

2002

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Health)

Gene Technology Bill 2002

Contents

	Page	
Part 1		
Preliminary		
1	Name of Act etc	2
2	Commencement	2
3	Object of Act	2
4	Regulatory framework to achieve object	2
5	Nationally consistent scheme	3
6	Act to bind the Crown	3
7	External Territories	3
8	Offences	3
8A	Numbering	4
8B	Notes	4

		Page
8C	Outlines	5
Part 2	Interpretation and operation of Act	
Division 2.1	Simplified outline of part 2	
9	Simplified outline—pt 2	6
Division 2.2	Interpretation	
10	Dictionary etc	6
11	Meaning of intentional release of a GMO into the environment	7
12	Meaning of <i>corresponding State law</i>	7
Division 2.3	Operation of Act	
13	Operation of Act	7
14	Wind-back of reach of Act	7
15	Relationship to other Territory laws	7
Division 2.4	Provisions to facilitate a nationally consistent scheme	
Subdivision 2.4.1	General provisions	
16	State laws may operate concurrently	8
17	Conferral of functions on Commonwealth officers and bodies	8
18	No doubling-up of liabilities	8
19	Review of certain decisions	8
20	Things done for multiple purposes	9
Subdivision 2.4.2	Policy principles, policy guidelines and codes of practice	
21	Ministerial council may issue policy principles	9
22	Consultation on policy principles	10
23	Ministerial council may issue policy guidelines	10
24	Ministerial council may issue codes of practice	11
Part 3	Gene technology regulator	
25	Simplified outline—pt 3	12
26	Gene technology regulator	12
27	Functions of regulator	12

	Page
28 Powers of regulator	13
29 Delegation	13
30 Independence of regulator	14
Part 4 Regulation of dealings with GMOs	
Division 4.1 Simplified outline of part 4	
31 Simplified outline—pt 4	15
Division 4.2 Dealings with GMOs must be licensed	
32 Person not to deal with GMO without licence	15
33 Person not to deal with GMO without licence—strict liability offence	16
34 Person must not breach conditions of GMO licence	17
35 Person must not breach conditions of GMO licence—strict liability offence	18
36 Person must not breach conditions on GMO register	18
37 Offence relating to notifiable low risk dealings	19
38 Aggravated offences—significant damage to health or safety of people or to environment	19
Part 5 Licensing system	
Division 5.1 Simplified outline of part 5	
39 Simplified outline—pt 5	20
Division 5.2 Licence applications	
40 Person may apply for a licence	20
41 Application may be withdrawn	21
42 Regulator may require applicant to give further information	21
43 Regulator must consider applications except in certain circumstances	22
44 Regulator may consult with applicant	22
45 Regulator must not use certain information in considering licence application	22

	Page
Division 5.3	
Initial consideration of licences for dealings not involving intentional release of GMO into environment	
46 Applications to which div 5.3 applies	23
47 What regulator must do in relation to application	23
Division 5.4	
Initial consideration of licences for dealings involving intentional release of GMO into environment	
48 Applications to which div 5.4 applies	24
49 Dealings that may pose significant risks to health and safety of people or environment	24
50 Regulator must prepare risk assessment and risk management plan	26
51 Matters regulator must take into account in preparing risk assessment and risk management plan	26
52 Public notification of risk assessment and risk management plan	28
53 Regulator may take other actions	29
54 Person may request copies of certain documents	30
Division 5.5	
Decision on licence application	
55 Regulator must make a decision on licence and licence conditions	30
56 Regulator must not issue the licence unless satisfied as to risk management	31
57 Other circumstances in which regulator must not issue the licence	31
58 Matters to be taken into account in deciding whether person is suitable to hold licence	32
59 Notification of licence decision	33
60 Period of licence	33
Division 5.6	
Conditions of licences	
61 Licence is subject to conditions	33
62 Conditions that may be prescribed or imposed	34
63 Condition about telling people of obligations	35
64 Condition about monitoring and audits	35

	Page
65	36
66	37
67	37
Division 5.7 Suspension, cancellation and variation of licences	
68	37
69	38
70	38
71	39
72	40
Division 5.8 Annual charge	
72A	41
Part 6 Regulation of notifiable low risk dealings on GMO register	
Division 6.1 Simplified outline of part 6	
73	42
Division 6.2 Notifiable low risk dealings	
74	42
75	43
Division 6.3 GMO register	
76	44
77	44
78	44
79	45
80	46
81	46
Part 7 Certification and accreditation	
Division 7.1 Simplified outline of part 7	
82	47

		Page
Division 7.2	Certification	
83	Application for certification	47
84	When regulator may certify facility	48
85	Regulator may require applicant to give further information	48
86	Conditions of certification	48
87	Variation of certification	48
88	Suspension or cancellation of certification	49
89	Regulator to notify of proposed suspension, cancellation or variation	49
90	Guidelines	50
Division 7.3	Accredited organisations	
91	Application for accreditation	50
92	Regulator may accredit organisations	50
93	Regulator may require applicant to give further information	51
94	Conditions of accreditation	51
95	Variation of accreditation	52
96	Suspension or cancellation of accreditation	52
97	Regulator to notify of proposed suspension, cancellation or variation	52
98	Guidelines	53
Part 8	Gene technology technical advisory committee, gene technology community consultative committee and gene technology ethics committee	
Division 8.1	Simplified outline of part 8	
99	Simplified outline—pt 8	54
Division 8.2	Gene technology technical advisory committee	
100	Gene technology technical advisory committee	54
101	Function of gene technology technical advisory committee	55
102	Expert advisers	55
103	Remuneration	55

	Page
104	55
105	55
Division 8.3	
Gene technology community consultative committee	
106	56
107	56
108	56
109	56
110	56
110A	57
Division 8.4	
Gene technology ethics committee	
111	57
112	57
113	57
114	57
115	57
116	58
Part 9	
Administration	
Division 9.1	
Simplified outline of part 9	
117	59
Division 9.2	
Appointment and conditions of regulator	
118	59
119	59
120	59
121	60
122	60
123	60
124	60
125	60
126	60

		Page
Division 9.3 Money		
127	Regulator may charge for services	60
128	Notional payments	60
129	Gene technology account	61
130	Credits to gene technology account	61
131	Recovery of amounts	61
132	Purposes of account	62
Division 9.4 Staffing		
133	Staff assisting regulator	62
134	Consultants	62
135	Seconded officers	62
Division 9.5 Reporting requirements		
136	Annual report	62
136A	Quarterly reports	62
137	Reports to Legislative Assembly	63
Division 9.6 Record of GMO and GM product dealings		
138	Record of GMO and GM product dealings	63
139	Inspection of record	65
Division 9.7 Reviews of notifiable low risk dealings and exemptions		
140	Regulator may review notifiable low risk dealings	65
141	Regulator may review exemptions	65
142	Regulator may give notice of consideration	65
143	What regulator may do after consideration	66
144	Regulator not required to review matters	67
Part 10 Enforcement		
145	Simplified outline—pt 10	68
146	Regulator may give directions	68
147	Injunctions	69
148	Forfeiture	70

		Page
Part 11	Powers of inspection	
Division 11.1	Simplified outline of part 11	
149	Simplified outline—pt 11	72
Division 11.2	Appointment of inspectors and identity cards	
150	Appointment of inspectors	72
151	Identity card	73
Division 11.3	Monitoring powers	
152	Powers available to inspectors for monitoring compliance	73
153	Monitoring powers	74
Division 11.4	Offence-related powers	
154	Searches and seizures related to offences	76
155	Offence-related powers of inspectors for premises	76
156	Use of equipment at premises	77
Division 11.5	Expert assistance	
157	Expert assistance to operate thing	78
Division 11.6	Emergency powers	
158	Powers available to inspectors for dealing with dangerous situations	79
Division 11.7	Obligations and incidental powers of inspectors	
159	Inspector must produce identity card on request	80
160	Consent	80
161	Details of warrant to be given to occupier etc	81
162	Announcement before entry	81
163	Compensation for damage	82
Division 11.8	Power to search goods, baggage and containers and seize goods	
164	Power to search goods, baggage etc	83
165	Seizure of goods	83
Division 11.9	General provisions relating to search and seizure	
166	Copies of seized things to be provided	84

Contents

	Page
167	Occupier entitled to be present during search 84
168	Receipts for things seized 85
169	Keeping seized things 85
170	Magistrates Court may permit thing to be kept 86
171	Disposal of goods if there is no owner or owner cannot be located 86
Division 11.10 Warrants	
172	Monitoring warrants 87
173	Offence-related warrants 88
174	Offence-related warrants by telephone, telex, fax etc 89
175	Offences relating to warrants 91
Division 11.11 Other matters	
176	Pt 11 not to abrogate privilege against selfincrimination 92
176A	Damage etc to be minimised 92
176B	Compensation to be paid in certain circumstances 92
177	Pt 11 does not limit power to impose licence conditions 93
Part 12 Miscellaneous	
Division 12.1 Simplified outline of part 12	
178	Simplified outline—pt 12 94
Division 12.2 Review of decisions	
179	Meaning of <i>reviewable decision</i> and <i>eligible person</i> 94
180	Notification of decisions and review rights 96
181	Internal review 96
182	Deadlines for making reviewable decisions 97
183	Review of decisions by Commonwealth administrative appeals tribunal 97
183A	Extended standing for judicial review 98
Division 12.3 Confidential commercial information	
184	Application for protection of confidential commercial information 98
185	Regulator may declare information is confidential commercial information 98

		Contents
		Page
186	Revocation of declaration	100
187	Confidential commercial information must not be disclosed	100
Division 12.4 Conduct by directors, employees and agents		
188	Conduct by directors, employees and agents	102
189	Meaning of terms in s 188	103
Division 12.5 Transitional provisions		
190	Transitional provision—dealings covered by genetic manipulation advisory committee advice to proceed	104
191	Regulations may relate to transitional matters	105
191A	Expiry of div 12.5	105
Division 12.6 Other provisions		
192	False or misleading information or document	105
192A	Interference with dealings with GMOs	106
192B	Cloning of human beings is prohibited	107
192C	Certain experiments involving animal eggs prohibited	107
192D	Certain experiments involving putting human and animal cells into human uterus prohibited	107
192E	Approved forms	107
193	Regulation-making power	108
194	Review of operation of Act	108
Dictionary		110

2002

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Health)

Gene Technology Bill 2002

A Bill for

An Act to regulate activities involving gene technology, and for related purposes

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

1 **Part 1 Preliminary**

2

3 **1 Name of Act etc**

4 (1) This Act is the *Gene Technology Act 2002*.

5 (2) This Act may also be referred to as the Gene Technology Law of the
6 ACT or simply as the Gene Technology Law.

7 *Note* This section differs from the Commonwealth Act, s 1.

8 **2 Commencement**

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

11 *Note 1* The naming and commencement provisions automatically commence on
12 the notification day (see *Legislation Act 2001*, s 75).

13 *Note 2* A single day or time may be fixed, or different days or times may be
14 fixed, for the commencement of different provisions (see *Legislation*
15 *Act 2001*, s 77 (1)).

16 *Note 3* If a provision has not commenced within 6 months beginning on the
17 notification day, it automatically commences on the first day after that
18 period (see *Legislation Act 2001*, s 79).

19 *Note 4* This section differs from the Commonwealth Act, s 2.

20 **3 Object of Act**

21 The object of this Act is to protect the health and safety of people,
22 and to protect the environment, by identifying risks posed by or as a
23 result of gene technology, and by managing those risks through
24 regulating certain dealings with GMOs.

25 **4 Regulatory framework to achieve object**

26 The object of this Act is to be achieved through a regulatory
27 framework that—

- 1 (a) provides that where there are threats of serious or irreversible
2 environmental damage, a lack of full scientific certainty should
3 not be used as a reason for postponing cost-effective measures
4 to prevent environmental degradation; and
- 5 (b) provides an efficient and effective system for the application of
6 gene technologies; and
- 7 (c) operates in conjunction with other Commonwealth and State
8 regulatory schemes relevant to GMOs and GM products.
- 9 *Note* Examples of the schemes mentioned in paragraph (c) are those that
10 regulate food, agricultural and veterinary chemicals, industrial
11 chemicals and therapeutic goods.

12 **5 Nationally consistent scheme**

13 It is the intention of the Legislative Assembly that this Act form a
14 component of a nationally consistent scheme for the regulation of
15 certain dealings with GMOs by the Commonwealth and the States.

16 **6 Act to bind the Crown**

17 *Note* The Commonwealth Act includes a provision binding the Crown. The
18 provision is unnecessary in the ACT (see *Legislation Act 2001*, s 121).

19 **7 External Territories**

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

22 **8 Offences**

23 The *Criminal Code 2001* applies to all offences against this Act.

24 *Note 1* The Criminal Code, ch 2 sets out the general principles of criminal
25 responsibility.

26 *Note 2* Penalties prescribed under this Act are expressed in ACT penalty units.
27 See the *Legislation Act 2001*, s 133 for the value of penalty units.

28 *Note 3* This section differs from the Commonwealth Act, s 8.

1 **8A Numbering**

2 (1) To maintain consistent section numbering between this Act and the
3 Commonwealth Act—

4 (a) if the Commonwealth Act contains a section that is not needed
5 in this Act—the provision number and heading to the section
6 appearing in the Commonwealth Act are included in this Act
7 despite the omission of the body of the section; and

8 (b) if this Act contains a section that is not included in the
9 Commonwealth Act—the section is numbered so as to
10 maintain consistency in numbering between sections common
11 to both Acts.

12 (2) A provision number and heading mentioned in subsection (1) (a)
13 form part of this Act.

14 (3) If a provision of this Act (other than a section) is numbered
15 differently from the equivalent provision of the Commonwealth Act,
16 the provision of this Act may be referred to using the number of the
17 equivalent provision of the Commonwealth Act.

18 *Note 1* A note appears under each heading of a kind mentioned in s (1) (a)
19 describing the omitted section of the Commonwealth Act.

20 *Note 2* A note appears under each section of a kind mentioned in s (1) (b)
21 highlighting the non-appearance of an equivalent section in the
22 Commonwealth Act.

23 *Note 3* This section does not appear in the Commonwealth Act.

24 **8B Notes**

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

26 *Note 1* See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of
27 notes.

28 *Note 2* This section does not appear in the Commonwealth Act.

1 **8C Outlines**

2 The provisions appearing at the beginning of parts 2 to 12, outlining
3 the part (simplified outlines), are intended only as a guide to readers
4 about the general scheme and effect of the parts.

5 *Note* This section does not appear in the Commonwealth Act.
6

1

2 **Part 2 Interpretation and operation of**
3 **Act**

4 **Division 2.1 Simplified outline of part 2**

5 **9 Simplified outline—pt 2**

6 In outline, this part—

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

12 *Note* This section differs from the Commonwealth Act, s 9.

13 **Division 2.2 Interpretation**

14 **10 Dictionary etc**

- 15 (1) The dictionary at the end of this Act is part of this Act.

16 *Note 1* The dictionary at the end of this Act defines certain words and
17 expressions used in this Act, and includes references (*signpost*
18 *definitions*) to other words and expressions defined elsewhere in this
19 Act.

20 For example, the signpost definition '*aggravated offence*—see
21 section 38 (1).' means that the expression 'aggravated offence' is
22 defined in that section.

23 *Note 2* A definition in the dictionary (including a signpost definition) applies to
24 the entire Act unless the definition, or another provision of the Act,
25 provides otherwise or the contrary intention otherwise appears (see
26 *Legislation Act 2001*, s 155 and s 156 (1)).

- 1 (2) If this Act requires or permits the Ministerial council to do
2 something, the Ministerial council must do it in accordance with the
3 gene technology agreement.

4 *Note* Subsection (1) differs from the Commonwealth Act, s 10 (1).

5 **11 Meaning of *intentional release of a GMO into the***
6 ***environment***

7 A dealing with a GMO involves the *intentional release of the GMO*
8 *into the environment* if the GMO is intentionally released into the
9 open environment, whether or not it is released with provision for
10 limiting the dissemination or persistence of the GMO or its genetic
11 material in the environment.

12 **12 Meaning of *corresponding State law***

13 *Note* The Commonwealth Act includes a provision defining ‘corresponding
14 State law’ for that Act.

15 **Division 2.3 Operation of Act**

16 **13 Operation of Act**

17 *Note* The Commonwealth Act includes a provision about the application of
18 that Act.

19 **14 Wind-back of reach of Act**

20 *Note* The Commonwealth Act includes a provision about the giving of
21 wind-back notices to a State.

22 **15 Relationship to other Territory laws**

23 This Act is in addition to, and not in substitution for, the
24 requirements of any other Territory law, whether passed or made
25 before or after the commencement of this section.

26 *Note* The equivalent section in the Commonwealth Act deals with the
27 relationship of that Act to other Commonwealth laws.

1 **Division 2.4 Provisions to facilitate a nationally**
2 **consistent scheme**

3 **Subdivision 2.4.1 General provisions**

4 **16 State laws may operate concurrently**

5 *Note* The Commonwealth Act includes a provision allowing State laws, other
6 than State laws prescribed for the provision, to operate concurrently
7 with that Act.

8 **17 Conferral of functions on Commonwealth officers and**
9 **bodies**

10 *Note* The Commonwealth Act includes a provision allowing corresponding
11 State laws to give functions, powers and duties to certain
12 Commonwealth officers and bodies.

