

THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY

**EXPLANATORY MEMORANDUM**

*GENE TECHNOLOGY BILL 2002*

Distributed by Authority of the Minister for Health

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# *Gene Technology Bill 2002*

## **Overview**

This Bill is an important component of a national framework for the regulation of gene technology. It proposes new legislation to regulate the use of gene technology in the ACT in order to protect the public and the environment from potential risks of the technology.

A national model Bill to regulate gene technology was prepared with input from States and Territories. The *Inter-Governmental Agreement on Gene Technology* commits States and Territories to introduce legislation based on that model.

This Bill is based on the national model Bill.

The Commonwealth will wind back the application of its *Gene Technology Act 2000* (the Commonwealth Act) as States and Territories get consistent legislation in place. This Bill is suitably consistent with the Commonwealth Act.

There are some differences to the Commonwealth Act. Some provisions are more relevant to the Commonwealth and it is not necessary for the provision to also be in State/Territory legislation, therefore, these provisions have been omitted. Also, some minor differences appear due to an attempt to keep with usual ACT drafting practice. Where the Bill varies from the Commonwealth *Gene Technology Act 2000*, a note is provided to that effect.

Specific terms are defined in the Dictionary at the end of the Act and in some places throughout the Act.

Note: In this Explanatory Memorandum, the Commonwealth *Gene Technology Act 2000* will simply be referred to as the Commonwealth Act.

# EXPLANATORY MEMORANDUM

## Part 1 Preliminary

### Clause 1 – Name of Act

Clause 1 is a formal clause declaring the name of the Act (if the Bill is passed) to be the *Gene Technology Act 2002*. It provides that the Act can also be referred to as the ‘Gene Technology Law of the ACT’ or the ‘Gene Technology Law’.

### Clause 2 – Commencement

Clause 2 specifies that the Act will commence on a date to be fixed by the Minister.

As the *Legislation Act 2001* applies, if the Act or any provision of the Act has not commenced within 6 months of notification of the Act, it will automatically commence on the following day. In relation to the naming and commencement provisions, these will commence on the day that the Act is notified.

### Clause 3 – Object of Act

Clause 3 provides the object of the Bill, which is to protect the health and safety of people and the environment by identifying risks posed by gene technology (or resulting from gene technology) and by managing those risks by regulation of dealings with genetically modified organisms (GMOs).

### Clause 4 – Regulatory framework to achieve object

Clause 4 explains the intention that the object of the Bill will be achieved through a regulatory system that will oversee gene technology. The Bill provides for an efficient and effective system for the application of gene technology.

Clause 4 also specifies that where there is a risk of serious or irreversible environmental damage, cost-effective environmental protection measures should not be delayed due to a lack of scientific certainty. Because significant and permanent environmental damage might result, it is best to take a precautionary approach.

The regulatory framework is to operate in conjunction with other Commonwealth and State regulatory schemes relevant to genetically modified (GM) organisms and products. For example:

- Food (including GM food) is regulated under State and Territory food Acts and the national Food Standards Code;
- Therapeutic goods (including GM therapeutic goods) are regulated under the *Therapeutic Goods Act 1989*;
- Agricultural and veterinary chemicals (including GM agricultural and veterinary chemicals) are regulated by the National Registration Authority;

- Import arrangements for GMOs are administered by the Australian Quarantine and Inspection Service in accordance with the *Quarantine Act 1908*); and
- Other State and Territory legislation may effect the use of GMOs, such as biological control legislation, environment legislation and fisheries legislation.

#### **Clause 5 – Nationally consistent scheme**

Clause 5 notes that it is intended that the Bill will be part of a nationally consistent scheme for the regulation of certain dealings with GMOs.

#### **Clause 6 – Act to bind the Crown**

No provision is included here; only a note that the Commonwealth Act includes a provision to bind the Crown. This clause is not necessary in the ACT because this matter is covered by the ACT *Legislation Act*.

#### **Clause 7 – External Territories**

No provision is included here; only a note that the Commonwealth Act includes a provision that extends that Act to all external Territories other than Norfolk Island.

#### **Clause 8 – Offences**

Clause 8 specifies that the *Criminal Code 2001* applies to all offences against the Bill.

#### **Clause 8A – Numbering**

Clause 8A explains that in order to maintain consistency in numbering between this Bill and the Commonwealth Act, if a section of the Commonwealth Act includes a section that is not required in this Bill, the section number and heading of that section will be included in the Bill even though the body of that section will not be included. In addition, if this Bill contains a clause that is not in the Commonwealth Act, that section will be numbered in a manner that will maintain consistency in numbering between sections common to the Bill and the Commonwealth Act.

#### **Clause 8B - Notes**

Clause 8B provides that notes do not form part of the Bill.

#### **Clause 8C – Outlines**

Clause 8C provides that the provisions at the beginning of Parts 2 – 12, which outline those Parts, are only intended as a guide regarding the general scheme and effect of that Part.

## **Part 2 Interpretation and Operation of Act**

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

### **Clause 9 – Simplified outline – pt 2**

Clause 9 gives a simplified outline of Part 2.

