



Australian Capital Territory

# Gene Technology Amendment Act 2008

A2008-10

## Contents

---

	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended	2
4 Simplified outline—pt 4	
New section 31 (b) (ia)	2
5 Section 32	2
6 Person not to deal with GMO without licence—strict liability offence	
New section 33 (1) (ba)	3
7 Section 33 (2)	4
8 Person must not breach conditions of GMO licence	
Section 34 (1)	4
9 Section 34 (2) (b) and (c)	4
10 New sections 35A and 35B	5

## Contents

---

	Page	
11	New section 40A	6
12	Regulator may require applicant to give further information New section 42 (3)	7
13	Regulator must consider applications except in certain circumstances Section 43 (2)	7
14	New section 43 (2) (f)	7
15	New section 46A	8
16	Section 49	8
17	Regulator must prepare risk assessment and risk management plan Section 50 (2)	8
18	Section 50 (3)	9
19	New section 50A	9
20	Matters regulator must take into account in preparing risk assessment and risk management plan Section 51 (1) (a)	11
21	Section 51 (1) (b)	11
22	Section 51 (2) (b)	11
23	Public notification of risk assessment and risk management plan Section 52 (1)	12
24	New section 52 (2) (ba)	12
25	Section 52 (2) (d)	12
26	Regulator must not issue the licence unless satisfied as to risk management Section 56 (2) (a) and (b)	13
27	Section 56 (2), new note	13
28	Other circumstances in which regulator must not issue the licence New section 57 (3)	13
29	Period of licence New section 60 (3)	13
30	Protection of persons who give information Section 67	14
31	Variation of licence Section 71 (1)	14
32	Section 71 (2)	14
33	New section 71 (2A)	15
34	Section 71 (4)	16
35	New section 71 (5) to (8)	16

	Page	
36	Regulator to notify of proposed suspension, cancellation or variation New section 72 (8)	16
37	GMO licence—annual charge Section 72A	17
38	New part 5A	17
39	Regulator may include dealings with GMOs on GMO register Section 78 (4)	18
40	Simplified outline—pt 7 Section 82 (2) and (4)	18
41	Application for certification Section 83 (2), note	19
42	Regulator to notify of proposed suspension, cancellation or variation New section 89 (8)	19
43	New section 89A	19
44	Application for accreditation Section 91 (1), note	20
45	Regulator may accredit organisations Section 92 (2) (a)	20
46	Section 92 (2) (b) and (c)	20
47	Regulator to notify of proposed suspension, cancellation or variation New section 97 (8)	21
48	Part 8 heading	21
49	Simplified outline—pt 8 Section 99 (b) and (c)	22
50	Division 8.3 heading	22
51	Section 106 heading	22
52	Section 106, note	22
53	Section 107	23
54	Sections 108 and 109, notes	24
55	Regulations Section 110, note	24
56	Subcommittees Section 110A	24
57	New sections 111 and 112	24
58	Gene technology ethics committee Division 8.4	24

## Contents

	Page
59	Quarterly reports
	New sections 136A (2) (ba) and (bc) 25
60	Record of GMO and GM product dealings
	New section 138 (1A) 25
61	Section 138 (5) 25
62	Simplified outline—pt 10
	Section 145 (a) (ii) 26
63	New section 145 (aa) 26
64	Regulator may give directions
	Section 146 (1) (b) 26
65	Section 146 (2) (a) 27
66	Section 146 (2) (b) 27
67	New section 146 (2A) 27
68	Simplified outline—pt 11
	Section 149 (e) 28
69	Powers available to inspectors for monitoring compliance
	New section 152 (2) (d) 29
70	Section 152 (3) 29
71	Section 177 29
72	Meaning of <i>reviewable decision</i> and <i>eligible person</i>
	Section 179, table, new item 1A 29
73	Section 179, table, new item 5A 30
74	Section 179, table, new item 7A 30
75	Deadlines for making reviewable decisions
	Section 182 (a) 30
76	Section 182 30
77	Regulator may declare information is confidential commercial information
	New section 185 (5A) 31
78	Interference with dealings with GMOs
	Section 192A (2), definition of <i>authorised GMO dealings</i> , new paragraph (aa) 31
79	Section 192A (2), definition of <i>authorised GMO dealings</i> , paragraph (d) 31
80	Dictionary, definition of <i>consultative committee</i> 31
81	Dictionary, definition of <i>deal with</i> 32
82	Dictionary, new definition of <i>ethics and community committee</i> 32