13 **18 No doubling-up of liabilities**

14 If a person has been ordered to pay a pecuniary penalty under the
15 Commonwealth Act, the person is not liable to a pecuniary penalty
16 under this Act in respect of the same conduct.

17 *Note* The Commonwealth Act, s 18 also includes a provision preventing a
18 person being prosecuted for an offence against this Act and the
19 Commonwealth Act. The provision is unnecessary in the ACT (see
20 *Legislation Act 2001*, s 191).

21 **19 Review of certain decisions**

22 (1) Application may be made to the Commonwealth administrative
23 appeals tribunal for review of a reviewable State decision.

24 (2) A decision made by the regulator in the exercise of a function under
25 this Act is a *reviewable State decision* if—

26 (a) this Act provides for review of the decision by the
27 Commonwealth administrative appeals tribunal; and

- 1 (b) the decision is declared by regulations made under the
2 Commonwealth Act to be a reviewable State decision for the
3 Commonwealth Act, section 19.
- 4 (3) The Commonwealth Administrative Appeals Tribunal Act (other
5 than part 4A) applies as a Territory law in relation to reviewable
6 State decisions.
- 7 (4) For this section, a reference in a provision of the Commonwealth
8 Administrative Appeals Tribunal Act (as that provision applies as a
9 Territory law) to all or any part of part 4A of that Act is taken to be
10 a reference to all or any part of that part as it has effect as a law of
11 the Commonwealth.
- 12 *Note 1* The reference in s (3) to the Commonwealth Administrative Appeals
13 Tribunal Act includes a reference to the regulations in force under that
14 Act from time to time (see *Legislation Act 2001*, s 102 and s 104).
- 15 *Note 2* This section differs from the Commonwealth Act, s 19.

16 **20 Things done for multiple purposes**

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

20 **Subdivision 2.4.2 Policy principles, policy guidelines 21 and codes of practice**

22 **21 Ministerial council may issue policy principles**

- 23 (1) The Ministerial council may issue policy principles in relation to the
24 following:
- 25 (a) ethical issues relating to dealings with GMOs;
- 26 (b) recognising areas (if any) designated under a Territory law for
27 the purpose of preserving the identity of 1 or both of the
28 following for marketing purposes:
- 29 (i) GM crops;

- 1 (ii) non-GM crops;
- 2 (c) matters relating to dealings with GMOs prescribed under the
3 regulations for this paragraph.
- 4 *Note 1* Section 57 provides that the regulator must not issue a licence if to do
5 so would be inconsistent with a policy principle.
- 6 *Note 2* The *Legislation Act 2001*, s 46 gives power to amend or repeal an
7 instrument made under an Act.
- 8 (2) Before issuing a policy principle, the Ministerial council must be
9 satisfied that the policy principle was developed in accordance with
10 the Commonwealth Act, section 22.
- 11 (3) Regulations for subsection (1) (c) may relate to matters other than
12 the health and safety of people or the environment, but must not
13 derogate from the health and safety of people or the environment.
- 14 *Note* This section differs from the Commonwealth Act, s 21.

15 **22 Consultation on policy principles**

- 16 *Note* The Commonwealth Act includes a provision about how policy
17 principles are to be developed.

18 **23 Ministerial council may issue policy guidelines**

19 The Ministerial council may issue policy guidelines in relation to
20 matters relevant to the functions of the regulator under this Act.

- 21 *Note 1* Section 56, among other things, requires the regulator to have regard to
22 policy guidelines when deciding an application for a GMO licence.
23 Section 30 provides that the regulator is not subject to direction in
24 relation to individual decisions.

- 25 *Note 2* The *Legislation Act 2001*, s 46 gives power to amend or repeal an
26 instrument made under an Act.

1 **24 Ministerial council may issue codes of practice**

2 The Ministerial council may issue codes of practice, developed
3 under the Commonwealth Act, section 24 (2) in relation to gene
4 technology.

5 *Note 1* The *Legislation Act 2001*, s 46 gives power to amend or repeal an
6 instrument made under an Act.

7 *Note 2* The Commonwealth Act, s 24 includes provisions about how codes of
8 practice are to be developed and making them disallowable instruments.
9

1

2 **Part 3 Gene technology regulator**

3

4 **25 Simplified outline—pt 3**

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

7 *Note* This section differs from the Commonwealth Act, s 25.

8 **26 Gene technology regulator**

9 *Note* The Commonwealth Act, s 26 creates the office of gene technology
10 regulator.

11 **27 Functions of regulator**

12 The regulator has the following functions:

- 13 (a) to exercise functions relating to GMO licences under part 5;
- 14 (b) to develop draft policy principles and policy guidelines, as
15 requested by the Ministerial council;
- 16 (c) to develop codes of practice;
- 17 (d) to issue technical and procedural guidelines about GMOs;
- 18 (e) to provide information and advice to other regulatory agencies
19 about GMOs and GM products;
- 20 (f) to provide information and advice to the public about the
21 regulation of GMOs;
- 22 (g) to provide advice to the Ministerial council about—
- 23 (i) the operations of the regulator and the gene technology
24 technical advisory committee; and
- 25 (ii) the effectiveness of the legislative framework for the
26 regulation of GMOs, including about possible
27 amendments of relevant legislation;

- 1 (h) to undertake or commission research about risk assessment and
2 the biosafety of GMOs;
- 3 (i) to promote the harmonisation of risk assessments for GMOs
4 and GM products by regulatory agencies;
- 5 (j) to monitor international practice for regulating GMOs;
- 6 (k) to maintain links with international organisations dealing with
7 the regulation of gene technology and with agencies regulating
8 GMOs in places outside the ACT;
- 9 (l) to exercise other functions given to the regulator under this Act
10 or any other law.

11 **28 Powers of regulator**

12 *Note* The Commonwealth Act, s 28 gives the regulator powers. The provision
13 is unnecessary in the ACT (see *Legislation Act 2001*, s 196).

14 **29 Delegation**

- 15 (1) The regulator may delegate the regulator's functions under this Act
16 to any of the following:
- 17 (a) a public servant;
- 18 (b) an officer or employee of a Territory agency, if the functions of
19 the Territory agency relate, directly or indirectly, to GMOs or
20 GM products;
- 21 (c) an employee of a Commonwealth authority, if the functions of
22 the Commonwealth authority relate, directly or indirectly, to
23 GMOs or GM products.

24 *Note* For the making of delegations and the exercise of delegated functions,
25 see *Legislation Act 2001*, pt 19.4.

- 26 (2) In exercising a function under a delegation, the delegate must
27 comply with any directions of the regulator.

28 *Note* This section differs from the Commonwealth Act, s 29.

1 **30 Independence of regulator**

2 (1) The regulator has discretion in the exercise of the regulator's
3 functions under this Act.

4 (2) In particular, the regulator is not subject to direction from anyone
5 about—

6 (a) whether or not a particular application for a GMO licence is
7 issued or refused; or

8 (b) the conditions to which a particular GMO licence is subject.

9

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Part 4 Regulation of dealings with GMOs

Division 4.1 Simplified outline of part 4

31 Simplified outline—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
 - (ii) the dealing is a notifiable low risk dealing (see division 6.2); or
 - (iii) the dealing is an exempt dealing; or
 - (iv) the dealing is included in the GMO register (see division 6.3); 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 4.2 Dealings with GMOs must be licensed

32 Person not to deal with GMO without licence

A person commits an offence if the person—

- (a) deals with a GMO, knowing that it is a GMO; and
- (b) knows that the dealing with the GMO by the person is not authorised by a GMO licence or is reckless about whether or not the dealing is so authorised; and

- 1 (c) knows that the dealing is not a notifiable low risk dealing or is
2 reckless about whether or not the dealing is a notifiable low
3 risk dealing; and
- 4 (d) knows that the dealing is not an exempt dealing or is reckless
5 about whether or not the dealing is an exempt dealing; and
- 6 (e) knows that the dealing is not included on the GMO register or
7 is reckless about whether or not the dealing is included on the
8 GMO register.

9 Maximum penalty:

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

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

15 *Note 2* For provisions corresponding to the Commonwealth Act, s 32 (4), see
16 the *Legislation Act 2001*, s 48.

17 **33 Person not to deal with GMO without licence—strict**
18 **liability offence**

- 19 (1) A person commits an offence if—
- 20 (a) the person deals with a GMO, knowing that it is a GMO; and
- 21 (b) the dealing with the GMO by the person is not authorised by a
22 GMO licence; and
- 23 (c) the dealing is not a notifiable low risk dealing; and
- 24 (d) the dealing is not an exempt dealing; and
- 25 (e) the dealing is not included on the GMO register.

26 Maximum penalty:

- 27 (a) for an aggravated offence—200 penalty units; or
28 (b) in any other case—50 penalty units.

- 29 (2) Strict liability applies to subsection (1) (b), (c), (d) and (e).

1 *Note* This section differs from the Commonwealth Act, s 33.

2 **34 Person must not breach conditions of GMO licence**

3 (1) The holder of a GMO licence commits an offence if the holder—

- 4 (a) intentionally takes an action or omits to take an action; and
5 (b) knows that the action or omission contravenes the licence or is
6 reckless about whether or not the action or omission
7 contravenes the licence.

8 Maximum penalty:

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

13 (2) A person covered by a GMO licence commits an offence if the
14 person—

- 15 (a) intentionally takes an action or omits to take an action; and
16 (b) knows that the action or omission contravenes the licence or is
17 reckless about whether or not the action or omission
18 contravenes the licence; and
19 (c) has knowledge of the conditions of the licence.

20 Maximum penalty:

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

1 (3) A person who contravenes subsection (1) or (2) commits a separate
2 offence for each day (after the first day) during any part of which
3 the contravention continues.

4 Maximum penalty (for each day):

- 5 (a) for an aggravated offence—200 penalty units ; or
6 (b) in any other case—50 penalty units.

7 **35 Person must not breach conditions of GMO**
8 **licence—strict liability offence**

9 (1) The holder of a GMO licence commits an offence if the holder—

- 10 (a) takes an action or omits to take an action; and
11 (b) the action or omission contravenes the licence.

12 Maximum penalty:

- 13 (a) for an aggravated offence—200 penalty units; or
14 (b) in any other case—50 penalty units.

15 (2) A person covered by a GMO licence commits an offence if—

- 16 (a) the person takes an action or omits to take an action; and
17 (b) the action or omission contravenes the licence; and
18 (c) the person has knowledge of the conditions of the licence.

19 Maximum penalty:

- 20 (a) for an aggravated offence—200 penalty units; or
21 (b) in any other case—50 penalty units.

22 (3) Strict liability applies to subsections (1) (a) and (b) and (2) (a)
23 and (b).

24 **36 Person must not breach conditions on GMO register**

25 (1) A person commits an offence if the person—

- 26 (a) deals with a GMO, knowing that it is a GMO; and

- 1 (b) the dealing is on the GMO register; and
2 (c) the dealing contravenes a condition about the dealing that is
3 stated in the GMO register.

4 Maximum penalty: 50 penalty units.

- 5 (2) Strict liability applies to subsection (1) (b) and (c).

6 **37 Offence relating to notifiable low risk dealings**

- 7 (1) A person commits an offence if—

- 8 (a) the person deals with a GMO, knowing that it is a GMO; and
9 (b) the dealing is a notifiable low risk dealing; and
10 (c) the dealing by the person was not undertaken in accordance
11 with the regulations.

12 Maximum penalty: 50 penalty units.

- 13 (2) Strict liability applies to subsection (1) (b) and (c).

14 **38 Aggravated offences—significant damage to health or**
15 **safety of people or to environment**

- 16 (1) An offence is an *aggravated offence* if the commission of the
17 offence causes significant damage, or is likely to cause significant
18 damage, to the health and safety of people or to the environment.

- 19 (2) To prove an aggravated offence, the prosecution must prove that the
20 person who committed the offence—

- 21 (a) intended his or her conduct to cause significant damage to the
22 health and safety of people or to the environment; or
23 (b) was reckless about whether his or her conduct would cause
24 significant damage to the health and safety of people or to the
25 environment.
26

1

2 **Part 5** **Licensing system**

3 **Division 5.1** **Simplified outline of part 5**

4 **39** **Simplified outline—pt 5**

5 In outline, this part—

- 6 (a) provides a licensing system under which a person can apply to
7 the regulator for a licence authorising dealings with GMOs;
8 and
- 9 (b) sets out the processes the regulator must follow for
10 applications involving the following kinds of dealings:
- 11 (i) those that involve the intentional release of a GMO into
12 the environment;
- 13 (ii) those that do not involve the intentional release of a
14 GMO into the environment; and
- 15 (c) provides that a licence can cover dealings by people other than
16 the licence holder and requires the licence holder to tell them
17 of any conditions of the licence that apply to them.

18 **Division 5.2** **Licence applications**

19 **40** **Person may apply for a licence**

- 20 (1) A person may apply to the regulator for a licence authorising stated
21 dealings with 1 or more stated GMOs.
- 22 (2) The application must be in writing, and must contain—
- 23 (a) the information (if any) prescribed under the regulations; and
24 (b) the information specified in writing by the regulator.

- 1 (3) The application must state whether any of the dealings proposed to
2 be authorised by the licence would involve the intentional release of
3 a GMO into the environment.
- 4 (4) The dealings for which a person may apply for a licence may be—
- 5 (a) all dealings with a GMO, or with a stated class of GMOs; or
- 6 (b) a stated class of dealings with a GMO, or with a stated class of
7 GMOs; or
- 8 (c) 1 or more stated dealings with a GMO, or with a stated class of
9 GMOs.
- 10 (5) The applicant may apply for a licence authorising the dealings by—
- 11 (a) a stated person or stated people; or
- 12 (b) a stated class of people; or
- 13 (c) all people.
- 14 (6) The application must be accompanied by the application fee (if any)
15 prescribed under the regulations.

16 **41 Application may be withdrawn**

- 17 (1) The applicant may withdraw the application at any time before the
18 licence is issued.
- 19 (2) The application fee is not refundable if the applicant withdraws the
20 application.

21 **42 Regulator may require applicant to give further
22 information**

- 23 (1) The regulator may, by written notice, require the applicant to give
24 the regulator any further information about the application the
25 regulator requires.
- 26 (2) The notice may state the period within which the information must
27 be given.

1 **43 Regulator must consider applications except in certain**
2 **circumstances**

- 3 (1) The regulator must consider the application in accordance with this
4 part.
- 5 (2) However, the regulator is not required to consider the application
6 if—
- 7 (a) the application does not contain the information specified by
8 the regulator or prescribed under the regulations; or
- 9 (b) the application does not satisfy section 40 (3); or
- 10 (c) the application is not accompanied by the application fee (if
11 any) prescribed under the regulations; or
- 12 (d) the applicant did not provide further information required by
13 the regulator by notice under section 42 within the period
14 stated in the notice; or
- 15 (e) the regulator is satisfied that to issue the licence would be
16 inconsistent with a policy principle in force under section 21.
- 17 (3) The regulator must issue the licence, or refuse to issue the licence,
18 within the period (if any) prescribed under the regulations.

19 **44 Regulator may consult with applicant**

20 Before considering the application, the regulator may consult the
21 applicant, or another regulatory agency, on any aspect of the
22 application.

23 **45 Regulator must not use certain information in**
24 **considering licence application**

25 If—

- 26 (a) a person (the *first person*) applies for a GMO licence; and
- 27 (b) the first person gives information to the regulator for the
28 regulator's consideration of the application; and

- 1 (c) the information is confidential commercial information;
2 the regulator must not take that information into account in
3 considering an application by someone else for a GMO licence,
4 unless the first person has given written consent for the information
5 to be so taken into account.

6 **Division 5.3 Initial consideration of licences for**
7 **dealings not involving intentional**
8 **release of GMO into environment**

9 **46 Applications to which div 5.3 applies**

10 This division applies to an application for a GMO licence if the
11 regulator is satisfied that none of the dealings proposed to be
12 authorised by the licence would involve the intentional release of a
13 GMO into the environment.

14 **47 What regulator must do in relation to application**

- 15 (1) Before issuing the licence, the regulator must prepare a risk
16 assessment and a risk management plan in relation to the dealings
17 proposed to be authorised by the licence (the *proposed dealings*).
- 18 (2) In preparing the risk assessment, the regulator must take into
19 account the risks posed by the proposed dealings, including any
20 risks to the health and safety of people and any risks to the
21 environment.
- 22 (3) In preparing the risk management plan, the regulator must take into
23 account the ways of managing any risks posed by the proposed
24 dealings that protect—
- 25 (a) the health and safety of people; and
26 (b) the environment.
- 27 (4) The regulator may consult any of the following on any aspect of the
28 application:

- 1 (a) the States;
- 2 (b) the gene technology technical advisory committee;
- 3 (c) relevant Commonwealth authorities or agencies;
- 4 (d) any local council the regulator considers appropriate;
- 5 (e) anyone else the regulator considers appropriate.

6 **Division 5.4 Initial consideration of licences for**
7 **dealings involving intentional**
8 **release of GMO into environment**

9 **48 Applications to which div 5.4 applies**

10 This division applies to an application for a GMO licence if the
11 regulator is satisfied that at least 1 of the dealings proposed to be
12 authorised by the licence would involve the intentional release of a
13 GMO into the environment.