## **Division 2.2 Interpretation**

### **Clause 10 – Dictionary etc**

Clause 10 explains that the dictionary at the end of the Bill is part of the Bill. The Dictionary defines words and phrases used in the Bill.

Clause 10 also provides that, where the Ministerial Council is required or permitted to do something, it must be undertaken in accordance with the *Inter-Governmental Agreement on Gene Technology*.

### **Clause 11 – Meaning of intentional release of a GMO into the environment**

Clause 11 describes the circumstances in which a dealing will be considered to involve an intentional release into the environment.

### **Clause 12 – Meaning of corresponding State law**

No provision is included here; only a note stating that the Commonwealth Act includes a provision defining “corresponding State law” for the purposes of that Act.

## **Division 2.3 Operation of Act**

### **Clause 13 – Operation of Act**

No provision is included here; only a note that states that the Commonwealth Act includes a provision about the application of that Act.

### **Clause 14 - Wind-back of reach of Act**

No provision is included here; only a note to the effect that the Commonwealth Act includes a provision about giving wind-back notices to a State. Therefore, when a state or Territory puts consistent gene technology legislation in place, a wind-back notice will be given to recognise that the Commonwealth Act will no longer need to cover that jurisdiction.

### **Clause 15 – Relationship to other Territory laws**

Clause 15 provides that the Bill is not intended to cover the field in respect of GMOs. The provisions of the Bill are in addition to, and not in substitution for, the requirements of any other law of the Territory.

## **Division 4 Provisions to facilitate a nationally consistent scheme**

### **Subdivision 2.4.1 General provisions**

### **Clause 16 – State laws may operate concurrently**

No provision is included here; only a note that the Commonwealth Act includes a provision allowing State laws to operate concurrently with that Act.

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

No provision is included here, only a note stating that the Commonwealth Act includes a provision allowing corresponding State laws to confer functions, powers and duties on certain Commonwealth officers and bodies.

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

Clause 18 provides that a person cannot be ordered to pay a monetary penalty twice for the same conduct. If the person has been ordered to pay a penalty under the Commonwealth Act for an offence, then the person is not liable to also pay a penalty to the ACT for the same offence.

The Bill does not refer to a person being prosecuted twice, because that is covered by the *Legislation Act 2001*.

### **Clause 19 – Review of certain decisions**

Clause 19 allows applications to be made to the Administrative Appeals Tribunal for review of reviewable decisions.

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

Clause 20 states that licences, certificates and other things done under this Bill remain valid even if they have also been done for the purposes of the Commonwealth Act.

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

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

Clause 21 enables the Ministerial council to issue policy principles in relation to specific issues. Before issuing a policy principle, the Ministerial council must be satisfied that the policy principle was developed in accordance with section 22 of the Commonwealth Act.

Clause 21 also provides that, while regulations may relate to matters beyond public health and safety and the environment, they must not harm the health and safety of the public or the environment.

### **Clause 22 - Consultation on policy principles**

No provision is included here; only a note advising that the Commonwealth Act includes a provision about how policy principles are to be developed.

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

Clause 23 allows the Ministerial council to issue policy guidelines relating to the regulator's functions under this Bill.



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

Clause 24 allows the Ministerial council to issue codes of practice, which are disallowable instruments developed under the Commonwealth Act.

Section 24(2) of the Commonwealth Act provides that the Ministerial council must not issue a code of practice unless the code was developed by the regulator in consultation with specific bodies and groups.

## **Part 3 Gene technology regulator**

### **Clause 25 – Simplified outline – pt 3**

Clause 25 provides a simplified outline of Part 3.

### **Clause 26 – Gene technology regulator**

No provision is included here; only a note that the Commonwealth Act creates the office of Gene Technology regulator.

### **Clause 27 – Functions of regulator**

Clause 27 sets out the functions of the regulator, such as licensing, drafting policy principles and guidelines, developing codes of practice and providing information and advice about the regulation of GMOs.

### **Clause 28 – Powers of regulator**

No provision is included here; only a note that the Commonwealth Act gives powers to the regulator.

### **Clause 29 – Delegation**

Clause 29 provides that the regulator may delegate any of the regulator's functions to public servants, employees or officers of a Territory agency or an employee of a Commonwealth authority. It also provides that delegates must comply with any directions of the regulator.

### **Clause 30 – Independence of regulator**

Clause 30 gives the regulator discretion in his or her functions under the Bill. The clause specifies that the regulator is not subject to direction from anyone in relation to decisions about GMO licences and licence conditions.

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

### **Division 4.1 Simplified outline**

### **Clause 31 – Simplified outline – pt 4**

Clause 31 provides a simplified outline of Part 4.

## **Division 4.2 Dealings with GMOs must be licensed**

### **Clause 32 – Person not to deal with GMO without licence**

Clause 32 describes the central prohibition in this legislation. It provides that a person is guilty of an offence if he or she deals with a GMO, knowing that the dealing with the GMO is not authorised by a GMO licence or being reckless as to whether or not the dealing is so authorised.

Therefore, a person must not deal with a thing that he or she knows to be a GMO without a licence authorising that dealing, unless the dealing is a notifiable low risk dealing, has been specifically exempted from the application of the legislation under the regulations, or has been placed on the GMO Register.