---

Contents

		Page
83	Dictionary, definition of <i>ethics committee</i>	32
84	Dictionary, new definition of <i>inadvertent dealings application</i>	32
85	Dictionary, definition of <i>institutional biosafety committee</i>	32





Australian Capital Territory

# Gene Technology Amendment Act 2008

A2008-10

---

An Act to amend the *Gene Technology Act 2003*

---

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

**1 Name of Act**

This Act is the *Gene Technology Amendment Act 2008*.

**2 Commencement**

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

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

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

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

**3 Legislation amended**

This Act amends the *Gene Technology Act 2003*.

**4 Simplified outline—pt 4  
New section 31 (b) (ia)**

*insert*

(ia) the dealing is specified in an emergency dealing determination;  
or

**5 Section 32**

*substitute*

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

A person commits an offence if—

(a) the person deals with a GMO, knowing that it is a GMO; and



- (b) the dealing with the GMO by the person is not authorised by a GMO licence, and the person knows or is reckless about that fact; and
- (c) the dealing with the GMO is not specified in an emergency dealing determination, and the person knows or is reckless about that fact; and
- (d) the dealing is not a notifiable low risk dealing, and the person knows or is reckless about that fact; and
- (e) the dealing is not an exempt dealing and the person knows or is reckless about that fact; and
- (f) the dealing is not included on the GMO Register, and the person knows or is reckless about that fact.

Maximum penalty:

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

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

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

**6 Person not to deal with GMO without licence—strict liability offence**  
**New section 33 (1) (ba)**

*insert*

- (ba) the dealing with the GMO is not specified in an emergency dealing determination; and

**7 Section 33 (2)**

*after*

subsection (1) (b),

*insert*

(ba),

**8 Person must not breach conditions of GMO licence  
Section 34 (1)**

*substitute*

- (1) The holder of a GMO licence commits an 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 about that fact.

Maximum penalty:

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

**9 Section 34 (2) (b) and (c)**

*substitute*

- (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 about that fact.

**10 New sections 35A and 35B**

*insert*

**35A Person must not breach conditions of emergency dealing determination**

A person commits an 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 such a condition, and the person knows or is reckless about that fact.

Maximum penalty:

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

*Note* This section differs from the Commonwealth Act, s 35A.

**35B Person must not breach conditions of emergency dealing determination—strict liability offence**

(1) 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 such a condition.

Maximum penalty:

- (a) for an aggravated offence—200 penalty units; or
  - (b) in any other case—50 penalty units.
- (2) Strict liability applies to subsection (1) (a) and (c).

*Note* This section differs from the Commonwealth Act, s 35B.

## **11 New section 40A**

*insert*

### **40A Licences relating to inadvertent dealings**

- (1) If the regulator is satisfied that a person has come into possession of a GMO inadvertently the regulator may, with the agreement of the person, treat the person as having made an inadvertent dealings application.
- (2) To remove any doubt, 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* Section 46A and s 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 s 40, or is taken to have been made under this section.

**12 Regulator may require applicant to give further information  
New section 42 (3)**

*insert*

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

**13 Regulator must consider applications except in certain circumstances  
Section 43 (2)**

*omit*

application if—

*substitute*

application, or may cease considering the application, if—

**14 New section 43 (2) (f)**

*insert*

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

**15 New section 46A**

*insert*

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

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

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

**16 Section 49**

*substitute*

**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.

**17 Regulator must prepare risk assessment and risk management plan  
Section 50 (2)**

*omit*

**18 Section 50 (3)**

*omit*

The

*substitute*

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

**19 New section 50A**

*insert*

**50A Limited and controlled release applications**

- (1) This section applies to an application for a licence if the regulator is satisfied that—
  - (a) the principal purpose of the application is to enable the licence holder, and people 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 regulator is satisfied that the controls and limits are of such 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 people 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 anything else 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 people who are to be permitted to conduct of the dealings with the GMO.