14 **49 Dealings that may pose significant risks to health and**
15 **safety of people or environment**

- 16 (1) If the regulator is satisfied that at least 1 of the dealings proposed to
17 be authorised by the licence (the *proposed dealings*) may pose
18 significant risks to the health and safety of people or the
19 environment, the regulator must prepare a written notice in
20 accordance with subsection (3).
- 21 (2) For satisfying himself or herself about whether the dealings
22 proposed to be authorised by the licence may pose significant risks
23 to the health and safety of people or to the environment, the
24 regulator must have regard to the following:
- 25 (a) the properties of the organism to which the dealings relate
26 before it became, or will become, a GMO;

- 1 (b) the effect, or the expected effect, of genetic modification that
2 has happened, or will happen, on the properties of the
3 organism;
- 4 (c) provisions for limiting the dissemination or persistence of the
5 GMO or its genetic material in the environment;
- 6 (d) the potential for spread or persistence of the GMO or its
7 genetic material in the environment;
- 8 (e) the extent or scale of the proposed dealings;
- 9 (f) any likely impacts of the proposed dealings on the health and
10 safety of people;
- 11 (g) anything else prescribed under the regulations for this
12 paragraph.
- 13 (3) The notice mentioned in subsection (1) must—
- 14 (a) state that the application has been made; and
- 15 (b) state that a person may request further information about the
16 application under section 54; and
- 17 (c) invite written submissions, on whether the licence should be
18 issued, about matters that the regulator is required to take into
19 account—
- 20 (i) under section 51 (1) (a) in preparing a risk assessment in
21 relation to the proposed dealings; and
- 22 (ii) under section 51 (2) (a) in preparing a risk management
23 plan in relation to the proposed dealings; and
- 24 (d) state the closing date for submissions, which must not be
25 earlier than 30 days after the notice is notified under the
26 *Legislation Act 2001*.
- 27 (4) The notice is a notifiable instrument.

28 *Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

- 1 (5) The regulator must also publish the notice—
2 (a) in a newspaper circulating generally in the ACT; and
3 (b) on the regulator’s website (if any).

4 *Note* This section differs from the Commonwealth Act, s 49.

5 **50 Regulator must prepare risk assessment and risk**
6 **management plan**

- 7 (1) Before issuing the licence, the regulator must prepare a risk
8 assessment and a risk management plan in relation to the dealings
9 proposed to be authorised by the licence.
- 10 (2) The regulator must prepare a risk assessment and a risk management
11 plan whether or not the regulator was required to publish a notice
12 about the application under section 49.
- 13 (3) The regulator must seek advice on matters relevant to the
14 preparation of the risk assessment and the risk management plan
15 from—
- 16 (a) the States; and
17 (b) the gene technology technical advisory committee; and
18 (c) each Commonwealth authority or agency prescribed under the
19 regulations for this paragraph; and
20 (d) the Commonwealth Environment Minister; and
21 (e) any local council that the regulator considers appropriate.

22 **51 Matters regulator must take into account in preparing risk**
23 **assessment and risk management plan**

- 24 (1) In preparing the risk assessment in relation to the dealings proposed
25 to be authorised by the licence (the *proposed dealings*), the
26 regulator must take into account the following:

- 1 (a) the risks posed by the proposed dealings, including any risks to
2 the health and safety of people or risks to the environment,
3 having regard to the matters mentioned in section 49 (2) (a) to
4 (f);
- 5 (b) any submission made under section 49 (3) (c) about the risks;
- 6 (c) any advice about the risk assessment given by the following in
7 response to a request under section 50 (3):
- 8 (i) a State;
- 9 (ii) the gene technology technical advisory committee;
- 10 (iii) a Commonwealth authority or agency;
- 11 (iv) the Commonwealth Environment Minister;
- 12 (v) a local council;
- 13 (d) anything else prescribed under the regulations for this
14 paragraph.
- 15 (2) In preparing the risk management plan, the regulator must take into
16 account the following:
- 17 (a) the ways of managing any risks posed by the proposed dealings
18 that protect—
- 19 (i) the health and safety of people; and
- 20 (ii) the environment;
- 21 (b) any submission made under section 49 (3) (c) about the ways
22 of managing the risks;
- 23 (c) any advice about the risk management plan given by the
24 following in response to a request under section 50 (3):
- 25 (i) a State;
- 26 (ii) the gene technology technical advisory committee;
- 27 (iii) a Commonwealth authority or agency;
-

- 1 (iv) the Commonwealth Environment Minister;
- 2 (v) a local council;
- 3 (d) anything else prescribed under the regulations for this
- 4 paragraph.
- 5 (3) To remove any doubt, in taking into account the ways of managing
- 6 risks mentioned in subsection (2) (a), the regulator—
- 7 (a) is not limited to considering submissions or advice mentioned
- 8 in subsection (2) (b) and (c); and
- 9 (b) subject to section 45, may take into account other information,
- 10 including, for example, relevant independent research.

11 **52 Public notification of risk assessment and risk**

12 **management plan**

- 13 (1) After taking the steps mentioned in sections 49 (if applicable), 50
- 14 and 51, the regulator must prepare a written notice in accordance
- 15 with subsection (2).
- 16 (2) The notice must—
- 17 (a) state that a risk assessment and a risk management plan have
- 18 been prepared for dealings proposed to be authorised by the
- 19 licence; and
- 20 (b) state that a person may ask for a copy of information about the
- 21 risk assessment and the risk management plan under section
- 22 54; and
- 23 (c) invite written submissions about the risk assessment and the
- 24 risk management plan; and
- 25 (d) state the closing date for submissions, which must not be
- 26 earlier than 30 days after the notice is notified under the
- 27 *Legislation Act 2001*.

1 (3) The notice is a notifiable instrument.

2 *Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

3 (4) The regulator must also publish the notice—

4 (a) in a newspaper circulating generally in the ACT; and

5 (b) on the regulator's website (if any).

6 (5) The regulator must also seek advice on the risk assessment and the
7 risk management plan from—

8 (a) the States; and

9 (b) the gene technology technical advisory committee; and

10 (c) each Commonwealth authority or agency prescribed under the
11 regulations for this paragraph; and

12 (d) the Commonwealth Environment Minister; and

13 (e) any local council that the regulator considers appropriate.

14 *Note* This section differs from the Commonwealth Act, s 52.

15 **53 Regulator may take other actions**

16 (1) In addition to satisfying the requirements of this division, the
17 regulator may take any other action the regulator considers
18 appropriate for deciding the application, including holding a public
19 hearing.

20 (2) If the regulator holds a public hearing, the regulator may, having
21 regard to the requirements of this Act about confidential commercial
22 information, direct that any part of the hearing be held in private,
23 and may decide who can attend.

24 (3) The regulator may give directions prohibiting or restricting the
25 publication of evidence given, or material contained in documents
26 produced, at a public hearing.

1 (4) A person must not contravene a direction under subsection (3).

2 Maximum penalty: 30 penalty units.

3 (5) An offence against subsection (4) is an offence of strict liability.

4 *Note* For offences of strict liability, see the Criminal Code, s 17.

5 **54 Person may request copies of certain documents**

6 (1) A person may ask the regulator for a copy of the following
7 documents:

8 (a) an application to which this division applies;

9 (b) a risk assessment or a risk management plan prepared under
10 section 50.

11 (2) If a person makes a request under subsection (1), the regulator must
12 give the person a copy of the documents, other than—

13 (a) any confidential commercial information contained in the
14 documents; and

15 (b) any information contained in the documents about relevant
16 convictions of the applicant for the licence.

17 *Note* For information to be confidential commercial information, it must be
18 covered by a declaration under s 185.

19 (3) In this section:

20 *relevant conviction*—see section 58 (4).

21 **Division 5.5 Decision on licence application**

22 **55 Regulator must make a decision on licence and licence**
23 **conditions**

24 After taking any steps required by division 5.3 or 5.4 for an
25 application for a GMO licence, the regulator—

26 (a) must decide whether to issue or refuse to issue the licence; and

- 1 (b) if the regulator decides to issue the licence—may impose
2 conditions on it.

3 **56 Regulator must not issue the licence unless satisfied as**
4 **to risk management**

- 5 (1) The regulator must not issue the licence unless the regulator is
6 satisfied that any risks posed by the dealings proposed to be
7 authorised by the licence are able to be managed in a way that
8 protects—
9 (a) the health and safety of people; and
10 (b) the environment.
11 (2) For subsection (1), the regulator must have regard to the following:
12 (a) if a risk assessment has been prepared under section 50 for the
13 dealings—the risk assessment;
14 (b) if a risk management plan has been prepared under section 50
15 for the dealings—the risk management plan;
16 (c) any submissions received under section 52 about the licence;
17 (d) any policy guidelines in force under section 23 about—
18 (i) risks that may be posed by the dealings; or
19 (ii) ways of managing the risks that protect the health and
20 safety of people and protect the environment.

21 **57 Other circumstances in which regulator must not issue**
22 **the licence**

- 23 (1) The regulator must not issue the licence if the regulator is satisfied
24 that issuing the licence would be inconsistent with a policy principle
25 in force under section 21.
26 (2) The regulator must not issue the licence unless the regulator is
27 satisfied that the applicant is a suitable person to hold the licence.

- 1 **58 Matters to be taken into account in deciding whether**
2 **person is suitable to hold licence**
- 3 (1) Without limiting the matters to which the regulator may have regard
4 in deciding whether an individual is a suitable person to hold a
5 licence, the regulator must have regard to—
- 6 (a) any relevant conviction of the individual; and
- 7 (b) any revocation or suspension of a licence or permit (however
8 described) held by the individual under a law of the Territory,
9 the Commonwealth, a State or a foreign country about the
10 health and safety of people or the environment; and
- 11 (c) the capacity of the individual to meet the conditions of the
12 licence.
- 13 (2) Without limiting the matters to which the regulator may have regard
14 in deciding whether a corporation is a suitable person to hold a
15 licence, the regulator must have regard to—
- 16 (a) any relevant conviction of the corporation; and
- 17 (b) if there is a relevant conviction of the corporation—
- 18 (i) whether the offence concerned was committed when
19 anyone who is presently a director of the corporation was
20 a director; and
- 21 (ii) whether that offence was committed when any officer or
22 shareholder of the corporation who is presently in a
23 position to influence the management of the corporation
24 was an officer or shareholder of the corporation; and
- 25 (c) any revocation or suspension of a licence or permit (however
26 described) held by the corporation under a law of the Territory,
27 the Commonwealth, a State or a foreign country about the
28 health and safety of people or the environment; and
- 29 (d) the capacity of the corporation to meet the conditions of the
30 licence.

1 (3) This section does not affect the *Spent Convictions Act 2000*.

2 (4) In this section:

3 *relevant conviction*, for an applicant for a licence, means a
4 conviction for an offence against a law of the Territory, the
5 Commonwealth, a State or a foreign country, about the health and
6 safety of people or the environment, if—

7 (a) the offence was committed within 10 years immediately before
8 the making of the application for the licence; and

9 (b) the offence was punishable by a fine of \$5 000 or more, or by
10 imprisonment for 1 year or more.

11 *Note* This section differs from the Commonwealth Act, s 58.

12 **59 Notification of licence decision**

13 The regulator must notify the applicant in writing of the regulator's
14 decision, including any conditions imposed by the regulator.

15 **60 Period of licence**

16 (1) A licence continues in force—

17 (a) if the licence is expressed to be in force for a particular
18 period—until the end of the period; or

19 (b) otherwise—until it is cancelled or surrendered.

20 (2) A licence is not in force during a period of suspension.

21 **Division 5.6 Conditions of licences**

22 **61 Licence is subject to conditions**

23 A GMO licence is subject to the following conditions:

24 (a) the conditions stated in sections 63, 64 and 65;

25 (b) any conditions prescribed under the regulations;

- 1 (c) any conditions imposed by the regulator when issuing the
2 licence;
- 3 (d) any conditions imposed by the regulator under section 71 after
4 the licence is issued.

5 **62 Conditions that may be prescribed or imposed**

- 6 (1) Licence conditions may include conditions that impose obligations
7 about GM products derived from a GMO for which particular
8 dealings are licensed.
- 9 (2) Licence conditions may relate to, for example, the following:
- 10 (a) the scope of the dealings authorised by the licence;
- 11 (b) the purposes for which the dealings may be undertaken;
- 12 (c) variations to the scope or purposes of the dealings;
- 13 (d) documentation and record-keeping requirements;
- 14 (e) the required level of containment for the dealings, including
15 requirements about the certification of facilities to stated
16 containment levels;
- 17 (f) waste disposal requirements;
- 18 (g) measures to manage risks posed to the health and safety of
19 people or to the environment;
- 20 (h) data collection, including studies to be conducted;
- 21 (i) auditing and reporting;
- 22 (j) actions to be taken if a GMO is released from a contained
23 environment;
- 24 (k) the geographic area where the dealings authorised by the
25 licence may happen;
- 26 (l) requiring compliance with a code of practice issued under
27 section 24, or a technical or procedural guideline issued under
28 section 27;

- 1 (m) supervision by, and monitoring by, institutional biosafety
2 committees;
- 3 (n) contingency planning for unintended effects of the dealings
4 authorised by the licence;
- 5 (o) limiting the dissemination or persistence of the GMO or its
6 genetic material in the environment.
- 7 (3) Licence conditions may also include conditions requiring the licence
8 holder to be adequately insured against any loss, damage or injury
9 that may be caused to human health, property or the environment by
10 the dealings authorised by the licence.

11 **63 Condition about telling people of obligations**

- 12 (1) It is a condition of a licence that the licence holder tell anyone
13 covered by the licence, to whom a particular condition of the licence
14 applies, of the following:
- 15 (a) the particular condition, including any variations of it;
- 16 (b) the cancellation or suspension of the licence;
- 17 (c) the surrender of the licence.
- 18 (2) Requirements about how information is given under subsection (1)
19 may be—
- 20 (a) prescribed under the regulations; or
- 21 (b) specified by the regulator.
- 22 (3) The requirements may include, for example, measures about
23 labelling, packaging, conducting training and giving information.
- 24 (4) If requirements are prescribed or specified, it is a condition of a
25 licence that the licence holder comply with the requirements.

26 **64 Condition about monitoring and audits**

- 27 (1) It is a condition of a licence that if—

- 1 (a) a person is authorised by the licence to deal with a GMO; and
2 (b) a particular condition of the licence applies to the dealing by
3 the person—
4 the person must allow the regulator, or a person authorised by the
5 regulator, to enter premises where the dealing is being undertaken,
6 for auditing or monitoring the dealing.
- 7 (2) Subsection (1) does not limit the conditions that may be imposed by
8 the regulator or prescribed under the regulations.

9 **65 Condition about additional information to be given to**
10 **regulator**

- 11 (1) It is a condition of a licence that the licence holder tell the regulator
12 if the licence holder becomes aware of—
13 (a) additional information about any risks to the health and safety
14 of people, or to the environment, associated with the dealings
15 authorised by the licence; or
16 (b) any contraventions of the licence by a person covered by the
17 licence; or
18 (c) any unintended effects of the dealings authorised by the
19 licence.
- 20 (2) For subsection (1)—
21 (a) the licence holder is taken to have become aware of additional
22 information of a kind mentioned in subsection (1) if the licence
23 holder was reckless about whether the information existed; and
24 (b) the licence holder is taken to have become aware of
25 contraventions, or unintended effects, of a kind mentioned in
26 subsection (1) if the licence holder was reckless about whether
27 the contraventions had happened, or the unintended effects
28 existed.

1 **66 Person may give information to regulator**

2 A person covered by a licence may tell the regulator if the person
3 becomes aware of any of the following:

- 4 (a) additional information about any risks to the health and safety
5 of people, or to the environment, associated with the dealings
6 authorised by the licence;
- 7 (b) any contraventions of the licence by a person covered by the
8 licence;
- 9 (c) any unintended effects of the dealings authorised by the
10 licence.

11 **67 Protection of persons who give information**

12 A person does not incur any civil liability for loss, damage or injury
13 of any kind suffered by someone else because the first person gave
14 information to the regulator under section 65 or 66.

15 **Division 5.7 Suspension, cancellation and**
16 **variation of licences**

17 **68 Suspension and cancellation of licence**

18 The regulator may, by written notice given to the holder of a GMO
19 licence, suspend or cancel the licence if—

- 20 (a) the regulator believes on reasonable grounds that a condition of
21 the licence has been breached, whether by the licence holder or
22 a person covered by the licence; or
- 23 (b) the regulator believes on reasonable grounds that the licence
24 holder, or a person covered by the licence, has committed an
25 offence against this Act; or
- 26 (c) any annual charge payable for the licence remains unpaid after
27 the due date; or
- 28 (d) the licence was obtained improperly; or

- 1 (e) the regulator becomes aware of risks associated with the
2 continuation of the dealings authorised by the licence, and is
3 satisfied that the licence holder has not proposed, or is not in a
4 position to implement, adequate measures to deal with the
5 risks; or
- 6 (f) the regulator is satisfied that the licence holder is no longer a
7 suitable person to hold the licence.

8 **69 Surrender of licence**

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

11 **70 Transfer of licences**

- 12 (1) The licence holder and someone else (the *transferee*) may jointly
13 apply to the regulator for the licence to be transferred from the
14 licence holder to the transferee.
- 15 (2) The application must be in writing, and must contain—
- 16 (a) the information (if any) prescribed under the regulations; and
17 (b) the information specified in writing by the regulator.
- 18 (3) The regulator must not transfer the licence unless the regulator is
19 satisfied that, if the licence is transferred, any risks posed by the
20 dealings authorised by the licence will continue to be able to be
21 managed in a way that protects—
- 22 (a) the health and safety of people; and
23 (b) the environment.
- 24 (4) The regulator must not transfer the licence unless the regulator is
25 satisfied that the transferee is a suitable person to hold the licence.
- 26 (5) The regulator must give written notice of his or her decision on the
27 application to the licence holder and the transferee.
- 28 (6) If the regulator decides to transfer the licence—

- 1 (a) the transfer takes effect on the date stated in the notice; and
2 (b) the licence continues in force as mentioned in section 60; and
3 (c) the licence is subject to the same conditions as the conditions
4 in force immediately before the transfer.