Clause 32 provides two levels of penalties, with the maximum penalty being much higher for an ‘aggravated offence’. An aggravated offence is defined under clause 38, as an offence that causes or is likely to cause significant damage to the health and safety of people or the environment.

### **Clause 33 – Person not to deal with GMO without licence – strict liability offence**

Clause 33 describes the same offence as clause 32 but enables strict liability to apply in respect of the offence. This means that a smaller penalty may be applied in relation to lesser offences without the need to establish all of the fault elements of the offence.

While it is necessary to establish that the person dealt with the GMO knowing that it was a GMO, the simple fact that he or she dealt with the GMO without a licence or without the dealing being a notifiable low risk dealing, exempt dealing or dealing on the GMO Register, is sufficient evidence of the offence. It will not be necessary to establish that the person knowingly or recklessly dealt with the GMO without approval under the legislation.

### **Clause 34 – Person must not breach conditions of GMO licence**

Clause 34 provides that a holder of a GMO licence is guilty of an offence if he or she intentionally does something, or fails to do something, that they know will result in a breach of a condition of licence or that he or she does so being reckless as to whether or not the action or omission will contravene the licence.

Sub-clause 34 (2) establishes a similar offence for persons covered by a GMO licence who do something, or fail to do something, which results in a breach of a condition of licence. However, in this case it is also necessary for the prosecution to establish that the person had knowledge of the conditions of licence. By contrast, in relation to offences committed by holders of a licence (under subclause 34 (1)) it is assumed that all licence holders would necessarily have knowledge of the conditions of a licence.

Subclause 34 (3) provides that a person commits a separate offence for each day that the contravention continues.

### **Clause 35 – Person must not breach conditions of GMO licence – strict liability offence**

Clause 35 describes the same offences as clause 34 but enables strict liability to apply in respect of the offences. This means that a smaller penalty may be applied in relation to lesser offences without the need to establish all of the fault elements of the offence.

If a person covered by a licence breaches a condition of licence, provided it can be established that he or she had knowledge of the conditions of licence in order for the penalty to be applied, it is not necessary to establish that the person breached the condition of licence knowingly or recklessly.

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

Clause 36 provides that a person is guilty of an offence if the person deals with a GMO, knowing that it is a GMO, and the dealing is in breach of a condition relating to the dealing that is specified on the GMO Register.

Recognising that dealings with GMOs are only entered on the GMO Register after a period of licensing and after the regulator is satisfied that any risks are minimal and that it is no longer necessary for the GMO to be licensed directly, the penalty for breach of any condition is smaller than the penalties for breach of a condition of licence. The maximum penalty is 50 penalty units.

While the person must have dealt with the GMO, knowing that it is a GMO, to be liable of an offence, strict liability applies in relation to establishing that the dealing is on the GMO Register and that the dealing contravened a condition on the Register.

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

Clause 37 provides that a person is guilty of an offence if he or she dealt with a GMO, knowing that it is a GMO, that the dealing is a notifiable low risk dealing, and that the dealing has been undertaken in contravention of the regulations which describe the conditions to be observed.

Strict liability applies in relation to establishing that the dealing is a notifiable low risk dealing and that the dealing was not undertaken in accordance with the conditions prescribed in the regulations.

### **Clause 38 – Aggravated offences – significant damage to health or safety of people or to environment**

Clause 38 describes the concept of an aggravated offence, as referred to in clauses 32, 33, 34 and 35.

An aggravated offence is one that causes significant damage, or is likely to cause significant damage, to the health and safety of people or to the environment.

In order to prove an aggravated offence, the prosecution must prove intent or recklessness in relation to the person's conduct.

## **Part 5 Licensing System**

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

#### **Clause 39 – Simplified outline – pt 5**

Clause 39 provides a simplified outline of Part 5.

### **Division 5.2 Licence applications**

#### **Clause 40 – Person may apply for a licence**

Clause 40 describes the requirements for applying to the regulator for a licence authorising specified dealings with GMOs. The application must specify whether any of the dealings proposed to be authorised by the licence would involve the intentional release of a GMO into the environment.

If an application fee has been prescribed under the regulations, the applicant must provide that fee with the application.

#### **Clause 41 – Application may be withdrawn**

Clause 41 allows the applicant to withdraw his or her licence application at any time before the licence is issued, however, the application fee is not refundable.

#### **Clause 42 – Regulator may require applicant to give further information**

Clause 42 allows the regulator to require an applicant to provide further information. To do this, the regulator must give the applicant written notice of the requirement to provide more information, specifying the period in which the information is to be provided.

#### **Clause 43 – Regulator must consider applications except in certain circumstances**

Clause 43 provides that the regulator must consider an application under clause 40, but that the regulator is not required to consider the application in the circumstances listed under subclause 43 (2).

The clause also specifies that the regulator must issue or refuse to issue the licence within any timeframe prescribed by the regulations.

#### **Clause 44 – Regulator may consult with applicant**

Clause 44 provides that before considering an application in accordance with the requirements of Part 5, the regulator may consult with the applicant or another regulatory agency with respect to any aspect of the application.