*Note* This section differs from the Commonwealth Act, s 50A.

**20 Matters regulator must take into account in preparing risk assessment and risk management plan  
Section 51 (1) (a)**

*omit everything after*

matters

*substitute*

prescribed by regulation;

**21 Section 51 (1) (b)**

*omit*

**22 Section 51 (2) (b)**

*omit*

**23 Public notification of risk assessment and risk management plan  
Section 52 (1)**

*omit*

sections 49 (if applicable), 50 and 51

*substitute*

section 50 and section 51

**24 New section 52 (2) (ba)**

*insert*

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

**25 Section 52 (2) (d)**

*omit everything after*

earlier

*substitute*

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) in any other case—30 days after the date on which the notice was published.

**26 Regulator must not issue the licence unless satisfied as to risk management  
Section 56 (2) (a) and (b)**

*substitute*

- (a) the risk assessment prepared under section 47 or section 50 in relation to the dealings;
- (b) the risk management plan prepared under section 47 or section 50 in relation to the dealings;

**27 Section 56 (2), new note**

*insert*

*Note* Subsections (2) (a) to (c) do not apply to an inadvertent dealings application.

**28 Other circumstances in which regulator must not issue the licence  
New section 57 (3)**

*insert*

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

**29 Period of licence  
New section 60 (3)**

*insert*

- (3) A licence issued as a result of an inadvertent dealings application must not be expressed to be in force for a period of longer than 12 months.

**30 Protection of persons who give information  
Section 67**

*omit*

or section 66

*substitute*

, section 66 or the Commonwealth Act, section 72D (2) (h)

**31 Variation of licence  
Section 71 (1)**

*substitute*

- (1) The regulator may vary a licence, by written notice 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) any information prescribed by regulation; and
  - (b) any information specified in writing by the regulator.

**32 Section 71 (2)**

*omit*

However, the

*substitute*

The

**33 New section 71 (2A)**

*insert*

- (2A) The regulator must not vary a licence if the original application for the licence was an application to which section 50A applied, unless—
- (a) the regulator is satisfied that the principal purpose of the licence as proposed to be varied is to enable the licence holder, and people 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 that the controls and limits are of such 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 that 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.

**34 Section 71 (4)**

*omit*

However, the regulator must not vary the

*substitute*

The regulator must not vary a

**35 New section 71 (5) to (8)**

*insert*

- (5) The regulator must not vary a licence unless any local council that the regulator considers appropriate has been consulted about the proposed variation.
- (6) The regulator must not vary a licence in the circumstances (if any) prescribed by 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 by regulation.

- (8) In this section:

*controls*—see section 50A (3).

*limits*—see section 50A (3).

**36 Regulator to notify of proposed suspension, cancellation or variation  
New section 72 (8)**

*insert*

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

**37**      **GMO licence—annual charge**  
**Section 72A**

*renumber as section 72AA*

**38**      **New part 5A**

*insert*

**Part 5A**                      **Emergency dealing  
determinations**

*Note to pt 5A*

This part differs from the Commonwealth Act, pt 5A.

**72A**      **Application of Commonwealth emergency dealing  
determinations**

An emergency dealing determination in force under the Commonwealth Act, section 72B applies, as far as applicable, as a law of the Territory.

*Note*      This section differs from the Commonwealth Act, s 72A.

**72B**      **Minister may make emergency dealing determination**

*Note*      The Commonwealth Act, s 72B permits the Commonwealth Minister to make emergency dealing determinations with a GMO for the purposes of the Commonwealth Act, part 5A.

**72C**      **Period of effect of emergency dealing determination**

*Note*      The Commonwealth Act, s 72C provides for when an emergency dealing determination takes effect, when it ceases to have effect and how the period of effect may be extended by the Commonwealth Minister responsible for emergency dealing determinations.