5 **71 Variation of licence**

- 6 (1) The regulator may, at any time, by written notice given to the
7 licence holder, vary a licence.
8 (2) However, the regulator must not vary a licence to authorise dealings
9 involving the intentional release of a GMO into the environment if
10 the application for the licence was originally considered under
11 division 5.3.

12 *Note* Applications may only be considered under div 5.3 if none of the
13 dealings proposed to be authorised by the licence would involve the
14 intentional release of a GMO into the environment.

- 15 (3) Without limiting subsection (1), the regulator may—
16 (a) impose licence conditions or additional licence conditions; or
17 (b) remove or vary licence conditions that were imposed by the
18 regulator; or
19 (c) extend or reduce the authority granted by the licence.
20 (4) However, the regulator must not vary the licence unless the
21 regulator is satisfied that any risks posed by the dealings proposed to
22 be authorised by the licence as varied are able to be managed in a
23 way that protects—
24 (a) the health and safety of people; and
25 (b) the environment.

- 1 **72 Regulator to notify of proposed suspension, cancellation**
2 **or variation**
- 3 (1) Before suspending, cancelling or varying a licence under this
4 division, the regulator must give written notice of the proposed
5 suspension, cancellation or variation to the licence holder.
- 6 (2) The notice—
- 7 (a) must state that the regulator proposes to suspend, cancel or
8 vary the licence; and
- 9 (b) may require the licence holder to give to the regulator any
10 information of a kind stated in the notice that is relevant to the
11 proposed suspension, cancellation or variation; and
- 12 (c) may invite the licence holder to make a written submission to
13 the regulator about the proposed suspension, cancellation or
14 variation.
- 15 (3) The notice must state a period within which the licence holder—
- 16 (a) must give the information mentioned in subsection (2) (b); and
17 (b) may make a submission under subsection (2) (c).
- 18 (4) The period must not end earlier than 30 days after the day the notice
19 was given.
- 20 (5) In considering whether to suspend, cancel or vary a licence, the
21 regulator must have regard to any submission made under
22 subsection (2) (c).
- 23 (6) This section does not apply to a suspension, cancellation or variation
24 requested by the licence holder.
- 25 (7) This section does not apply to a suspension, cancellation or variation
26 of a licence if the regulator considers that the suspension,
27 cancellation or variation is necessary to avoid an imminent risk of
28 death, serious illness, serious injury or serious damage to the
29 environment.

1 **Division 5.8** **Annual charge**

2 **72A GMO licence—annual charge**

- 3 (1) A person who is the holder of a GMO licence at any time during a
4 financial year is liable to pay a charge for the licence for the year.
- 5 (2) The amount of the charge for a financial year is the amount
6 prescribed under the regulations.
- 7 (3) The amount prescribed may be in the nature of a tax and not be
8 related to the cost of providing any service.

9 *Note* This section does not appear in the Commonwealth Act. Provision is
10 included, however, in the *Gene Technology (Licence Charges) Act 2000*
11 (Cwlth) for the imposition of an annual charge for a GMO licence.

12

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Part 6 Regulation of notifiable low risk dealings on GMO register

Division 6.1 Simplified outline of part 6

73 Simplified outline—pt 6

In outline, this part—

- (a) establishes a mechanism for the regulations to regulate certain dealings with GMOs (*notifiable low risk dealings*) that do not involve the intentional release of GMOs into the environment (see division 6.2); 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.

Division 6.2 Notifiable low risk dealings

74 Notifiable low risk dealings

- (1) The regulations may declare a dealing with a GMO to be a notifiable low risk dealing for this Act.
- (2) Before the Executive makes regulations declaring a dealing with a GMO to be a notifiable low risk dealing, the regulator must be satisfied that the dealing would not involve the intentional release of a GMO into the environment.

- 1 (3) Also, before the Executive makes regulations declaring a dealing
2 with a GMO to be a notifiable low risk dealing, the regulator must
3 consider the following matters:
- 4 (a) whether the GMO is biologically contained so that it is not able
5 to survive or reproduce without human intervention;
- 6 (b) whether the dealing with the GMO would involve minimal risk
7 to the health and safety of people and to the environment,
8 taking into account the properties of the GMO as a pathogen or
9 pest and the toxicity of any proteins produced by the GMO;
- 10 (c) whether no conditions, or minimal conditions, would be
11 necessary to be prescribed to manage any risk mentioned in
12 paragraph (b).

13 *Note 1* For provisions corresponding to the Commonwealth Act, s 74 (4), see
14 the *Legislation Act 2001*, s 48.

15 *Note 2* This section differs from the Commonwealth Act, s 74.

16 **75 Regulation of notifiable low risk dealings**

- 17 (1) The regulations may regulate a notifiable low risk dealing for the
18 purpose of protecting the health and safety of people or the
19 environment.
- 20 (2) The regulations may prescribe different requirements to be complied
21 with in different situations or by different people, including
22 requirements in relation to the following:
- 23 (a) the people who may undertake notifiable low risk dealings;
- 24 (b) notifying the regulator of notifiable low risk dealings;
- 25 (c) supervision by institutional biosafety committees of notifiable
26 low risk dealings;
- 27 (d) the containment level of facilities in which notifiable low risk
28 dealings may be undertaken.

- 1 (3) Subsection (2) does not limit the *Legislation Act 2001*, section 48
2 (Power to make instrument includes power to make different
3 provision for different categories etc).

4 **Division 6.3 GMO register**

5 **76 GMO register**

- 6 *Note* The Commonwealth Act, s 76 provides for the establishment and
7 maintenance of the GMO register.

8 **77 Contents of register**

9 If the regulator determines under section 78 that a dealing with a
10 GMO is to be included on the GMO register, the regulator must
11 state in the GMO register—

- 12 (a) a description of the dealing; and
13 (b) any condition to which the dealing is subject.

14 **78 Regulator may include dealings with GMOs on GMO 15 register**

16 (1) The regulator may, in writing, determine that a dealing with a GMO
17 is to be included on the GMO register if the regulator is satisfied
18 that—

- 19 (a) the dealing is, or has been, authorised by a GMO licence; or
20 (b) the GMO—
21 (i) is a GM product; and
22 (ii) is a GMO only because of regulations made under the
23 definition of *genetically modified organism*, paragraph
24 (c).

25 (2) A determination under subsection (1) may be made—

- 26 (a) on application by the holder of a licence authorising the
27 dealing; or

1 (b) on the regulator's own initiative.

2 (3) A determination under subsection (1) commences on the day stated
3 in the determination.

4 (4) If the determination was made on application by the holder of a
5 GMO licence authorising the dealing, the day must not be before the
6 licence ceases to be in force.

7 *Note* The Commonwealth Act, s 78 (4) provides for determinations to be
8 disallowable instruments.

9 **79 Regulator not to make determination unless risks can be**
10 **managed**

11 (1) The regulator must not make a determination under section 78 (1)
12 about a dealing with a GMO unless the regulator is satisfied that—

13 (a) any risks posed by the dealing are minimal; and

14 (b) it is not necessary for people undertaking the dealing to hold,
15 or be covered by, a GMO licence to protect the health and
16 safety of people or to protect the environment.

17 (2) For subsection (1), the regulator must have regard to the following:

18 (a) any data available to the regulator about adverse effects posed
19 by the dealing;

20 (b) any other information about risks associated with the dealing
21 of which the regulator is aware, including information given to
22 the regulator by a licence holder under section 65 or by
23 someone else under section 66;

24 (c) whether there is a need for the dealing to be subject to
25 conditions;

26 (d) any other information about whether the dealing should be
27 authorised by a GMO licence.

28 (3) The regulator may have regard to any other matters the regulator
29 considers relevant.

1 **80 Variation of GMO register**

2 (1) The regulator may vary the GMO register by written determination.

3 (2) A variation may—

4 (a) remove a dealing from the GMO register; or

5 (b) revoke or vary conditions to which a dealing on the GMO
6 register is subject; or

7 (c) impose additional conditions to which a dealing on the GMO
8 register is subject.

9 *Note* The Commonwealth Act, s 80 (3) provides for determinations to be
10 disallowable instruments.

11 **81 Inspection of register**

12 *Note* The Commonwealth Act, s 81 requires the regulator to permit any
13 person to inspect the GMO register.
14

1

2 **Part 7** **Certification and accreditation**

3 **Division 7.1** **Simplified outline of part 7**

4 **82** **Simplified outline—pt 7**

- 5 (1) In outline, this part establishes a system under which the regulator
6 may certify facilities to stated containment levels in accordance with
7 guidelines issued by the regulator.
- 8 (2) Licence conditions may require that facilities be certified to stated
9 containment levels (see division 7.2).
- 10 (3) Also, this part enables the regulator to accredit organisations in
11 accordance with accreditation guidelines issued by the regulator.
- 12 (4) Licence conditions may state that dealings must be supervised by an
13 institutional biosafety committee established by an accredited
14 organisation (see division 7.3).

15 **Division 7.2** **Certification**

16 **83** **Application for certification**

- 17 (1) A person may apply to the regulator for certification of a facility to a
18 particular containment level.
- 19 (2) The application must be in writing, and must contain the
20 information the regulator requires.
- 21 *Note* The conditions of a licence may require that a facility be certified under
22 this division.
- 23 (3) The application must be accompanied by the application fee (if any)
24 prescribed under the regulations.

1 **84 When regulator may certify facility**

2 The regulator may, in writing, certify the facility to a stated
3 containment level if the facility meets the containment requirements
4 provided in guidelines issued by the regulator under section 90.

5 **85 Regulator may require applicant to give further**
6 **information**

- 7 (1) The regulator may, by written notice, require an applicant for
8 certification of a facility to give the regulator further information
9 about the application.
- 10 (2) The notice may state the period within which the information must
11 be given.

12 **86 Conditions of certification**

13 The certification of a facility is subject to the following conditions:

- 14 (a) any conditions imposed by the regulator at the time of
15 certification;
- 16 (b) any conditions imposed by the regulator under section 87 after
17 certification;
- 18 (c) any conditions prescribed under the regulations.

19 **87 Variation of certification**

- 20 (1) The regulator may, at any time, by written notice given to the holder
21 of the certification, vary the certification of a facility.
- 22 (2) Without limiting subsection (1), the regulator may—
- 23 (a) impose additional conditions; or
- 24 (b) remove or vary conditions imposed by the regulator.

1 **88 Suspension or cancellation of certification**

2 The regulator may, by written notice, suspend or cancel the
3 certification of a facility if the regulator believes on reasonable
4 grounds that a condition of the certification has been breached.

5 **89 Regulator to notify of proposed suspension, cancellation
6 or variation**

7 (1) Before suspending, cancelling or varying a certification under this
8 division, the regulator must give written notice of the proposed
9 suspension, cancellation or variation to the holder of the
10 certification.

11 (2) The notice—

12 (a) must state that the regulator proposes to suspend, cancel or
13 vary the certification; and

14 (b) may require the holder of the certification to give to the
15 regulator any information of a kind stated in the notice that is
16 relevant to the proposed suspension, cancellation or variation;
17 and

18 (c) may invite the holder to make a written submission to the
19 regulator about the proposed suspension, cancellation or
20 variation.

21 (3) The notice must state a period within which the holder of the
22 certification—

23 (a) must give the information mentioned in subsection (2) (b); and

24 (b) may make a submission under subsection (2) (c).

25 (4) The period must not end earlier than 30 days after the day the notice
26 was given.

27 (5) In considering whether to suspend, cancel or vary a certification, the
28 regulator must have regard to any submission made under
29 subsection (2) (c).

1 (6) This section does not apply to a suspension, cancellation or variation
2 requested by the holder of the certification.

3 (7) This section does not apply to a suspension, cancellation or variation
4 of a certification if the regulator considers the suspension,
5 cancellation or variation is necessary to avoid an imminent risk of
6 death, serious illness, serious injury or serious damage to the
7 environment.

8 **90 Guidelines**

9 The regulator may issue written technical or procedural guidelines
10 about the requirements for the certification of facilities to stated
11 containment levels.

12 *Note 1* For provisions corresponding to the Commonwealth Act, s 90 (2), see
13 the *Legislation Act 2001*, s 46.

14 *Note 2* This section differs from the Commonwealth Act, s 90.

15 **Division 7.3 Accredited organisations**

16 **91 Application for accreditation**

17 (1) A person may apply to the regulator for accreditation of an
18 organisation as an accredited organisation.

19 *Note* The conditions of a licence may require supervision of dealings by an
20 institutional biosafety committee established by an accredited
21 organisation (see s 62 (2) (m)), and the regulations may require
22 supervision by a committee of notifiable low risk dealings (see
23 s 75 (2) (c)).

24 (2) The application must be in writing, and must contain the
25 information the regulator requires.

26 **92 Regulator may accredit organisations**

27 (1) The regulator may, in writing, accredit an organisation as an
28 accredited organisation.

- 1 (2) In deciding whether to accredit an organisation, the regulator must
2 have regard to—
- 3 (a) whether the organisation has established, or proposes to
4 establish, an institutional biosafety committee under guidelines
5 issued by the regulator under section 98; and
- 6 (b) whether the organisation will be able to maintain an
7 institutional biosafety committee under the guidelines; and
- 8 (c) whether the organisation has, or will have, appropriate
9 indemnity arrangements for its institutional biosafety
10 committee members; and
- 11 (d) any other matters provided in the guidelines.

12 **93 Regulator may require applicant to give further**
13 **information**

- 14 (1) The regulator may, by written notice, require an applicant for
15 accreditation of an organisation to give the regulator further
16 information about the application.
- 17 (2) The notice may state the period within which the information must
18 be given.

19 **94 Conditions of accreditation**

20 The accreditation of an accredited organisation is subject to the
21 following conditions:

- 22 (a) any conditions imposed by the regulator at the time of
23 accreditation;
- 24 (b) any conditions imposed by the regulator under section 95 after
25 accreditation;
- 26 (c) any conditions prescribed under the regulations.

1 **95 Variation of accreditation**

2 (1) The regulator may, at any time, by written notice given to an
3 accredited organisation, vary the organisation's accreditation.

4 (2) Without limiting subsection (1), the regulator may—

5 (a) impose additional conditions; or

6 (b) remove or vary conditions imposed by the regulator.

7 **96 Suspension or cancellation of accreditation**

8 The regulator may, by written notice given to an accredited
9 organisation, suspend or cancel the accreditation if the regulator
10 believes on reasonable grounds that a condition of the accreditation
11 has been breached.

12 **97 Regulator to notify of proposed suspension, cancellation
13 or variation**

14 (1) Before suspending, cancelling or varying an accreditation under this
15 division, the regulator must give written notice of the proposed
16 suspension, cancellation or variation to the holder of the
17 accreditation.

18 (2) The notice—

19 (a) must state that the regulator proposes to suspend, cancel or
20 vary the accreditation; and

21 (b) may require the holder of the accreditation to give to the
22 regulator any information of a kind stated in the notice that is
23 relevant to the proposed suspension, cancellation or variation;
24 and

25 (c) may invite the holder of the accreditation to make a written
26 submission to the regulator about the proposed suspension,
27 cancellation or variation.

28 (3) The notice must state a period within which the holder of the
29 accreditation—

- 1 (a) must give the information mentioned in subsection (2) (b); and
2 (b) may make a submission under subsection (2) (c).
- 3 (4) The period must not end earlier than 30 days after the day the notice
4 was given.
- 5 (5) In considering whether to suspend, cancel or vary an accreditation,
6 the regulator must have regard to any submission made under
7 subsection (2) (c).
- 8 (6) This section does not apply to a suspension, cancellation or variation
9 requested by the holder of the accreditation.
- 10 (7) This section does not apply to a suspension, cancellation or variation
11 of an accreditation if the regulator considers the suspension,
12 cancellation or variation is necessary to avoid an imminent risk of
13 death, serious illness, serious injury or serious damage to the
14 environment.

15 **98 Guidelines**

- 16 (1) The regulator may, in writing, issue technical or procedural
17 guidelines about requirements that must be met for an organisation
18 to be accredited under this division.
- 19 (2) The guidelines may relate to, but are not limited to, matters about
20 establishing and maintaining institutional biosafety committees.

21 *Note 1* For provisions corresponding to the Commonwealth Act, s 98 (3), see
22 the *Legislation Act 2001*, s 46.

23 *Note 2* This section differs from the Commonwealth Act, s 98.
24

Part 8 Gene technology technical advisory committee, gene technology community consultative committee and gene technology ethics committee

Division 8.1 Simplified outline of part 8

Section 99

1

2 **Part 8** **Gene technology technical**
3 **advisory committee, gene**
4 **technology community**
5 **consultative committee and**
6 **gene technology ethics**
7 **committee**

8 **Division 8.1** **Simplified outline of part 8**

9 **99** **Simplified outline—pt 8**

10 In outline, this part sets out the functions under this Act of the
11 following committees:

- 12 (a) the gene technology technical advisory committee;
13 (b) the gene technology community consultative committee;
14 (c) the gene technology ethics committee.