### **Clause 45 – Regulator must not use certain information in considering licence application**

Clause 45 provides that if a person gives confidential commercial information in support of a licence application, the regulator must not take that information into account in considering an application by another person for a GMO licence (unless the first person has given written consent for the information to be taken into account).

### **Division 5.3 Initial consideration of licences for dealings not involving intentional release of GMO into the environment**

#### **Clause 46 – Applications to which div 5.3 applies**

Clause 46 provides that Division 5.3 applies to an application for a GMO licence where none of the dealings proposed to be authorised by the licence would involve the intentional release of a GMO into the environment.

#### **Clause 47 – What regulator must do in relation to application**

Clause 47 provides that before issuing a licence, the regulator must prepare a risk assessment and risk management plan in relation to the dealings proposed to be authorised by the licence. Subclauses 47 (2) and (3) provide the matters that the regulator must take into account in so doing and subclause 47 (4) authorises the regulator to consult with the States, the gene technology technical advisory committee, relevant Commonwealth authorities, local councils and any other appropriate person, on any aspect of the application.

### **Division 5.4 Initial consideration of licences for dealings involving intentional release of GMO into the environment**

#### **Clause 48 – Applications to which div 5.4 applies**

Clause 48 provides that Division 5.4 applies where the regulator is satisfied that at least one of the dealings proposed to be authorised by the licence involves the intentional release of a GMO into the environment.

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

Clause 49 describes the process that the regulator must follow, and the matters the regulator must consider, if the regulator is satisfied that at least one of the dealings proposed to be authorised by a licence may pose significant risks to the health and safety of people or the environment. This process includes publishing a notice in a newspaper circulating generally in the ACT and on the regulator's website. The notice is a notifiable instrument under the *Legislation Act 2001*.

#### **Clause 50 – Regulator must prepare risk assessment and risk management plan**

Clause 50 provides that, before issuing a licence, the regulator must prepare a comprehensive risk assessment and risk management plan. The risk assessment would

identify hazards to public health and safety or the environment, consider the probability of hazards occurring and estimate the risk.

Following the estimation of risk, a risk management plan would identify measures for managing any risks identified in order to reduce the probability of hazards occurring. The risk management plan may provide that the risks cannot be managed and, as such, a licence should not be granted. Alternatively the plan could set out conditions that would be necessary for the risks to be effectively managed.

Subclause 50 (3) requires the regulator to seek advice from a range of parties including the gene technology technical advisory committee, States and Territories, the Commonwealth Environment Minister, prescribed Commonwealth agencies and relevant local councils.

### **Clause 51 – Matters regulator must take into account in preparing risk assessment and risk management plan**

Clause 51 details a range of things that must be considered by the regulator in preparing the risk assessment. Those matters include the risks posed by the proposed dealings, submissions made to the regulator, and any advice provided by the gene technology technical advisory committee and Commonwealth, State and local government agencies.

The regulator must also consider ways of managing risks identified in relation to the application.

### **Clause 52 – Public notification of risk assessment and risk management plan**

Clause 52 describes the process the regulator must follow after having prepared a draft risk assessment and risk management plan. This process includes publishing a notice in a newspaper and on the regulator's website, advising that a risk assessment and risk management plan have been prepared and inviting submissions in relation to them. The regulator is also required to seek advice on the risk assessment and risk management plan from certain entities, including the States and the gene technology technical advisory committee.

### **Clause 53 – Regulator may take other actions**

Clause 53 allows the regulator to take other actions for the purpose of deciding the application, such as holding a public hearing.

Subclauses 53 (2) and (3) allow the regulator to decide who may attend a meeting, whether to hold part of the hearing in private, and to prohibit or restrict publication of evidence given or material presented at a public hearing.

### **Clause 54 – Person may request copies of certain documents**

Clause 54 provides that a person may request a copy of a licence application, risk assessment or risk management plan. The regulator must provide the person with the information, excluding any confidential commercial information or information about the applicant's relevant convictions.

‘Relevant conviction’ is defined under clause 58 as a conviction for an offence against any law (whether or not it is a law of the Territory) about the health and safety of people or the environment. It is a relevant conviction if the offence was committed within 10 years before the application for the GMO licence was made; and the offence was punishable by a fine of \$5 000 or more, or by imprisonment for 1 year or more.

## **Division 5.5 Decision on licence application**

### **Clause 55 – Regulator must make a decision on licence and licence conditions**

Clause 55 provides that, after taking the steps required by Division 5.3 or 5.4 in relation to an application for a GMO licence, the regulator must decide whether or not to issue a licence. If the regulator decides to issue a licence, he or she may impose conditions to which the licence is subject.

### **Clause 56 – Regulator must not issue the licence unless satisfied as to risk management**

Clause 56 provides that the regulator must not issue the licence unless he or she is satisfied that any risks posed by the dealings proposed to be authorised by the licence are able to be managed in such a way as to protect public health and safety and the environment. The regulator must have regard to the risk assessment, risk management plan, submissions received and any policy guidelines that are in force.

### **Clause 57 – Other circumstances in which regulator must not issue the licence**

Clause 57 provides that the regulator must not issue the licence if to do so would be inconsistent with a policy principle issued by the Ministerial council under clause 21. The regulator also must not issue a licence if satisfied that the applicant is not a suitable person to hold the licence.