### **Division 5A.3            Effect and conditions of emergency dealing determination**

#### **72D            Emergency dealing determination authorises dealings, subject to conditions**

*Note*        The Commonwealth Act, s 72D authorises dealings with a GMO subject to conditions, including those referred to in s 72D (2).

### **Division 5A.4            Variation, suspension and revocation of emergency dealing determination**

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

*Note*        Under the Commonwealth Act, s 72E, the Commonwealth Minister responsible for emergency dealing determinations may suspend an emergency dealing determination, revoke an emergency dealing determination or vary the conditions to which an emergency dealing determination is subject.

#### **39            Regulator may include dealings with GMOs on GMO register Section 78 (4)**

*omit*

#### **40            Simplified outline—pt 7 Section 82 (2) and (4)**

*after*

Licence conditions

*insert*

, or conditions to which an emergency dealing determination is subject,



---

**41 Application for certification  
Section 83 (2), note**

*after*

licence

*insert*

, or conditions to which an emergency dealing determination is subject,

**42 Regulator to notify of proposed suspension, cancellation  
or variation  
New section 89 (8)**

*insert*

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

**43 New section 89A**

*insert*

**89A Transfer of certification**

- (1) The holder of a certification and another person (the *transferee*) may jointly apply to the regulator for the certification to be transferred from the holder of the certification to the transferee.
- (2) The application must be in writing and must contain—
- (a) any information prescribed by regulation; and
  - (b) any information required, in writing, by the regulator.
- (3) The regulator must not transfer the certification unless 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.

**44 Application for accreditation  
Section 91 (1), note**

*substitute*

*Note 1* The conditions of a licence may require supervision of dealings by an institutional biosafety committee (see s 62 (2) (m)), and a regulation may require such supervision of notifiable risk dealings (see s 75 (2) (c)).

*Note 2* The conditions to which an emergency dealing determination is subject may require supervision of dealings by an institutional biosafety committee (see the Commonwealth Act, s 72D (2) (t)).

**45 Regulator may accredit organisations  
Section 92 (2) (a)**

*omit*

, or proposes to establish,

**46 Section 92 (2) (b) and (c)**

*substitute*

- (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; and

- (c) if the organisation has established an institutional biosafety committee—whether the organisation has appropriate indemnity arrangements for its institutional biosafety committee members; and
- (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; and

**47 Regulator to notify of proposed suspension, cancellation or variation**  
**New section 97 (8)**

*insert*

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

**48 Part 8 heading**

*substitute*

**Part 8**

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

**49 Simplified outline—pt 8  
Section 99 (b) and (c)**

*substitute*

(b) gene technology ethics and community consultative committee.

**50 Division 8.3 heading**

*substitute*

**Division 8.3 Gene technology ethics and  
community consultative committee**

**51 Section 106 heading**

*substitute*

**106 Gene technology ethics and community consultative  
committee**

**52 Section 106, note**

*after*

technology

*insert*

ethics and

**53 Section 107***substitute***107 Function of ethics and community committee**

The function of the ethics and community committee under this Act is to provide advice, on 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 such principles, guidelines and codes;
- (e) community consultation about the process for applications for licences covering dealings that involve intentional release of a GMO into the environment;
- (f) risk communication matters in relation to dealings that involve 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.

**54 Sections 108 and 109, notes**

*omit*

consultative

*substitute*

ethics and community

**55 Regulations  
Section 110, note**

*omit everything after*

membership

*substitute*

and procedures of the ethics and community committee.

**56 Subcommittees  
Section 110A**

*omit*

**57 New sections 111 and 112**

*in division 8.3, insert*

**111 Subcommittees**

*Note* The Commonwealth Act, s 111 deals with the establishment of subcommittees by the ethics and community committee.

**112 Expert advisers**

*Note* The Commonwealth Act, s 112 provides for the appointment of expert advisers to the ethics and community committee.

**58 Gene technology ethics committee  
Division 8.4**

*omit*

**59**      **Quarterly reports**  
**New sections 136A (2) (ba) and (bc)**

*insert*

- (ba) emergency dealing determinations made by the Minister during the quarter;
- (bb) any breaches of conditions of an emergency dealing determination that have come to the regulator's attention during the quarter;

**60**      **Record of GMO and GM product dealings**  
**New section 138 (1A)**

*insert*

- (1A) The GM record must contain the following information, other than confidential commercial information, in relation to each emergency dealing determination made under section 72B:
  - (a) the dealings specified in the emergency dealing determination and the GMO to which those 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.