15 *Note* This section differs from the Commonwealth Act, s 99.

16 **Division 8.2** **Gene technology technical**
17 **advisory committee**

18 **100** **Gene technology technical advisory committee**

19 *Note* The Commonwealth Act, s 100 provides for the establishment and
20 membership of the gene technology technical advisory committee.

1 **101 Function of gene technology technical advisory**
2 **committee**

3 The function of the gene technology technical advisory committee
4 under this Act is to provide scientific and technical advice, on the
5 request of the regulator or the Ministerial council, on the following:

- 6 (a) gene technology, GMOs and GM products;
7 (b) applications made under this Act;
8 (c) the biosafety aspects of gene technology;
9 (d) the need for policy principles, policy guidelines, codes of
10 practice and technical and procedural guidelines about GMOs
11 and GM products and the content of the principles, guidelines
12 and codes.

13 **102 Expert advisers**

14 *Note* The Commonwealth Act, s 102 provides for the appointment of expert
15 advisers to the gene technology technical advisory committee.

16 **103 Remuneration**

17 *Note* The Commonwealth Act, s 103 provides for the payment of
18 remuneration and allowances to members of, and expert advisers to, the
19 gene technology technical advisory committee.

20 **104 Members and procedures**

21 *Note* The Commonwealth Act, s 104 authorises the making of regulations
22 about the membership and operation of the gene technology technical
23 advisory committee.

24 **105 Subcommittees**

25 *Note* The Commonwealth Act, s 105 deals with the establishment of
26 subcommittees by the gene technology technical advisory committee.

Part 8 Gene technology technical advisory committee, gene technology community consultative committee and gene technology ethics committee

Division 8.3 Gene technology community consultative committee

Section 106

1 **Division 8.3** **Gene technology community**
2 **consultative committee**

3 **106 Gene technology community consultative committee**

4 *Note* The Commonwealth Act, s 106 establishes the gene technology
5 community consultative committee.

6 **107 Function of consultative committee**

7 The function of the consultative committee under this Act is to
8 provide advice, on the request of the regulator or the Ministerial
9 council, on the following:

- 10 (a) matters of general concern identified by the regulator about
11 applications made under this Act;
- 12 (b) matters of general concern about GMOs;
- 13 (c) the need for policy principles, policy guidelines, codes of
14 practice and technical and procedural guidelines about GMOs
15 and GM products and the content of the principles, guidelines
16 and codes.

17 *Note* This section differs from the Commonwealth Act, s 107.

18 **108 Membership**

19 *Note* The Commonwealth Act, s 108 provides for the membership of the
20 consultative committee.

21 **109 Remuneration**

22 *Note* The Commonwealth Act, s 109 provides for the payment of
23 remuneration and allowances to members of the consultative committee.

24 **110 Regulations**

25 *Note* The Commonwealth Act, s 110 authorises the making of regulations
26 about the membership and operation of the consultative committee.

1 **110A Subcommittees**

2 *Note* The Commonwealth Act, s110A deals with the establishment of
3 subcommittees by the consultative committee.

4 **Division 8.4 Gene technology ethics committee**

5 **111 Gene technology ethics committee**

6 *Note* The Commonwealth Act, s 111 provides for the establishment and
7 membership of the gene technology ethics committee.

8 **112 Function of gene technology ethics committee**

9 The function of the ethics committee under this Act is to provide
10 advice, on the request of the regulator or the Ministerial council, on
11 the following:

- 12 (a) ethical issues about gene technology;
- 13 (b) the need for, and content of, codes of practice about ethics for
14 conducting dealings with GMOs;
- 15 (c) the need for, and content of, policy principles about dealings
16 with GMOs that should not be conducted for ethical reasons.

17 **113 Expert advisers**

18 *Note* The Commonwealth Act, s 113 provides for the appointment of expert
19 advisers to the ethics committee.

20 **114 Remuneration**

21 *Note* The Commonwealth Act, s 114 provides for the payment of
22 remuneration and allowances to members of, and expert advisers to, the
23 ethics committee.

24 **115 Members and procedures**

25 *Note* The Commonwealth Act, s 115 authorises the making of regulations
26 about the membership and operation of the ethics committee.

Part 8 Gene technology technical advisory committee, gene technology
community consultative committee and gene technology ethics
committee

Division 8.4 Gene technology ethics committee

Section 116

1 **116 Subcommittees**

2 *Note* The Commonwealth Act, s 116 deals with the establishment of
3 subcommittees by the ethics committee.
4

1

2 **Part 9 Administration**

3 **Division 9.1 Simplified outline of part 9**

4 **117 Simplified outline—pt 9**

5 In outline, this part—

- 6 (a) provides for financial matters (see division 9.3); and
- 7 (b) sets out reporting requirements (see division 9.5); and
- 8 (c) requires the regulator to ensure that certain information is
- 9 entered on a record of GMOs and GM products (see
- 10 division 9.6); and
- 11 (d) permits the regulator to review notifiable low risk dealings and
- 12 exemptions (see division 9.7).

13 *Note* This section differs from the Commonwealth Act, s 117.

14 **Division 9.2 Appointment and conditions of**

15 **regulator**

16 **118 Appointment of regulator**

17 *Note* The Commonwealth Act, s 118 provides for the appointment of the

18 regulator.

19 **119 Termination of appointment**

20 *Note* The Commonwealth Act, s 119 sets out the circumstances in which the

21 regulator's appointment may be terminated.

22 **120 Disclosure of interests**

23 *Note* The Commonwealth Act, s 120 requires the regulator to disclose his or

24 her interests to the relevant Commonwealth Minister.

1 **121 Acting appointment**

2 *Note* The Commonwealth Act, s 121 deals with the appointment of a person
3 to act as the regulator.

4 **122 Terms and conditions**

5 *Note* The Commonwealth Act, s 122 deals with the terms and conditions of
6 appointment of the regulator.

7 **123 Outside employment**

8 *Note* The Commonwealth Act, s 123 prohibits the regulator from engaging in
9 paid outside employment without the relevant Commonwealth
10 Minister's approval.

11 **124 Remuneration**

12 *Note* The Commonwealth Act, s 124 provides for the payment of
13 remuneration and allowances to the regulator.

14 **125 Leave of absence**

15 *Note* The Commonwealth Act, s 125 deals with the entitlement of the
16 regulator to leave of absence.

17 **126 Resignation**

18 *Note* The Commonwealth Act, s 126 deals with the procedure for resignation
19 by the regulator.

20 **Division 9.3 Money**

21 **127 Regulator may charge for services**

22 The regulator may charge for services provided by, or on behalf of,
23 the regulator in exercising the regulator's functions under this Act.

24 **128 Notional payments**

25 *Note* The Commonwealth Act, s 128 provides for fees and charges to be
26 notionally payable by the Commonwealth and allows directions to be
27 given for the section. This provision is unnecessary in the ACT (see
28 *Financial Management Act 1996*).

1 **129 Gene technology account**

2 *Note* The Commonwealth Act, s 129 provides for the establishment of the
3 gene technology account.

4 **130 Credits to gene technology account**

5 The following amounts must be paid to the Commonwealth for
6 crediting to the gene technology account:

- 7 (a) amounts equal to amounts from time to time received by the
8 Territory under division 5.8;
- 9 (b) amounts equal to fees received by the Territory under section
10 40 (6) (Person may apply for a licence) and section 83 (3)
11 (Application for certification);
- 12 (c) amounts equal to amounts received by the Territory for the
13 exercise of the regulator's functions under this Act;
- 14 (d) amounts equal to amounts recovered by the Territory under
15 section 146 (5) (Regulator may give directions) or section
16 158 (4) (Powers available to inspectors for dealing with
17 dangerous situations), to the extent that they are referable to
18 costs paid out of the gene technology account.

19 *Note* This section differs from the Commonwealth Act, s 130.

20 **131 Recovery of amounts**

21 The following amounts may be recovered in a court of competent
22 jurisdiction as debts owing to the Territory:

- 23 (a) amounts payable to the Territory under division 5.8;
- 24 (b) fees payable to the Territory under this Act;
- 25 (c) amounts payable to the Territory for the exercise of the
26 regulator's functions under this Act.

1 **132 Purposes of account**

2 *Note* The Commonwealth Act, s 132 sets out the purposes for which money
3 in the gene technology account may be expended.

4 **Division 9.4 Staffing**

5 **133 Staff assisting regulator**

6 *Note* The Commonwealth Act, s 133 provides for staff to be made available
7 to assist the regulator.

8 **134 Consultants**

9 *Note* The Commonwealth Act, s 134 authorises the regulator to engage
10 consultants.

11 **135 Seconded officers**

12 *Note* The Commonwealth Act, s 135 provides for staff to be seconded to the
13 regulator.

14 **Division 9.5 Reporting requirements**

15 **136 Annual report**

16 (1) As soon as practicable after the end of each financial year, the
17 regulator must prepare and give to the Minister a report on the
18 operations of the regulator under this Act during that year.

19 (2) The Minister must present a copy of the report to the Legislative
20 Assembly within 15 sitting days after the Minister receives the
21 report.

22 *Note* The Commonwealth Act, s 136 (3) requires the regulator to give a copy
23 of his or her report under that section to each State.

24 **136A Quarterly reports**

25 (1) As soon as practicable after the end of each quarter, the regulator
26 must prepare and give to the Minister a report on the operations of
27 the regulator under this Act during the quarter.

- 1 (2) The report must include information about the following:
- 2 (a) GMO licences issued during the quarter;
- 3 (b) any breaches of conditions of a GMO licence that have come
- 4 to the regulator's attention during the quarter;
- 5 (c) auditing and monitoring of dealings with GMOs under this Act
- 6 by the regulator or an inspector during the quarter.
- 7 (3) The Minister must present a copy of the report to the Legislative
- 8 Assembly within 15 sitting days after the Minister receives the
- 9 report.
- 10 (4) In this section:
- 11 *quarter* means a period of 3 months beginning on 1 January,
- 12 1 April, 1 July or 1 October of any year.

13 **137 Reports to Legislative Assembly**

- 14 (1) The regulator may at any time give the Minister a report about
- 15 matters relating to the regulator's functions under this Act and ask
- 16 the Minister to present the report to the Legislative Assembly.
- 17 (2) The Minister must present a copy of the report to the Legislative
- 18 Assembly within 15 sitting days after the Minister receives the
- 19 report.

20 *Note 1* The Commonwealth Act, s 137 (2) requires the regulator to give a copy

21 of his or her report under that section to each State.

22 *Note 2* This section differs from the Commonwealth Act, s 137.

23 **Division 9.6 Record of GMO and GM product**

24 **dealings**

25 **138 Record of GMO and GM product dealings**

- 26 (1) The GM record must contain the following information, other than
- 27 confidential commercial information, about each licence issued
- 28 under section 55:

- 1 (a) the name of the licence holder;
- 2 (b) the people covered by the licence;
- 3 (c) the dealings authorised by the licence and the GMO to which
4 those dealings relate;
- 5 (d) any licence conditions;
- 6 (e) the date the licence was issued, and its expiry date (if any).
- 7 (2) The GM record must contain the following information, other than
8 confidential commercial information, about each notifiable low risk
9 dealing notified to the regulator under regulations made for section
10 75 (2) (b):
- 11 (a) the name of the person who notified the dealing;
- 12 (b) the particulars of the dealing prescribed under the regulations
13 for this paragraph.
- 14 (3) The GM record must contain the information prescribed under the
15 regulations, other than confidential commercial information, about
16 GM products mentioned in designated notifications given to the
17 regulator under an Act.
- 18 (4) The GM record must also contain—
- 19 (a) a description of each dealing on the GMO register; and
- 20 (b) any condition to which the dealing is subject.
- 21 (5) The regulator must ensure that information mentioned in subsection
22 (1), (2), (3) or (4) is entered on the GM record as soon as reasonably
23 practicable.
- 24 (6) In this section:
- 25 *designated notification* means a notification required to be given to
26 the regulator under an Act or any law applying as a Territory law by
27 force of an Act.
- 28 *Note* This section differs from the Commonwealth Act, s 138.

1 **139 Inspection of record**

2 *Note* The Commonwealth Act, s 139 requires the regulator to permit any
3 person to inspect the GM record.

4 **Division 9.7 Reviews of notifiable low risk**
5 **dealings and exemptions**

6 **140 Regulator may review notifiable low risk dealings**

- 7 (1) The regulator may, at any time, consider—
- 8 (a) whether a dealing with a GMO should be a notifiable low risk
9 dealing; or
- 10 (b) whether an existing notifiable low risk dealing should no
11 longer be a notifiable low risk dealing.
- 12 (2) The basis of the regulator's consideration must relate to—
- 13 (a) the matters of which the regulator must be satisfied under
14 section 74 (2); or
- 15 (b) the matters the regulator must consider under section 74 (3).

16 **141 Regulator may review exemptions**

- 17 The regulator may, at any time, consider—
- 18 (a) whether an exempt dealing should not be an exempt dealing; or
- 19 (b) whether a dealing should be an exempt dealing.

20 **142 Regulator may give notice of consideration**

- 21 (1) The regulator may publish a notice inviting written submissions
22 about any matter the regulator may consider under section 140 or
23 141.
- 24 (2) The notice must state—
- 25 (a) the matters to which submissions must relate; and

- 1 (b) the closing date for submissions, which must not be earlier
2 than 30 days after the day the notice was published.
- 3 (3) If the regulator publishes a notice under subsection (1), the regulator
4 must also give written notice, stating the matters mentioned in
5 subsection (2) (a), to—
- 6 (a) each State; and
7 (b) the gene technology technical advisory committee; and
8 (c) each Commonwealth authority or agency prescribed under the
9 regulations for this paragraph.
- 10 (4) A notice under this section may be about a single matter or a class
11 of matters.

12 **143 What regulator may do after consideration**

- 13 (1) If—
- 14 (a) the matter is about whether a dealing should be a notifiable low
15 risk dealing; and
16 (b) the regulator is satisfied as mentioned in section 74 (2); and
17 (c) the regulator has considered the matters mentioned in section
18 74 (3);
- 19 the regulator may recommend to the Ministerial council that the
20 dealing be declared to be a notifiable low risk dealing.
- 21 (2) If—
- 22 (a) the matter is about whether an existing notifiable low risk
23 dealing be reconsidered; and
24 (b) after having had regard to the matters mentioned in section 74,
25 the regulator considers the dealing should not be a notifiable
26 low risk dealing;
- 27 the regulator may recommend to the Ministerial council that the
28 regulations be amended accordingly.

- 1 (3) If the matter is about whether a dealing—
2 (a) should be an exempt dealing; or
3 (b) should cease to be an exempt dealing;
4 the regulator may recommend to the Ministerial council that the
5 regulations be amended accordingly.

6 **144 Regulator not required to review matters**

7 This division does not require the regulator to consider a matter
8 under section 140 or 141.
9

1

2 **Part 10 Enforcement**

3

4 **145 Simplified outline—pt 10**

5 In outline, this part—

6 (a) authorises the regulator to give directions to a licence holder or
7 to a person covered by a licence if—

8 (i) the regulator believes the person is not complying with
9 this Act; and

10 (ii) the regulator believes it is necessary to give the directions
11 to protect the health and safety of people or to protect the
12 environment; and

13 (b) authorises the Supreme Court to issue injunctions, and contains
14 a forfeiture provision.

15 *Note* This section differs from the Commonwealth Act, s 145.

16 **146 Regulator may give directions**

17 (1) If the regulator believes, on reasonable grounds, that—

18 (a) a licence holder is not complying with this Act in relation to a
19 thing; and

20 (b) it is necessary to exercise powers under this section to protect
21 the health and safety of people or to protect the environment;

22 the regulator may, by written notice, direct the licence holder, within
23 the time stated in the notice, to take stated reasonable steps relating
24 to the thing to comply with this Act.

25 (2) If the regulator believes on reasonable grounds that—

26 (a) a person covered by a GMO licence is not complying with this
27 Act in relation to a thing; and

- 1 (b) it is necessary to exercise powers under this section to protect
2 the health and safety of people or to protect the environment;
3 the regulator may, by written notice, direct the person, within the
4 time stated in the notice, to take stated reasonable steps relating to
5 the thing to comply with this Act.
- 6 (3) A person must not intentionally fail to take the steps stated in a
7 notice under subsection (1) or (2) within the time stated in the
8 notice.
- 9 Maximum penalty:
10 (a) for an aggravated offence—2 000 penalty units; or
11 (b) in any other case—500 penalty units.
- 12 *Note* **Aggravated offence** is defined in s 38 (1).
- 13 (4) If the licence holder or the person does not take the steps stated in
14 the notice within the time stated in the notice, the regulator may
15 arrange for those steps to be taken.
- 16 (5) If the regulator incurs costs because of arrangements made by the
17 regulator under subsection (4), the licence holder or the person is
18 liable to pay to the Territory an amount equal to the cost.
- 19 *Note* The *Legislation Act 2001*, s 177 (Recovery of amounts owing under
20 laws) applies to the recovery of the amount.
- 21 (6) A time stated in a notice under subsection (1) or (2) must be
22 reasonable having regard to the circumstances.
- 23 *Note* This section differs from the Commonwealth Act, s 146.

24 **147 Injunctions**

- 25 (1) If a person has engaged, is engaging, or is about to engage in any
26 conduct that is or would be an offence against this Act, the Supreme
27 Court may, on the application of the regulator or any other
28 aggrieved person, grant an injunction restraining the person from
29 engaging in the conduct.