### **Clause 58 – Matters to be taken into account in deciding whether a person is suitable to hold licence**

Clause 58 sets out the matters which the regulator must consider in deciding whether a natural person or a body corporate is a suitable person to hold a licence. The regulator may have regard to other matters, in addition to those specified under subclauses 58 (1) and (2).

Clause 58 (4) defines “relevant conviction” for the purposes of this clause. As explained for clause 54 above, a ‘relevant conviction’ is a conviction for an offence (against any law about the health and safety of people or the environment) that was committed within 10 years before the application for the GMO licence was made; and was punishable by a fine of \$5 000 or more, or by imprisonment for 1 year or more.

### **Clause 59 – Notification of licence decision**

Clause 59 requires the regulator to provide written notification to the applicant of the regulator’s decision, including any conditions imposed.

**Clause 60 – Period of licence**

Clause 60 provides that a licence is issued until the end of a specified period, or until it is cancelled or surrendered. A licence is not in force while it is suspended.



## **Division 5.6 Conditions of licences**

### **Clause 61 – Licence is subject to conditions**

Clause 61 provides that licences may be subject to a range of conditions, including conditions set out in clauses 63, 64 and 65; conditions prescribed by the regulations; and conditions imposed by the regulator at the time of issuing the licence or at any time thereafter.

### **Clause 62 – Conditions that may be prescribed or imposed**

Clause 62 describes matters to which licence conditions may relate.

### **Clause 63 – Condition about telling people of obligations**

Clause 63 requires a licence holder to inform any person who is covered by the licence of any licence condition which applies to that person. The licence holder must also inform the person about any cancellation, suspension or surrender of the licence.

The clause also allows for requirements to be placed on the manner in which a licence holder is to provide information to people covered by the licence.

### **Clause 64 – Condition about monitoring and audits**

Clause 64 requires that, where a person is authorised to deal with a GMO and a particular licence condition applies to that dealing, the person authorised to deal with the GMO must allow the regulator (or his or her delegate) to enter premises where the dealing is being undertaken, for the purposes of auditing or monitoring the dealing.

This condition enables the regulator to undertake routine or "on-the-spot" auditing and/or monitoring of licensed dealings with GMOs to ensure that any conditions imposed are being complied with and that the activity with the GMO is being conducted safely.

### **Clause 65 – Condition about additional information to be given to regulator**

Clause 65 makes it a condition of a licence that the licence holder inform the regulator of any:

- additional information about risks to public health and safety and the environment associated with dealings authorised by the licence, of which they become aware;
- contraventions of the licence by a person who is covered by the licence; and
- any unintended effects of the dealings authorised by the licence.

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

Clause 66 allows a person covered by a licence to tell the regulator if he or she becomes aware of any:

- additional information about risks to public health and safety and the environment associated with dealings authorised by the licence, of which they become aware;
- contraventions of the licence by a person who is covered by the licence; and
- any unintended effects of the dealings authorised by the licence.

### **Clause 67 – Protection of persons who give information**

Clause 67 provides that civil proceedings may not be brought against a person who has given information to the regulator because another person has suffered loss, damage or injury as the result of the disclosure of information to the regulator. This clause does not, however, affect any rights a person may have against an informer who published the information more broadly than just to the regulator. This clause only provides protection in respect of civil proceedings in relation to the disclosure of the information to the regulator.

## **Division 5.7 Suspension, cancellation and variation of licences**

### **Clause 68 – Suspension and cancellation of licence**

Clause 68 gives the regulator the power to suspend or cancel a licence. This power may be exercised by the regulator by giving written notice to the licence holder. The grounds for the exercise of this power are listed in this clause. For example, a licence may be suspended or cancelled if the regulator believes on reasonable grounds that there has been a breach of a licence condition.

### **Clause 69 – Surrender of licence**

Clause 69 allows a licence holder to surrender a licence, if they have the consent of the regulator.

### **Clause 70 – Transfer of licence**

Clause 70 provides for the transfer of a licence. It specifies that a licence holder and the transferee may jointly apply to the regulator for the licence to be transferred to the transferee. The application must be in writing and must include information prescribed in the regulations (if any) and information specified in writing by the regulator.

Subclause 70 (3) requires that the regulator must not transfer the licence unless satisfied that any risks posed by the authorised dealings will continue to be able to be managed in such a way as to protect public health and safety and the environment.

Clause 70 (4) provides that the regulator must not transfer the licence unless satisfied that the transferee is a suitable person to hold the licence.

### **Clause 71 – Variation of licence**

Clause 71 allows the regulator to vary a licence at any time, by written notice given to the licence holder. For example, a licence variation may impose licence conditions, remove or vary licence conditions, or extend or reduce the authority granted by the licence.

However, the regulator must not vary a licence in order to authorise dealings involving the intentional release of a GMO into the environment if the application for the licence was originally considered under Division 5.3 (which deals with licence applications where there is to be no release of the GMO into the environment).

The regulator may impose additional conditions, remove or vary conditions previously imposed by the regulator, or extend or reduce the authority granted by the licence.

Subclause 71 (4) provides that the regulator must not vary a licence unless satisfied that any risks posed by the variation are able to be managed in order to protect public health and safety and the environment.