**61**      **Section 138 (5)**

*after*

(1),

*insert*

(1A),

**62 Simplified outline—pt 10  
Section 145 (a) (ii)**

*after*

environment

*insert*

, or for certain other reasons

**63 New section 145 (aa)**

*insert*

- (aa) authorises the regulator to give directions to a person permitted by an emergency dealing determination to deal with a GMO if—
- (i) the regulator believes that the person is not complying with this Act; and
  - (ii) the regulator believes that 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

**64 Regulator may give directions  
Section 146 (1) (b)**

*substitute*

- (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;



**65 Section 146 (2) (a)**

*substitute*

- (a) 1 of the following kinds of people 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 specified in an emergency dealing determination; and

**66 Section 146 (2) (b)**

*substitute*

- (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;

**67 New section 146 (2A)**

*insert*

- (2A) For the purposes of deciding under subsection (1) (b) (ii) or subsection (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 specified 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 non-compliance with this Act that the regulator believes is occurring (the *suspected non-compliance*);
- (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 or the regulations.

**68 Simplified outline—pt 11  
Section 149 (e)**

*after*

licence

*insert*

or an emergency dealing determination

---

**69 Powers available to inspectors for monitoring compliance  
New section 152 (2) (d)**

*insert*

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

**70 Section 152 (3)**

*omit*

subsection (2) (c) does not

*substitute*

subsection (2) (c) or (d) does not

**71 Section 177**

*substitute*

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

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

**72 Meaning of *reviewable decision* and *eligible person*  
Section 179, table, new item 1A**

*before item 1, insert*

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

**73 Section 179, table, new item 5A**

*insert*

5A to refuse to vary a licence the licence holder  
under section 71

**74 Section 179, table, new item 7A**

*insert*

7A to refuse to transfer a an applicant for the transfer  
certification under section 89A

**75 Deadlines for making reviewable decisions  
Section 182 (a)**

*substitute*

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

**76 Section 182**

*omit*

decision to refuse the application

*substitute*

reviewable decision to refuse the application, and the person may  
seek internal review of the reviewable decision under section 181

**77 Regulator may declare information is confidential commercial information  
New section 185 (5A)**

*insert*

(5A) 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 is to be treated as confidential commercial information until the regulator makes a decision on the application.

**78 Interference with dealings with GMOs  
Section 192A (2), definition of *authorised GMO dealings*,  
new paragraph (aa)**

*insert*

- (aa) that are specified in an emergency dealing determination and are not prohibited from being undertaken at the premises or facility by a condition of the determination; or

**79 Section 192A (2), definition of *authorised GMO dealings*,  
paragraph (d)**

*after*

are

*insert*

dealings

**80 Dictionary, definition of *consultative committee***

*omit*

**81 Dictionary, definition of *deal with***

*omit everything after paragraph (g), substitute*

(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).

**82 Dictionary, new definition of *ethics and community committee***

*insert*

*ethics and community committee* means the gene technology ethics and community consultative committee established by the Commonwealth Act, section 106.

**83 Dictionary, definition of *ethics committee***

*omit*

**84 Dictionary, new definition of *inadvertent dealings application***

*insert*

*inadvertent dealings application* means an application for a GMO licence to which division 5.3 or division 5.4 does not apply because of the operation of section 46A or section 49.

**85 Dictionary, definition of *institutional biosafety committee***

*substitute*

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

---

## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 6 December 2007.

**2 Notification**

Notified under the Legislation Act on 21 April 2008.

**3 Republications of amended laws**

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

---

I certify that the above is a true copy of the Gene Technology Amendment Bill 2008, which originated in the Legislative Assembly as the Gene Technology Amendment Bill 2007 and was passed by the Assembly on 8 April 2008.

Clerk of the Legislative Assembly

© Australian Capital Territory 2008