- 1 (2) If—
- 2 (a) a person has failed, is failing, or is about to fail, to do a thing;
- 3 and
- 4 (b) the failure is, or would be, an offence against this Act;
- 5 the Supreme Court may, on the application of the regulator or any
- 6 other aggrieved person, grant an injunction requiring the person to
- 7 do the thing.
- 8 (3) The power of the Supreme Court to grant an injunction may be
- 9 exercised—
- 10 (a) whether or not it appears to the court that the person intends to
- 11 engage, or to continue to engage, in conduct of that kind; and
- 12 (b) whether or not the person has previously engaged in conduct of
- 13 that kind.
- 14 (4) The Supreme Court may discharge or vary an injunction granted
- 15 under this section.
- 16 (5) The Supreme Court may grant an interim injunction pending
- 17 deciding an application under subsection (1).
- 18 (6) The powers under this section are in addition to any other powers of
- 19 the Supreme Court.
- 20 *Note* The Commonwealth Act, s 147 gives a similar power to grant
- 21 injunctions on the Federal Court.

22 **148 Forfeiture**

- 23 (1) If a court finds a person guilty of an offence against this Act, the
- 24 court may order forfeiture to the Territory of anything used or
- 25 otherwise involved in the commission of the offence.
- 26 (2) A thing ordered by a court to be forfeited under this section
- 27 becomes the property of the Territory and may be sold or otherwise
- 28 dealt with in accordance with the regulator's directions.

- 1 (3) Until the regulator gives a direction, the thing must be kept in the
2 custody the regulator directs.

3 *Note* This section differs from the Commonwealth Act, s 148.
4

1

2 **Part 11 Powers of inspection**

3 **Division 11.1 Simplified outline of part 11**

4 **149 Simplified outline—pt 11**

5 In outline, this part—

- 6 (a) provides for powers of inspection for monitoring and offences;
7 and
- 8 (b) provides for the appointment of inspectors (see division 11.2);
9 and
- 10 (c) deals with the powers and obligations of inspectors and the
11 rights and responsibilities of an occupier of premises when an
12 inspector seeks to exercise powers (see divisions 11.3 to 11.9);
13 and
- 14 (d) sets out procedures relating to monitoring warrants and
15 offence-related warrants (see division 11.10); and
- 16 (e) does not limit the conditions to which a licence can be subject,
17 and section 64 imposes a condition about monitoring dealings
18 with GMOs.

19 **Division 11.2 Appointment of inspectors and**
20 **identity cards**

21 **150 Appointment of inspectors**

- 22 (1) The regulator may, in writing, appoint any of the following people
23 as inspectors:
- 24 (a) a public servant;
- 25 (b) a person who is appointed or employed by the Commonwealth.

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

3 *Note* This section differs from the Commonwealth Act, s 150.

4 **151 Identity card**

- 5 (1) The regulator must issue an identity card to an inspector.

- 6 (2) The identity card—

7 (a) must be in the form approved under section 192E; and

8 (b) must contain a recent photograph of the inspector.

- 9 (3) If a person to whom an identity card has been issued ceases to be an
10 inspector, the person must return the identity card to the regulator as
11 soon as practicable.

12 Maximum penalty: 1 penalty unit.

- 13 (4) An offence against subsection (3) is an offence of strict liability.

14 *Note* For offences of strict liability, see the Criminal Code, s 17.

- 15 (5) An inspector must carry his or her identity card at all times when
16 exercising functions as an inspector.

17 *Note* This section differs from the Commonwealth Act, s 151.

18 **Division 11.3 Monitoring powers**

19 **152 Powers available to inspectors for monitoring compliance**

- 20 (1) For monitoring compliance with this Act, an inspector may—

21 (a) enter any premises; and

22 (b) exercise the monitoring powers stated in section 153.

- 23 (2) An inspector may enter premises under subsection (1) only if—

24 (a) the occupier of the premises has consented to the entry; or

25 (b) the entry is made under a warrant under section 172; or

1 (c) the occupier of the premises is a licence holder, or a person
2 covered by a licence, and the entry is at a reasonable time.

3 (3) However, subsection (2) (c) does not authorise entry into any part of
4 premises that is being used solely for residential purposes.

5 **153 Monitoring powers**

6 (1) The monitoring powers an inspector may exercise under section
7 152 (1) (b) are as follows:

8 (a) to search the premises and anything on the premises;

9 (b) to inspect, examine, take measurements of, conduct tests on, or
10 take samples of, anything on the premises that relates to a
11 GMO;

12 (c) to take photographs, make video or audio recordings or make
13 sketches of the premises or anything on the premises;

14 (d) if the inspector was authorised to enter the premises by a
15 warrant under section 172, to require anyone in or on the
16 premises to—

17 (i) answer any questions put by the inspector; and

18 (ii) produce any document requested by the inspector;

19 (e) to inspect any document on the premises;

20 (f) to take extracts from or make copies of any document;

21 (g) to take onto the premises the equipment and materials the
22 inspector requires to exercise powers relating to the premises;

23 (h) to secure a thing, until a warrant is obtained to seize it, if the
24 inspector—

25 (i) finds the thing during the exercise of monitoring powers
26 on the premises; and

27 (ii) believes on reasonable grounds the thing is evidential
28 material; and

- 1 (iii) believes on reasonable grounds the thing would be lost,
2 destroyed or tampered with before the warrant can be
3 obtained.
- 4 (2) The monitoring powers include the power to operate equipment at
5 premises to see whether—
- 6 (a) the equipment; or
- 7 (b) a disk, tape or other storage device that—
- 8 (i) is at the premises; and
- 9 (ii) can be used with the equipment or is associated with it;
- 10 contains information relevant to deciding whether there has been
11 compliance with this Act.
- 12 (3) If the inspector, after operating equipment at the premises, finds that
13 the equipment, or a tape, disk or other storage device at the
14 premises, contains information mentioned in subsection (2), the
15 inspector may—
- 16 (a) operate facilities at the premises to put the information in
17 documentary form and copy the document so produced; or
- 18 (b) if the information can be transferred to a tape, disk or other
19 storage device that—
- 20 (i) is brought to the premises; or
- 21 (ii) is at the premises and the use of which for the purpose
22 has been agreed to in writing by the occupier of the
23 premises;
- 24 operate the equipment or other facilities to copy the
25 information to the storage device, and remove the storage
26 device from the premises.

1 **Division 11.4 Offence-related powers**

2 **154 Searches and seizures related to offences**

3 (1) This section applies if an inspector has reasonable grounds for
4 suspecting there may be evidential material on any premises.

5 (2) The inspector may—

6 (a) enter the premises, with the consent of the occupier or under a
7 warrant issued under section 173; and

8 (b) exercise the powers set out in subsection (3) and section 155;
9 and

10 (c) if the entry is under a warrant and the inspector finds evidential
11 material on the premises—seize the material.

12 (3) If—

13 (a) in the course of searching, under a warrant, for a particular
14 thing, an inspector finds another thing that the inspector
15 believes, on reasonable grounds, to be evidential material; and

16 (b) the inspector believes, on reasonable grounds, that it is
17 necessary to seize that other thing to prevent its concealment,
18 loss or destruction, or its use in committing, continuing or
19 repeating an offence against this Act;

20 the warrant is taken to authorise the inspector to seize the other
21 thing.

22 **155 Offence-related powers of inspectors for premises**

23 The powers an inspector may exercise under section 154 (2) (b) are
24 as follows:

25 (a) to search the premises and anything on the premises for the
26 evidential material;

27 (b) to inspect, examine, take measurements of, conduct tests on, or
28 take samples of the evidential material;

- 1 (c) to take photographs, make video or audio recordings or make
2 sketches of the premises or the evidential material;
- 3 (d) to take onto the premises the equipment and materials the
4 inspector needs to exercise powers relating to the premises.

5 **156 Use of equipment at premises**

- 6 (1) The inspector may operate equipment at the premises to see whether
7 evidential material is accessible by doing so, if the inspector
8 believes, on reasonable grounds, that the equipment can be operated
9 without damaging the equipment.
- 10 (2) If the inspector, after operating the equipment, finds that evidential
11 material is accessible by doing so, the inspector may—
- 12 (a) seize the equipment and any disk, tape or other associated
13 device; or
- 14 (b) if the material can, by using facilities at the premises, be put in
15 documentary form—operate the facilities to put the material in
16 documentary form and seize the documents so produced; or
- 17 (c) if the material can be transferred to a disk, tape or other storage
18 device that—
- 19 (i) is brought to the premises; or
- 20 (ii) is at the premises and the use of which for the purpose
21 has been agreed to in writing by the occupier of the
22 premises;
- 23 operate the equipment or other facilities to copy the material to
24 the storage device and take the storage device from the
25 premises.
- 26 (3) An inspector may seize equipment under subsection (2) (a) only if—
- 27 (a) it is not practicable to put the material in documentary form as
28 mentioned in subsection (2) (b) or to copy the material as
29 mentioned in subsection (2) (c); or

1 (b) possession by the occupier of the equipment could constitute
2 an offence.

3 (4) An inspector may seize equipment under subsection (2) (a) or
4 documents under subsection (2) (b) only if the inspector entered the
5 premises under a warrant.

6 **Division 11.5 Expert assistance**

7 **157 Expert assistance to operate thing**

8 (1) If an inspector believes on reasonable grounds that—

9 (a) information relevant to deciding whether there has been
10 compliance with this Act, or evidential material, may be
11 accessible by operating a thing at particular premises; and

12 (b) expert assistance is required to operate the thing; and

13 (c) the information or material may be destroyed, altered or
14 otherwise interfered with if the inspector does not take action
15 under this subsection;

16 the inspector may do whatever is necessary to secure the thing,
17 whether by locking it up, placing it under guard or otherwise.

18 (2) The inspector must give notice to the occupier of the premises of the
19 inspector's intention to secure the thing and of the fact that the thing
20 may be secured for up to 24 hours.

21 (3) The thing may be secured—

22 (a) for a period of not longer than 24 hours; or

23 (b) until the thing has been operated by the expert;

24 whichever happens first.

25 (4) If the inspector believes, on reasonable grounds, that the expert
26 assistance will not be available within 24 hours, the inspector may
27 apply to the Magistrates Court for an extension of the period.

- 1 (5) The inspector must give notice to the occupier of the premises of the
2 inspector's intention to apply for an extension, and the occupier is
3 entitled to be heard on the application.

4 **Division 11.6 Emergency powers**

5 **158 Powers available to inspectors for dealing with** 6 **dangerous situations**

- 7 (1) This section applies if—
- 8 (a) an inspector has reasonable grounds for suspecting that there
9 may be on any premises a particular thing in relation to which
10 this Act has not been complied with; and
- 11 (b) the inspector considers that it is necessary to exercise powers
12 under this section to avoid an imminent risk of death, serious
13 illness, serious injury, or to protect the environment.
- 14 (2) The inspector may do any of the following:
- 15 (a) enter the premises;
- 16 (b) search the premises for the thing;
- 17 (c) secure the thing, if the inspector finds it on the premises, until a
18 warrant is obtained to seize the thing;
- 19 (d) if the inspector has reasonable grounds for suspecting that a
20 person has not complied with this Act in relation to the
21 thing—require the person to take the steps the inspector
22 considers necessary for the person to comply with this Act;
- 23 (e) take the steps, or arrange for the steps to be taken, in relation to
24 the thing that the inspector considers appropriate.
- 25 (3) The inspector may exercise the powers under subsection (2) only to
26 the extent that it is necessary for avoiding an imminent risk of death,
27 serious illness, serious injury or serious damage to the environment.

- 1 (4) If the regulator incurs costs because of steps reasonably taken or
2 arranged to be taken by an inspector under subsection (2) (e), the
3 person is liable to pay to the Territory an amount equal to the cost.

4 *Note* The *Legislation Act 2001*, s 177 (Recovery of amounts owing under
5 laws) applies to the recovery of the amount.

6 **Division 11.7 Obligations and incidental powers**
7 **of inspectors**

8 **159 Inspector must produce identity card on request**

9 An inspector is not entitled to exercise a power under this part in
10 relation to premises if—

- 11 (a) the occupier of the premises has required the inspector to
12 produce his or her identity card for inspection by the occupier;
13 and
14 (b) the inspector fails to comply with the requirement.

15 **160 Consent**

16 (1) When seeking the consent of an occupier for section 152 (2) (a) or
17 154 (2) (a), an inspector must—

- 18 (a) produce his or her identity card; and
19 (b) tell the occupier—
20 (i) the purpose of the entry; and
21 (ii) that anything found and seized under this part may be
22 used in evidence in court; and
23 (iii) that consent may be refused.

24 (2) If the occupier consents, the inspector must ask the occupier to sign
25 a written acknowledgment—

- 26 (a) that the occupier was told—
27 (i) the purpose of the entry; and

- 1 (ii) that anything found and seized under this part may be
2 used in evidence in court; and
- 3 (iii) that consent may be refused; and
- 4 (b) that the occupier consented to the entry; and
- 5 (c) stating the time, and date, when consent was given.
- 6 (3) If the occupier signs an acknowledgment of consent, the inspector
7 must immediately give a copy to the occupier.
- 8 (4) A court must presume that an occupier of premises did not consent
9 to an entry to the premises by an inspector under this part if—
- 10 (a) the question whether the occupier consented to the entry arises
11 in a proceeding in the court; and
- 12 (b) an acknowledgment under this section is not produced in
13 evidence for the entry; and
- 14 (c) it is not proved that the occupier consented to the entry.

15 *Note* This section differs from the Commonwealth Act, s 160.

16 **161 Details of warrant to be given to occupier etc**

- 17 (1) If a warrant in relation to premises is being executed and the
18 occupier of the premises or someone else who apparently represents
19 the occupier is present at the premises, the inspector must make a
20 copy of the warrant available to the person present.
- 21 (2) The inspector must identify himself or herself to the person.
- 22 (3) The copy of the warrant need not include the signature of the
23 magistrate who issued the warrant.

24 **162 Announcement before entry**

- 25 (1) An inspector must, before entering premises under a warrant—
- 26 (a) announce that the inspector is authorised to enter the premises;
27 and

- 1 (b) give anyone at the premises an opportunity to allow entry to
2 the premises.
- 3 (2) An inspector is not required to comply with subsection (1) if the
4 inspector believes, on reasonable grounds, that immediate entry to
5 the premises is required—
- 6 (a) to ensure the safety of a person; or
7 (b) to prevent serious damage to the environment; or
8 (c) to ensure that the effective execution of the warrant is not
9 frustrated.

10 **163 Compensation for damage**

- 11 (1) The owner of a thing is entitled to compensation for damage to the
12 thing if—
- 13 (a) the damage was caused to the thing because of it being
14 operated as mentioned in this part; and
15 (b) the damage was caused because of—
- 16 (i) insufficient care being exercised in selecting the person
17 to operate the thing; or
18 (ii) insufficient care being exercised by the person operating
19 the thing.
- 20 (2) Compensation is payable by the regulator.
- 21 (3) In deciding the amount of compensation payable, regard is to be had
22 to whether the occupier of the premises and the occupier's
23 employees and agents, if they were available at the time, had
24 provided any warning or guidance about the operation of the thing
25 that was appropriate in the circumstances.

26 *Note* The Commonwealth Act, s 163 (2) provides for compensation to be
27 payable out of money appropriated by the Commonwealth Parliament.

1 **Division 11.8** **Power to search goods, baggage**
2 **and containers and seize goods**

3 **164** **Power to search goods, baggage etc**

4 (1) This section applies to any goods that are to be, are being, or have
5 been, taken off an aircraft that flies between a place outside the ACT
6 and a place in the ACT.

7 (2) If an inspector believes, on reasonable grounds, that goods are
8 goods to which this section applies, and that the goods may be, or
9 may contain, evidential material, the inspector may—

10 (a) examine the goods; or

11 (b) if the goods are baggage—open and search the baggage; or

12 (c) if the goods are in a container—open and search the container.

13 (3) An inspector may ask a person who owns, is carrying or is otherwise
14 associated with, or appears to the inspector to be associated with,
15 goods to which this section applies, any question about the goods.

16 (4) A person must not fail to answer a question put to the person under
17 subsection (3).

18 Maximum penalty: 30 penalty units.

19 (5) An offence against subsection (4) is an offence of strict liability.

20 *Note 1* For offences of strict liability, see the Criminal Code, s 17.

21 *Note 2* This section differs from the Commonwealth Act, s 164.

22 **165** **Seizure of goods**

23 An inspector may seize goods mentioned in section 164 if the
24 inspector has reasonable grounds to suspect that the goods are
25 evidential material.

1 **Division 11.9** **General provisions relating to**
2 **search and seizure**

3 **166 Copies of seized things to be provided**

4 (1) If an inspector seizes, under a warrant relating to premises—

5 (a) a document, film, computer file or other thing that can be
6 readily copied; or

7 (b) a storage device, the information in which can be readily
8 copied;

9 the inspector must, if asked to do so by the occupier of the premises,
10 or someone else who apparently represents the occupier and who is
11 present when the warrant is executed, give a copy of the thing or the
12 information to that person as soon as practicable after the seizure.

13 (2) Subsection (1) does not apply if—

14 (a) the thing that has been seized was seized under section
15 156 (2) (b) or (c); or

16 (b) possession by the occupier of the document, film, computer
17 file, thing or information could constitute an offence.