#### **Clause 72 – Regulator to notify of proposed suspension, cancellation or variation**

Clause 72 requires the regulator to give written notice to the licence holder of any proposed suspension, cancellation or variation to the licence. The notice may require the licence holder to provide information and may invite them to make a written submission about the proposed action.

However, subclause 72 (7) specifies that clause 72 does not apply to a suspension, cancellation or variation of a licence if the regulator considers that such action is necessary to avoid an imminent risk of death, serious illness, serious injury or serious damage to the environment.

### **Division 5.8 Annual Charge**

#### **Clause 72A – GMO licence – annual charge**

Clause 72A provides that any person who is the holder of a GMO licence at any time during a financial year is liable to pay a charge for the licence for that year. The charge may be in the nature of a tax, and the amount can be prescribed under the regulations.

## **Part 6 Regulation of notifiable low risk dealings on GMO register**

### **Division 6.1 Simplified outline of part 6**

#### **Clause 73 – Simplified outline – pt 6**

Clause 73 provides a simplified outline of Part 6.

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

#### **Clause 74 – Notifiable low risk dealings**

Clause 74 allows for regulations to declare a dealing with a GMO to be a notifiable low risk dealing. However, before such regulations are made the regulator must be satisfied that the dealing would not involve the intentional release of a GMO into the environment.

The regulator is required to consider several things - whether the GMO is biologically contained so that it cannot survive without human intervention; whether the dealing

with the GMO presents a risk to the health and safety of people and the environment;  
and whether any conditions would need to be prescribed to manage such risk.

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

Clause 75 allows regulations to be made in order to regulate a specified notifiable low risk dealing, or a specified class of notifiable low risk dealings for the purpose of protecting public health and safety or the environment. The regulations may prescribe different requirements to be complied with in different situations or by different persons.

## **Division 6.3 GMO register**

### **Clause 76 – GMO register**

No provision is included here; only a note that the Commonwealth Act provides for establishment and maintenance of the GMO Register.

### **Clause 77 – Contents of register**

Clause 77 provides that, where the regulator determines that a dealing with a GMO is to be included in the GMO Register, the Register must contain a description of the dealing with the GMO and must state any condition(s) to which the dealing is subject.

### **Clause 78 – Regulator may include dealings with GMOs on GMO register**

Clause 78 provides that the regulator may place a dealing with a GMO on the register if the dealing is, or has been, authorised by a GMO licence; or if the GMO is a GM product and is only a GMO because regulations have specified that it is.

### **Clause 79 – Regulator not to make determination unless risks can be managed**

Clause 79 prevents the regulator from placing a dealing with a GMO on the Register (under clause 78) unless the regulator is satisfied that any risks posed by the dealing are minimal and that it is not necessary for the people undertaking the dealing to be covered by licence in order to protect public health and safety or the environment.

The matters that the regulator must consider are outlined in subclause 79 (2).

### **Clause 80 – Variation of GMO register**

Clause 80 allows the regulator to vary the GMO Register by written determination. A variation may remove a dealing from the GMO Register, revoke or vary conditions to which the dealing is subject, or impose additional conditions on the dealing.

### **Clause 81 – Inspection of register**

No provision is included here; only a note that the Commonwealth Act requires the regulator to allow people to inspect the GMO Register.

## **Part 7      Certification and accreditation**

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

#### **Clause 82 – Simplified outline – pt 7**

Clause 82 provides a simplified outline of Part 7.

### **Division 7.2      Certification**

#### **Clause 83 – Application for certification**

Clause 83 allows a person to apply to the regulator for certification of a facility to a particular containment level. The application must be in writing, must contain such information as the regulator requires, and be accompanied by the appropriate application fee (as prescribed by the regulations).

Certification of a facility to a certain containment level will be required of any organisation who wishes to undertake notifiable low risk dealings, or who holds a licence for dealings with GMOs where the licence includes a condition that the work with the GMO be conducted in a facility certified to a particular containment level. This clause provides that details of the containment levels to which the regulator may certify a facility may be documented in guidelines issued under clause 90.

#### **Clause 84 – When regulator may certify facility**

Clause 84 authorises the regulator to certify the facility to a specified containment level if it meets the requirements specified in guidelines issued under clause 90.

#### **Clause 85 - Regulator may require applicant to give further information**

Clause 85 allows the regulator to require a person applying for certification of a facility to provide further information regarding the application. This must be done by issuing a written notice which includes details of how much time the person has to provide the information.

#### **Clause 86 – Conditions of certificate**

Clause 86 provides that the certification of a facility is subject to several conditions - those imposed by the regulator at the time of certification; those imposed after certification varying the original certification; and any conditions prescribed by the regulations.

#### **Clause 87 – Variation of certification**

Clause 87 authorises the regulator to vary the certification of a facility. For example, a variation may add, remove or vary conditions to which the certification is subject.

#### **Clause 88 – Suspension or cancellation of certification**

Clause 88 authorises the regulator to suspend or cancel the certification of a facility if he or she believes on reasonable grounds that a condition of the certification not been complied with.

