amd 2008 No. 3 s 43

**Confidential commercial information must not be disclosed**

s 187 amd 2004 No. 19 s 133; 2008 No. 66 s 4 sch pt 1; 2009 No. 13 s 213 sch 5

**False or misleading information or document**

s 192 amd 2008 No. 66 s 4 sch pt 1

**Interference with dealings with GMOs**

s 192A amd 2008 No. 3 s 44; 2008 No. 66 s 4 sch pt 1

**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

**Review of operation of Act**

s 194 sub 2008 No. 3 s 45

**SCHEDULE 1—REVIEWABLE DECISIONS AND ELIGIBLE PERSONS**

amd 2008 No. 3 s 46

**SCHEDULE 3—DICTIONARY**

def *consultative committee* om 2008 No. 3 s 47(1)

def *corresponding Commonwealth emergency dealing determination* ins 2008 No. 3 s 47(2)

def *deal with* amd 2008 No. 3 s 47(3)

def *emergency dealing determination* ins 2008 No. 3 s 47(2)

def *ethics and community committee* ins 2008 No. 3 s 47(2)

def *ethics committee* om 2008 No. 3 s 47(1)

def *inadvertent dealings application* ins 2008 No. 3 s 47(2)

def *institutional biosafety committee* amd 2008 No. 3 s 47(4)

def *State agency* amd 2009 No. 25 s 83 sch

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