18 **167 Occupier entitled to be present during search**

19 (1) If a warrant in relation to premises is being executed and the
20 occupier of the premises, or someone else who apparently represents
21 the occupier is present at the premises, the person is entitled to
22 observe the search being conducted.

23 (2) The right to observe the search being conducted ceases if the person
24 impedes the search.

25 (3) This section does not prevent 2 or more areas of the premises being
26 searched at the same time.

1 **168 Receipts for things seized**

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

6 **169 Keeping seized things**

- 7 (1) Subject to any contrary order of a court, if an inspector seizes a
8 thing under this part, the inspector must return it if—
- 9 (a) the reason for its seizure no longer exists or it is decided that it
10 is not to be used in evidence; or
- 11 (b) the period of 60 days after its seizure ends;
- 12 whichever first happens, unless the thing is forfeited or forfeitable to
13 the Territory.
- 14 (2) At the end of the 60 days mentioned in subsection (1) (b), an
15 inspector must take reasonable steps to return the thing to the person
16 from whom it was seized, unless—
- 17 (a) a proceeding for which the thing may provide evidence was
18 begun before the end of the 60 days and has not been
19 completed (including an appeal to a court in relation to the
20 proceeding); or
- 21 (b) an inspector may keep the thing because of an order under
22 section 170; or
- 23 (c) to return the thing could cause an imminent risk of death,
24 serious illness, serious injury or serious damage to the
25 environment; or
- 26 (d) an inspector is otherwise authorised by a law, or an order of a
27 court, of the Territory or the Commonwealth, to keep, destroy
28 or dispose of the thing.

- 1 (3) The thing may be returned under subsection (2) either
2 unconditionally or on the conditions decided by the regulator.

3 **170 Magistrates Court may permit thing to be kept**

- 4 (1) An inspector may apply to the Magistrates Court for an order that
5 the inspector may keep the thing for a further period if a proceeding
6 for which the thing may provide evidence has not begun before—

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

- 10 (2) If the Magistrates Court is satisfied that it is necessary for an
11 inspector to continue to keep the thing—

- 12 (a) for an investigation about whether an offence against this Act
13 has been committed; or
14 (b) to allow evidence of an offence against this Act to be secured
15 for a prosecution;

16 the court may order that an inspector may keep the thing for a period
17 (not longer than 3 years) stated in the order.

- 18 (3) Before making the application, the inspector must—

- 19 (a) take reasonable steps to discover who has an interest in the
20 retention of the thing; and
21 (b) if it is practicable to do so, notify each person whom the
22 inspector believes to have an interest of the proposed
23 application.

24 *Note* This section differs from the Commonwealth Act, s 170.

25 **171 Disposal of goods if there is no owner or owner cannot**
26 **be located**

27 If—

- 28 (a) a thing is seized under this part; and
-

- 1 (b) apart from this section, the Territory is required to return the
2 thing to the owner; and
- 3 (c) there is no owner or the regulator cannot, despite making
4 reasonable efforts, locate the owner;
- 5 the regulator may dispose of the thing in the way the regulator
6 considers appropriate.

7 **Division 11.10 Warrants**

8 **172 Monitoring warrants**

- 9 (1) An inspector may apply to a magistrate for a warrant under this
10 section for premises.
- 11 (2) The magistrate may issue the warrant if the magistrate is satisfied,
12 by evidence on oath, that it is reasonably necessary that 1 or more
13 inspectors should have access to the premises for monitoring
14 compliance with this Act.
- 15 (3) However, the magistrate may issue the warrant only if the inspector
16 or someone else has given to the magistrate, either orally or by
17 affidavit, the further information (if any) that the magistrate requires
18 about the grounds on which the issue of the warrant is being sought.
- 19 (4) The warrant must—
- 20 (a) authorise 1 or more inspectors (whether or not named in the
21 warrant), with any necessary and reasonable assistance and
22 force—
- 23 (i) to enter the premises; and
- 24 (ii) to exercise the powers mentioned in section 153
25 (Monitoring powers) in relation to the premises; and
- 26 (b) state whether the entry is authorised to be made at any time of
27 the day or night or during stated hours of the day or night; and
- 28 (c) specify the day (not later than 6 months after the issue of the
29 warrant) the warrant ceases to have effect; and

1 (d) state the purpose for which the warrant is issued.

2 **173 Offence-related warrants**

3 (1) An inspector may apply to a magistrate for a warrant under this
4 section for premises.

5 (2) The magistrate may issue the warrant if the magistrate is satisfied,
6 by evidence on oath, that there are reasonable grounds for
7 suspecting that there is, or there may be within the next 72 hours,
8 evidential material in or on the premises.

9 (3) However, the magistrate may issue the warrant only if the inspector
10 or someone else has given to the magistrate, either orally or by
11 affidavit, the further information (if any) that the magistrate requires
12 about the grounds on which the issue of the warrant is being sought.

13 (4) The warrant must—

14 (a) name 1 or more inspectors; and

15 (b) authorise the named inspectors, with any necessary and
16 reasonable assistance and force—

17 (i) to enter the premises; and

18 (ii) to exercise the powers mentioned in section 154 (3)
19 (Searches and seizures related to offences) and
20 section 155 (Offence-related powers of inspectors for
21 premises); and

22 (iii) to seize the evidential material; and

23 (c) state whether the entry is authorised to be made at any time of
24 the day or night or during stated hours of the day or night; and

25 (d) state the day (not later than 1 week after the issue of the
26 warrant) the warrant ceases to have effect; and

27 (e) state the purpose for which the warrant is issued.

1 **174 Offence-related warrants by telephone, telex, fax etc**

2 (1) If, in an urgent case, an inspector considers it necessary to do so, the
3 inspector may apply to a magistrate by telephone, telex, fax or other
4 electronic means for a warrant under section 173 for premises.

5 (2) The magistrate may require communication by voice to the extent
6 that it is practicable in the circumstances.

7 (3) Before applying for the warrant, the inspector must prepare an
8 affidavit in relation to the premises stating the grounds on which the
9 warrant is sought.

10 (4) If it is necessary to do so, the inspector may apply for the warrant
11 before the affidavit is sworn.

12 (5) If the magistrate is satisfied—

13 (a) after having considered the terms of the affidavit; and

14 (b) after having received the further information (if any) that the
15 magistrate requires about the grounds on which the issue of the
16 warrant is being sought;

17 that there are reasonable grounds for issuing the warrant, the
18 magistrate may complete and sign the same warrant that the
19 magistrate would issue under section 173 if the application had been
20 made under that section.

21 (6) If the magistrate completes and signs the warrant—

22 (a) the magistrate must—

23 (i) tell the inspector what the terms of the warrant are; and

24 (ii) tell the inspector the date and time the warrant was
25 signed; and

26 (iii) tell the inspector the day (not later than 1 week after the
27 magistrate completes and signs the warrant) the warrant
28 ceases to have effect; and

- 1 (iv) record on the warrant the reasons for issuing the warrant;
2 and
- 3 (b) the inspector must—
- 4 (i) complete a form of warrant in the same terms as the
5 warrant completed and signed by the magistrate; and
- 6 (ii) write on the form the name of the magistrate and the day
7 and time the warrant was signed.
- 8 (7) The inspector must also, not later than the day after the day of
9 expiry or execution of the warrant, whichever is the earlier, send to
10 the magistrate—
- 11 (a) the form of warrant completed by the inspector; and
- 12 (b) the affidavit mentioned in subsection (3), which must have
13 been properly sworn.
- 14 (8) When the magistrate receives the documents mentioned in
15 subsection (7), the magistrate must—
- 16 (a) attach them to the warrant that the magistrate completed and
17 signed; and
- 18 (b) deal with them how the magistrate would have dealt with the
19 affidavit if the application had been made under section 173.
- 20 (9) A form of warrant completed under subsection (6) is authority for
21 any entry, search, seizure or other exercise of a power that the
22 warrant signed by the magistrate authorises.
- 23 (10) If—
- 24 (a) it is material, in a proceeding, for a court to be satisfied that an
25 exercise of a power was authorised by this section; and
- 26 (b) the warrant signed by the magistrate authorising the exercise of
27 the power is not produced in evidence;

1 the onus of proof is on the person relying on the lawfulness of the
2 exercise of the power to prove a warrant authorised the exercise of
3 the power.

4 (11) A reference in this part to a warrant under section 173 includes a
5 reference to a warrant signed by a magistrate under this section.

6 **175 Offences relating to warrants**

7 (1) An inspector must not make, in an application for a warrant, a
8 statement that the inspector knows to be false or misleading in a
9 material particular.

10 Maximum penalty: 120 penalty units , imprisonment for 2 years or
11 both.

12 (2) An inspector must not—

13 (a) state a magistrate's name in a document purporting to be a
14 form of warrant under section 174 unless the magistrate issued
15 the warrant; or

16 (b) state on a form of warrant under section 174 a matter that, to
17 the inspector's knowledge, departs in a material particular from
18 the form authorised by the magistrate; or

19 (c) purport to execute, or present to someone, a document
20 purporting to be a form of warrant under section 174 that the
21 inspector knows—

22 (i) has not been approved by a magistrate under that section;
23 or

24 (ii) departs in a material particular from the terms authorised
25 by a magistrate under that section; or

26 (d) give to a magistrate a form of warrant under section 174 that is
27 not the form of warrant that the inspector purported to execute.

28 Maximum penalty: 120 penalty units , imprisonment for 2 years or
29 both.

1 **Division 11.11 Other matters**

2 **176 Pt 11 not to abrogate privilege against selfincrimination**

3 *Note* The Commonwealth Act, s 176 preserves the privilege against
4 selfincrimination. This provision is unnecessary in the ACT. The
5 *Legislation Act 2001*, s 170 and s 171 deal with the application of the
6 privilege against selfincrimination and client legal privilege.

7 **176A Damage etc to be minimised**

8 (1) In the exercise, or purported exercise, of a function under this part,
9 an inspector must take all reasonable steps to ensure that the
10 inspector, and any person assisting the inspector, causes as little
11 inconvenience, detriment and damage as is practicable.

12 (2) If an inspector, or a person assisting an inspector, damages anything
13 in the exercise or purported exercise of a function under this part,
14 the inspector must give written notice of the particulars of the
15 damage to the person whom the inspector believes, on reasonable
16 grounds, is the owner of the thing.

17 (3) If the damage happens on premises entered under this part in the
18 absence of the occupier, the notice may be given by securing it in a
19 conspicuous place on the premises.

20 *Note* This section does not appear in the Commonwealth Act.

21 **176B Compensation to be paid in certain circumstances**

22 (1) A person may claim compensation from the Territory if the person
23 suffers loss or expense because of the exercise, or purported
24 exercise, of a function under this part by an inspector or a person
25 assisting an inspector.

26 (2) Compensation may be claimed and ordered in a proceeding for—

27 (a) compensation brought in a court of competent jurisdiction; or

28 (b) an offence against this Act brought against the person making
29 the claim for compensation.

1 (3) A court may order the payment of reasonable compensation for the
2 loss or expense only if satisfied it is just to make the order in the
3 circumstances of the particular case.

4 (4) The regulations may prescribe matters that may, must or must not be
5 taken into account by the court in considering whether it is just to
6 make the order.

7 *Note* This section does not appear in the Commonwealth Act.

8 **177 Pt 11 does not limit power to impose licence conditions**

9 This part does not limit the regulator's power to impose licence
10 conditions.
11

1

2 Part 12 Miscellaneous

3 Division 12.1 Simplified outline of part 12

4 178 Simplified outline—pt 12

5 In outline, this part provides for miscellaneous matters, including
6 the following:

- 7 (a) review of decisions;
- 8 (b) provisions relating to confidential commercial information;
- 9 (c) the making of regulations;
- 10 (d) transitional provisions;
- 11 (e) review of the operation of the Act.

12 Division 12.2 Review of decisions

13 179 Meaning of *reviewable decision* and *eligible person*

14 The following table sets out—

- 15 (a) decisions that are *reviewable decisions*; and
- 16 (b) each *eligible person* for a reviewable decision.

column 1 item	column 2 reviewable decision	column 3 eligible person for reviewable decision
1	to refuse to issue a licence under section 55	the applicant for the licence
2	to impose a licence condition under section 55	the licence holder
3	to suspend or cancel a licence under section 68	the licence holder
4	to refuse to transfer a licence under section 70	the licence holder the transferee

column 1 item	column 2 reviewable decision	column 3 eligible person for reviewable decision
5	to vary a licence under section 71	the licence holder
6	to refuse to determine that a dealing with a GMO is to be included on the GMO register under section 78	the applicant for the determination
7	to vary the register in relation to a dealing under section 80	a person undertaking the dealing
8	to refuse to certify a facility under section 84	the applicant for certification
9	to state a condition of a certification under section 86	the holder of the certification
10	to vary a certification under section 87	the holder of the certification
11	to suspend or cancel a certification under section 88	the holder of the certification
12	to refuse to accredit an organisation under section 92	the applicant for accreditation
13	to state a condition of an accreditation under section 94	the holder of the accreditation
14	to vary an accreditation under section 95	the holder of the accreditation
15	to suspend or cancel an accreditation under section 96	the holder of the accreditation
16	to refuse to declare information to be confidential commercial information under section 185	the person who made an application under section 184 in relation to the information

column 1 item	column 2 reviewable decision	column 3 eligible person for reviewable decision
17	to revoke a declaration that information is confidential commercial information under section 186	the person who made an application under section 184 in relation to the information

1 *Note* This section differs from the Commonwealth Act, s 179.

2 **180 Notification of decisions and review rights**

- 3 (1) As soon as practicable after making a reviewable decision, the
4 regulator must give written notice of the decision to each eligible
5 person.
- 6 (2) The notice must contain—
- 7 (a) the terms of the decision; and
- 8 (b) the reasons for the decision; and
- 9 (c) a statement setting out particulars of the person's review rights.
- 10 (3) A failure to comply with this section in relation to a decision does
11 not affect the validity of the decision.

12 **181 Internal review**

- 13 (1) An eligible person for a reviewable decision (other than a decision
14 made by the regulator personally) may apply in writing to the
15 regulator for review of the decision.
- 16 (2) The application must be made within 30 days after the day the
17 reviewable decision first came to the notice of the applicant, or
18 within any period that the regulator, before or after the end of that
19 period, allows.
- 20 (3) On receiving the application, the regulator must review the
21 reviewable decision personally.

- 1 (4) The regulator may—
2 (a) make a decision confirming, varying or revoking the
3 reviewable decision; and
4 (b) if the regulator revokes the decision—make any other decision
5 the regulator considers appropriate.

6 **182 Deadlines for making reviewable decisions**

7 If—

- 8 (a) this Act provides for a person to apply to the regulator to make
9 a reviewable decision; and
10 (b) a period is stated under this Act for giving notice of the
11 decision to the applicant; and
12 (c) the regulator has not notified the applicant of the regulator's
13 decision within the period;
14 the regulator is taken, for this Act, to have made a decision to refuse
15 the application.

16 **183 Review of decisions by Commonwealth administrative**
17 **appeals tribunal**

- 18 (1) Subject to the Commonwealth Administrative Appeals Tribunal
19 Act, an eligible person may apply under that Act for a review of—
20 (a) a reviewable decision made by the regulator personally; or
21 (b) a decision made by the regulator under section 181.
22 (2) In this section:
23 *decision*—see the Commonwealth Administrative Appeals Tribunal
24 Act, section 3.

- 1 the regulator must declare that the information is confidential
2 commercial information for this Act.
- 3 (2) However, the regulator may refuse to declare that the information is
4 confidential commercial information if satisfied that the public
5 interest in disclosure outweighs the prejudice that the disclosure
6 would cause to anyone.
- 7 (3) Also, the regulator must refuse to declare that information is
8 confidential commercial information if the information relates to 1
9 or more locations where field trials involving GMOs are happening,
10 or are proposed to happen, unless satisfied that significant damage
11 to the health and safety of people, the environment or property
12 would be likely to happen if the locations were disclosed.
- 13 *Note* This means that, in general, information about sites where dealings with
14 GMOs are happening will be required to be disclosed under s 54 and
15 s 138, unless the regulator is satisfied that disclosure would involve
16 significant risks to health and safety.
- 17 (4) The regulator must give the applicant written notice of the
18 regulator's decision about the application.
- 19 (5) If—
- 20 (a) the regulator declares that particular information is confidential
21 commercial information; and
- 22 (b) the information relates to 1 or more locations where field trials
23 involving GMOs are happening, or are proposed to happen;
- 24 the regulator must make publicly available a statement of reasons
25 for the making of the declaration, including, for example—
- 26 (c) the reasons why the regulator was satisfied as mentioned in
27 subsection (1); and
- 28 (d) the reasons why the regulator was not satisfied under
29 subsection (2) that the public interest in disclosing the
30 information outweighed the prejudice that the disclosure would
31 cause; and

- 1 (c) knows that the information is confidential commercial
2 information;
3 must not disclose the information.
4 Maximum penalty: 120 penalty units , imprisonment for 2 years or
5 both.
- 6 (2) A person who—
7 (a) has confidential commercial information; and
8 (b) has it because of a disclosure mentioned in subsection (3); and
9 (c) knows that the information is confidential commercial
10 information;
11 must not disclose the information.
12 Maximum penalty: 120 penalty units , imprisonment for 2 years or
13 both.
- 14 (3) This section does not apply to a disclosure of information—
15 (a) to any of the following entities in the course of carrying out
16 functions under this Act, the Commonwealth Act or a
17 corresponding State law:
18 (i) a Territory agency;
19 (ii) the Commonwealth or a Commonwealth authority;
20 (iii) the gene technology technical advisory committee; or
21 (b) by order of a court; or
22 (c) with the consent of the person who applied to have the
23 information treated as confidential commercial information.
- 24 (4) The *Freedom of Information Act 1989*, section 43 (Documents
25 relating to business affairs etc) applies to information to which
26 subsection (1) or (2) applies.
- 27 (5) This section has effect despite anything to the contrary in the
28 *Freedom of Information Act 1989*.
-

1 (6) In this section:

2 *corresponding State law*—see the Commonwealth Act, section 12.