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

Clause 89 requires that the regulator give written notice of any proposed suspension, cancellation or variation of the certification of a facility. The written notice must be given to the holder of the certification before any action is taken.

The notice may require the holder of the certification to provide information and may invite them to make a written submission about the proposed action within a specified period. And in making a decision, the regulator must consider any submission that has been made.

Subclause 89 (7) provides that clause 89 does not apply to a suspension, cancellation or variation of a certification if the regulator considers that such action is necessary to avoid an imminent risk of death, serious illness, serious injury or serious damage to the environment.

**Clause 90 – Guidelines**

Clause 90 authorises the regulator to issue technical or procedural guidelines regarding the requirements for the certification of facilities under Division 7.2.

**Division 7.3 Accredited organisations**

**Clause 91 – Application for accreditation**

Clause 91 enables a person to apply to the regulator for accreditation of an organisation. The application must be in writing and must contain any information required by the regulator.

It is noted that the regulations may provide that notifiable low risk dealings can only occur within accredited organisations. Therefore, in order to be able to undertake notifiable low risk dealings, an organisation would have to apply for accreditation under this part. Similarly, a licence condition may require that a dealing be conducted within an accredited organisation.

**Clause 92 – Regulator may accredit organisations**

Clause 92 enables the regulator to accredit an organisation by written instrument. In deciding whether to accredit the organisation, the regulator must have regard to several matters including whether the organisation has established, or proposes to establish, an Institutional Biosafety Committee (IBC) in accordance with guidelines under clause 98.

**Clause 93 – Regulator may require applicant to give further information**

Clause 93 enables the regulator to require an applicant for accreditation of an organisation to provide further information in relation to the application. The notice

requiring the information may specify a period within which the information is to be provided.



### **Clause 94 – Conditions of accreditation**

Clause 94 provides that the accreditation of an accredited organisation is subject to any conditions imposed by the regulator at the time of, or after, accreditation; and any conditions prescribed by the regulations.

### **Clause 95 – Variation of accreditation**

Clause 95 authorises the regulator to vary the organisation's accreditation at any time, by notice in writing. For example, the regulator may add, remove or vary conditions in regard to the accreditation.

### **Clause 96 – Suspension or cancellation of accreditation**

Clause 96 authorises the regulator to suspend or cancel the accreditation of an organisation if he or she believes on reasonable grounds that a condition of the accreditation has been breached.

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

Clause 97 requires that the regulator give notice of any proposed suspension, cancellation or variation of an accreditation. The written notice must be given to the holder of the accreditation before any action is taken.

The notice may require the holder of the accreditation to provide information and may invite them to make a written submission about the proposed action, within a specified period. In making a decision, the regulator must consider any submission that has been made.

Subclause 97 (7) provides that clause 97 does not apply to a suspension, cancellation or variation of an accreditation if the regulator considers that such action is necessary to avoid an imminent risk of death, serious illness, serious injury or serious damage to the environment.

### **Clause 98 – Guidelines**

Clause 98 authorises the regulator to issue technical or procedural guidelines regarding requirements that must be satisfied in order for an organisation to be accredited. For example, such guidelines may relate to the establishment and maintenance of Institutional Biosafety Committees.

## **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**

#### **Clause 99 – Simplified outline – pt 8**

Clause 99 provides a simplified outline of Part 8.

## **Division 8.2 Gene technology technical advisory committee**

### **Clause 100 – Gene technology technical advisory committee**

No provision is included here; only a note that the Commonwealth Act provides for the establishment and membership of the gene technology technical advisory committee.

### **Clause 101 – Function of gene technology technical advisory committee**

Clause 101 provides that the function of the gene technology technical advisory committee is to provide scientific and technical advice (on the request of the regulator or the Ministerial council) on gene technology, GMOs, GM products, applications, biosafety aspects of gene technology and policy principles, guidelines and codes of practice.

### **Clause 102 – Expert advisers**

No provision is included here; only a note that the Commonwealth Act provides for the appointment of expert advisers to the gene technology technical advisory committee.

### **Clause 103 – Remuneration**

No provision is included here; only a note that the Commonwealth Act provides for remuneration and allowances to be paid to members of the gene technology technical advisory committee and to expert advisers of the committee.

### **Clause 104 – Members and procedures**

No provision is included here; only a note that the Commonwealth Act allows for regulations to be made in relation to the membership and operation of the gene technology technical advisory committee.

### **Clause 105 – Subcommittees**

No provision is included here; only a note that the Commonwealth Act deals with the establishment of subcommittees by the gene technology technical advisory committee.

## **Division 8.3 Gene technology community consultative committee**

### **Clause 106 – Gene technology community consultative committee**

No provision is included here; only a note that the Commonwealth Act establishes the gene technology community consultative committee.

### **Clause 107 – Function of consultative committee**

Clause 107 provides that the function of the gene technology community consultative committee is to provide advice (on the request of the regulator or the Ministerial council) on matters of concern identified by the regulator about applications made

under this Bill, matters of general concern about GMOs and the need for, and content of, policy principles, guidelines and codes of practice.

**Clause 108 – Membership**

No provision is included here; only a note that the Commonwealth Act provides for the membership of the gene technology community consultative committee.