3 *court* includes a tribunal, authority or person having power to
4 require the production of documents or the answering of questions.

5 *disclose*, in relation to information, means give or communicate in
6 any way.

7 *Note* This section differs from the Commonwealth Act, s 187.

8 **Division 12.4 Conduct by directors, employees**
9 **and agents**

10 **188 Conduct by directors, employees and agents**

11 (1) If, in a proceeding for an offence against this Act, it is necessary to
12 establish the state of mind of a corporation in relation to particular
13 conduct, it is enough to show—

14 (a) that the conduct was engaged in by a director, employee or
15 agent of the corporation within the scope of his or her actual or
16 apparent authority; and

17 (b) that the director, employee or agent had the state of mind.

18 *Note* A reference to an offence against a Territory law includes a reference to
19 an offence against the *Crimes Act 1900*, pt 9 (Aiding and abetting,
20 accessories, attempts, incitement and conspiracy) that relates to the law
21 (see *Legislation Act 2001*, s 189).

22 (2) Any conduct engaged in for a corporation by a director, employee or
23 agent of the corporation within the scope of his or her actual or
24 apparent authority is taken, for a prosecution for an offence against
25 this Act, to have been engaged in also by the corporation, unless the
26 corporation establishes that the corporation took reasonable
27 precautions and exercised proper diligence to avoid the conduct.

28 (3) If, in a proceeding for an offence against this Act, it is necessary to
29 establish the state of mind of an individual in relation to particular
30 conduct, it is enough to show—

- 1 (a) that the conduct was engaged in by an employee or agent of the
2 individual within the scope of his or her actual or apparent
3 authority; and
- 4 (b) that the employee or agent had the state of mind.
- 5 (4) Any conduct engaged in for an individual by an employee or agent
6 of the individual, within the scope of the actual or apparent authority
7 of the employee or agent is taken, for a prosecution for an offence
8 against this Act, to have been engaged in also by the individual
9 unless the individual establishes that he or she took reasonable
10 precautions and exercised proper diligence to avoid the conduct.
- 11 (5) If—
- 12 (a) an individual is convicted of an offence; and
- 13 (b) the individual would not have been convicted of the offence if
14 subsections (3) and (4) had not been enacted;
- 15 the individual is not liable to be punished by imprisonment for the
16 offence.
- 17 (6) In this section:
- 18 *director*, of a corporation—see section 189 (2).
- 19 *engage in conduct*—see section 189 (3).
- 20 *state of mind*, of a person—see section 189 (1).
- 21 **189 Meaning of terms in s 188**
- 22 (1) A reference in section 188 (1) or (3) to the *state of mind* of a person
23 includes a reference to—
- 24 (a) the person’s knowledge, intention, opinion, belief or purpose;
25 and
- 26 (b) the person’s reasons for the intention, opinion, belief or
27 purpose.

- 1 (2) A reference in section 188 to a *director* of a corporation includes a
2 reference to a constituent member of a body corporate incorporated
3 for a public purpose by a law of the Territory, the Commonwealth or
4 a State.
- 5 (3) A reference in section 188 to *engaging in conduct* includes a
6 reference to failing or refusing to engage in conduct.

7 **Division 12.5 Transitional provisions**

8 **190 Transitional provision—dealings covered by genetic** 9 **manipulation advisory committee advice to proceed**

- 10 (1) The prohibitions in this Act apply to a dealing with a GMO by a
11 person at a particular time during the transition period (the *dealing*
12 *time*) with the modifications set out in subsection (2) if—
- 13 (a) immediately before the commencement of part 4 (Regulation
14 of dealings with GMOs), an advice to proceed was in force in
15 relation to the dealing with the GMO by the person; and
- 16 (b) the advice to proceed is in force at the dealing time; and
- 17 (c) the dealing is in accordance with the advice to proceed.
- 18 (2) Unless the dealing is a notifiable low risk dealing, an exempt
19 dealing or a dealing on the GMO register—
- 20 (a) the advice to proceed is taken for this Act to be a GMO
21 licence; and
- 22 (b) the holder of the advice to proceed is taken to be the licence
23 holder; and
- 24 (c) the licence is taken to be subject to any conditions to which the
25 advice to proceed is subject; and
- 26 (d) the licence is taken to remain in force for the period ending at
27 the earliest of the following times:
- 28 (i) the time when the advice to proceed expires;

- 1 (ii) the end of the transition period;
2 (iii) when the licence is cancelled under section 68 or
3 surrendered under section 69.

4 (3) In this section:

5 *advice to proceed* means an advice to proceed issued by the Genetic
6 Manipulation Advisory Committee in accordance with guidelines
7 issued by the committee.

8 *transition period* means the period, not longer than 2 years,
9 prescribed under the regulations for this section.

10 *Note* The Commonwealth Act, s 190 (3) defines the ‘transition period’ as
11 being 2 years from the commencement of part 4 of that Act.

12 **191 Regulations may relate to transitional matters**

13 Regulations may be made in relation to transitional matters arising
14 from the enactment of this Act.

15 **191A Expiry of div 12.5**

16 (1) This division expires 2 years after it commences.

17 (2) Section 190 is a law to which the *Legislation Act 2001*, s 88 (Repeal
18 does not end transitional or validating effect etc) applies.

19 *Note* This section does not appear in the Commonwealth Act.

20 **Division 12.6 Other provisions**

21 **192 False or misleading information or document**

22 A person must not—

23 (a) in connection with an application made to the regulator under
24 this Act; or

25 (b) in compliance or purported compliance with this Act;

26 do either of the following:

- 1 (c) give information (whether orally or in writing) that the person
2 knows is false or misleading in a material particular;
- 3 (d) produce a document that the person knows is false or
4 misleading in a material particular without—
- 5 (i) indicating to the person to whom the document is
6 produced that it is false or misleading, and how it is false
7 or misleading; and
- 8 (ii) providing correct information to the person to whom the
9 document is produced, if the person producing the
10 document is in possession of, or can reasonably acquire,
11 the correct information.
- 12 Maximum penalty: 60 penalty units, imprisonment for 1 year or
13 both.

14 **192A Interference with dealings with GMOs**

- 15 (1) A person commits an offence if—
- 16 (a) the person engages in conduct; and
- 17 (b) the conduct—
- 18 (i) results in damage to, destruction of, or interference with,
19 premises or a facility where dealings with GMOs are
20 being undertaken; or
- 21 (ii) involves damaging, destroying, or interfering with, a
22 thing at, or removing a thing from, the premises or
23 facility; and
- 24 (c) the owner or occupier of the premises or facility, or the owner
25 of the thing (as the case requires), has not consented to the
26 conduct; and
- 27 (d) in engaging in the conduct, the person intends to prevent or
28 hinder authorised GMO dealings that are being undertaken at
29 the premises or facility; and

1 (e) the person knows, or is reckless about, the matters mentioned
2 in paragraphs (b) and (c).

3 Maximum penalty: 120 penalty units , imprisonment for 2 years or
4 both.

5 (2) In this section—

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

8 (a) that are authorised to be undertaken at the premises or facility
9 by a GMO licence; or

10 (b) that are notifiable low risk dealings; or

11 (c) that are exempt dealings; or

12 (d) that are included on the GMO register.

13 *Note* This section differs from the Commonwealth Act, s 192A.

14 **192B Cloning of human beings is prohibited**

15 *Note* The Commonwealth Act, s 192B prohibits the cloning of whole human
16 beings.

17 **192C Certain experiments involving animal eggs prohibited**

18 *Note* The Commonwealth Act, s 192C prohibits experiments or research
19 involving putting human cells, or a combination of human cells and
20 animal cells, into animal eggs.

21 **192D Certain experiments involving putting human and animal 22 cells into human uterus prohibited**

23 *Note* The Commonwealth Act, s 192D prohibits experiments or research
24 involving putting a combination of human cells and animal cells into a
25 human uterus.

26 **192E Approved forms**

27 (1) The regulator may, in writing, approve forms for this Act.

1 (2) If the regulator approves a form for a particular purpose, the
2 approved form must be used for the purpose.

3 (3) An approved form is a notifiable instrument.

4 *Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

5 **193 Regulation-making power**

6 (1) The Executive may make regulations for this Act.

7 *Note* Regulations must be notified, and presented to the Legislative
8 Assembly, under the *Legislation Act 2001*.

9 (2) The regulations may require a person to comply with codes of
10 practice or guidelines issued under this Act as in force at a particular
11 time or from time to time.

12 (3) The regulations may apply, adopt or incorporate a law or
13 instrument, or a provision of a law or instrument, as in force from
14 time to time.

15 *Note 1* A statutory instrument may also apply, adopt or incorporate (with or
16 without change) a law or instrument (or a provision of a law or
17 instrument) as in force at a particular time (see *Legislation Act 2001*,
18 s 47 (2) and (3)).

19 *Note 2* If a statutory instrument applies, adopts or incorporates a law or
20 instrument (or a provision of a law or instrument), the law, instrument
21 or provision may be taken to be a notifiable instrument that must be
22 notified under the *Legislation Act 2001* (see s 47 (5)-(7)).

23 *Note 3* This section differs from the Commonwealth Act, s 193.

24 **194 Review of operation of Act**

25 (1) The Minister must arrange for an independent review of the
26 operation of this Act to be undertaken as soon as practicable after
27 4 years after the commencement of this Act.

28 (2) A person who undertakes the review must give the Minister a
29 written report of the review.

- 1 (3) The Minister must present a copy of the report of the review to the
2 Legislative Assembly within 5 years after the commencement of this
3 Act.
- 4 (4) In this section:
- 5 *independent review* means a review undertaken by people who—
- 6 (a) the Minister considers have appropriate qualifications to
7 undertake the review; and
- 8 (b) include 1 or more people who are not employed by the
9 Territory, a Territory agency, the Commonwealth or a
10 Commonwealth authority.
- 11 *Note* This section differs from the Commonwealth Act, s 194.
- 12 (5) This section expires 5 years after it commences.
13

1

2 Dictionary

3 (see s 10 (1))

4 *Note* The definitions in this dictionary have equivalent definitions in the
5 Commonwealth Act, s 10 (1).

6 ***accredited organisation*** means an organisation accredited under
7 division 7.3.

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

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

10 ***Commonwealth authority*** means—

11 (a) a corporation established for a public purpose under a
12 Commonwealth Act; or

13 (b) a company in which a controlling interest is held by any 1 of
14 the following, or by 2 or more of the following together:

15 (i) the Commonwealth;

16 (ii) a corporation mentioned in paragraph (a);

17 (iii) an entity mentioned in subparagraph (i) or (ii).

18 ***Commonwealth administrative appeals tribunal*** means the
19 Administrative Appeals Tribunal established under the
20 Commonwealth Administrative Appeals Tribunal Act.

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

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

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

27 ***consultative committee*** means the gene technology community
28 consultative committee.

1 **containment level**, for a facility, means the degree of physical
2 confinement of GMOs provided by the facility, having regard to the
3 design of the facility, the equipment located or installed in the
4 facility and the procedures generally used within the facility.

5 **deal with** a GMO means any of the following:

- 6 (a) conduct experiments with the GMO;
- 7 (b) make, develop, produce or manufacture the GMO;
- 8 (c) breed the GMO;
- 9 (d) propagate the GMO;
- 10 (e) use the GMO in the course of manufacturing a thing that is not
11 the GMO;
- 12 (f) grow, raise or culture the GMO;
- 13 (g) import the GMO;

14 and includes the possession, supply, use, transport or disposal of the
15 GMO for, or in the course of, a dealing mentioned in any of
16 paragraphs (a) to (g).

17 **eligible person**, for a reviewable decision—see section 179.

18 **environment** includes—

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

22 **ethics committee** means the gene technology ethics committee.

23 **evidential material** means any of the following:

- 24 (a) a thing in relation to which an offence against this Act has been
25 committed or is suspected, on reasonable grounds, to have
26 been committed;

1 (b) a thing that there are reasonable grounds for suspecting will
2 provide evidence about the commission of an offence
3 mentioned in paragraph (a);

4 (c) a thing that there are reasonable grounds for suspecting is
5 intended to be used for committing an offence against this Act.

6 ***exempt dealing*** means a dealing prescribed under the regulations as
7 an exempt dealing.

8 ***facility*** includes, but is not limited to, the following:

9 (a) a building or part of a building;

10 (b) a laboratory;

11 (c) an aviary;

12 (d) a glasshouse;

13 (e) an insectary;

14 (f) an animal house;

15 (g) an aquarium or tank.

16 ***gene technology*** means any technique for modifying genes or other
17 genetic material, but does not include—

18 (a) sexual reproduction; or

19 (b) homologous recombination; or

20 (c) any other technique prescribed under the regulations for this
21 paragraph.

22 ***gene technology account*** means the Gene Technology Account
23 established under the Commonwealth Act, section 129.

24 ***gene technology agreement*** means the Gene Technology
25 Agreement made for the purposes of this Act between the
26 Commonwealth and at least 4 States, as in force from time to time.

1 **gene technology community consultative committee** means the
2 Gene Technology Community Consultative Committee established
3 under the Commonwealth Act, section 106.

4 **gene technology ethics committee** means the Gene Technology
5 Ethics Committee established under the Commonwealth Act,
6 section 111.

7 **gene technology regulator** means the Gene Technology Regulator
8 appointed under the Commonwealth Act, section 118.

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

12 **genetically modified organism** means—

- 13 (a) an organism that has been modified by gene technology; or
14 (b) an organism that has inherited particular traits from an
15 organism (the **initial organism**), if the traits occurred in the
16 initial organism because of gene technology; or
17 (c) anything declared under the regulations to be a genetically
18 modified organism;
19 but does not include—
20 (d) a human being, if the human being is an organism mentioned
21 in paragraph (a) only because the human being has undergone
22 somatic cell gene therapy; or
23 (e) an organism declared under the regulations not to be a
24 genetically modified organism.

25 **GMO** means a genetically modified organism.

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

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

- 1 **GM product** means a thing (other than a GMO) derived or produced
2 from a GMO.
- 3 **GM record** means the Record of GMO and GM Product Dealings
4 mentioned in the Commonwealth Act, section 138.
- 5 **institutional biosafety committee** means a committee established by
6 an accredited organisation as an institutional biosafety committee.
- 7 **intentional release of a GMO into the environment**—see
8 section 11.
- 9 **licence holder** means the holder of a GMO licence.
- 10 **Ministerial council** means the Ministerial Council within the
11 meaning of the gene technology agreement.
- 12 **notifiable low risk dealing** means a dealing declared to be a
13 notifiable low risk dealing under section 74.
- 14 **officer**, of the Commonwealth, includes the following:
- 15 (a) a Commonwealth Minister;
- 16 (b) a person who holds—
- 17 (i) an office established under a Commonwealth Act; or
- 18 (ii) an appointment made under a Commonwealth Act; or
- 19 (iii) an appointment made by the Governor-General or a
20 Commonwealth Minister other than under a
21 Commonwealth Act;
- 22 (c) a person who is a member or officer of a Commonwealth
23 authority;
- 24 (d) a person who is in the service or employment of the
25 Commonwealth or of a Commonwealth authority, or is
26 employed or engaged under a Commonwealth Act.
- 27 **organism** means any biological entity that is—
- 28 (a) viable; or

-
- 1 (b) capable of reproduction; or
- 2 (c) capable of transferring genetic material.
- 3 ***person covered by a GMO licence*** means a person authorised by a
- 4 GMO licence to deal with a GMO.
- 5 ***premises*** includes the following:
- 6 (a) a building;
- 7 (b) a place, including an area of land;
- 8 (c) a vehicle;
- 9 (d) a vessel;
- 10 (e) an aircraft;
- 11 (f) a facility;
- 12 (g) any part of premises, including premises mentioned in
- 13 paragraphs (a) to (f).
- 14 ***regulator*** means the gene technology regulator.
- 15 ***reviewable decision***—see section 179.
- 16 ***State*** includes the Territory.
- 17 *Note* ***State*** also includes the Northern Territory (see *Legislation Act 2001*,
- 18 dict, pt 1).
- 19 ***Territory agency*** means—
- 20 (a) the Territory; or
- 21 (b) a Minister; or
- 22 (c) an administrative unit; or
- 23 (d) a Territory instrumentality, and any other corporation
- 24 established for a public purpose under a Territory law; or
- 25 (e) a company in which a controlling interest is held by any 1 of
- 26 the following, or by 2 or more of the following together:
-

- 1 (i) the Territory;
- 2 (ii) a Minister;
- 3 (iii) a corporation mentioned in paragraph (d);
- 4 (iv) an entity mentioned in subparagraphs (i) to (iii).
- 5 *thing* includes a substance, and a thing in electronic or magnetic
- 6 form.
-

Endnote

Penalty units

The *Legislation Act 2001*, s 133 deals with the meaning of offence penalties that are expressed in penalty units

© Australian Capital Territory 2002