**Clause 109 – Remuneration**

No provision is included here; only a note that the Commonwealth Act provides for remuneration and allowances to be paid to members of the gene technology community consultative committee.

**Clause 110 – Regulations**

No provision is included here; only a note that the Commonwealth Act allows for regulations to be made in relation to the membership and operation of the gene technology community consultative committee.

**Clause 110A – Subcommittees**

No provision is included here; only a note that the Commonwealth Act deals with the establishment of subcommittees by the gene technology community consultative committee.

**Division 8.4 Gene technology ethics committee**

**Clause 111 - Gene technology ethics committee**

No provision is included here; only a note that the Commonwealth Act provides for the establishment and membership of the gene technology ethics committee.

**Clause 112 – Function of gene technology ethics committee**

Clause 112 provides that the function of the gene technology ethics committee is to provide advice (on the request of the regulator or the Ministerial council) on ethical issues about gene technology; the need for, and content of, codes of practice about ethics for conducting dealings with GMOs; and the need for, and content of, policy principles about dealings with GMOs that should not be conducted for ethical reasons.

**Clause 113 – Expert advisers**

No provision is included here; only a note that the Commonwealth Act provides for the appointment of expert advisers to the gene technology ethics committee.

**Clause 114 – Remuneration**

No provision is included here; only a note that the Commonwealth Act provides for remuneration and allowances to be paid to members of the gene technology ethics committee and to expert advisers to the committee.

**Clause 115 – Members and procedures**

No provision is included here; only a note that the Commonwealth Act allows for regulations to be made in relation to the membership and operation of the gene technology ethics committee.

**Clause 116 – Subcommittees**

No provision is included here; only a note that the Commonwealth Act deals with the establishment of subcommittees by the gene technology ethics committee.

**Part 9 Administration**

**Division 9.1 Simplified outline of part 9**

**Clause 117 – Simplified outline – pt 9**

Clause 117 provides a simplified outline of Part 9.

**Division 9.2 Appointment and conditions of regulator**

**Clause 118 – Appointment of regulator**

No provision is included here; only a note that the Commonwealth Act provides for appointment of the regulator.

**Clause 119 – Termination of appointment**

No provision is included here; only a note that the Commonwealth Act sets out the circumstances in which the regulator's appointment may be terminated.

**Clause 120 – Disclosure of interests**

No provision is included here; only a note that the Commonwealth Act requires the regulator to disclose his or her interests to the Minister.

**Clause 121 – Acting appointment**

No provision is included here; only a note that the Commonwealth Act deals with the appointment of a person to act as the regulator.

**Clause 122 – Terms and conditions**

No provision is included here; only a note that the Commonwealth Act deals with the regulator's terms and conditions of appointment.

**Clause 123 – Outside employment**

No provision is included here; only a note that the Commonwealth Act prohibits the regulator from engaging in paid outside employment without the Minister's approval.

**Clause 124 – Remuneration**

No provision is included here; only a note that the Commonwealth Act provides for remuneration and allowances to be paid to the regulator.

**Clause 125 – Leave of absence**

No provision is included here; only a note that the Commonwealth Act deals with the entitlement of the regulator to leave of absence.

**Clause 126 – Resignation**

No provision is included here; only a note that the Commonwealth Act deals with the procedure for resignation by the regulator.

**Division 9.3 Money****Clause 127 – Regulator may charge for services**

Clause 127 provides that the regulator may charge for services provided by, or on behalf of, the regulator in the performance of his or her functions.

**Clause 128 – Notional payments**

No provision is included here; only a note that the Commonwealth Act provides for fees and charges to be notionally payable by the Commonwealth and allows directions be given in relation to this. The clause is unnecessary in this Bill as it is covered by the ACT *Financial Management Act 1996*.

**Clause 129 – Gene technology account**

No provision is included here; only a note that the Commonwealth Act provides for the establishment of the gene technology account.

**Clause 130 – Credits to gene technology account**

Clause 130 provides that the amounts specified under sub-clauses (a) to (d) must be paid to the Commonwealth for crediting to the gene technology account. For example, amounts received for the annual charge for licences; amounts received as application fees; and amounts received by the Territory for the exercise of the regulator's functions.

**Clause 131 – Recovery of amounts**

Clause 131 provides that the certain amounts owing to the Territory (as specified in the clause) may be recovered in court.

**Clause 132 – Purposes of account**

No provision is included here; only a note that the Commonwealth Act sets out the purposes for which money in the gene technology account may be used.

## **Division 9.4 Staffing**

### **Clause 133 – Staff assisting regulator**

No provision is included here; only a note that the Commonwealth Act provides for staff to be made available to assist the regulator.

### **Clause 134 – Consultants**

No provision is included here; only a note that the Commonwealth Act allows the regulator to engage consultants.

### **Clause 135 – Seconded officers**

No provision is included here; only a note that the Commonwealth Act provides for staff to be seconded to the regulator.

## **Division 9.5 Reporting requirements**

### **Clause 136 – Annual report**

Clause 136 requires the regulator to provide the Minister with an annual report on the operations of the regulator under this Bill. A copy of the report must be presented to the ACT Legislative Assembly within 15 sitting days after it is received by the Minister.

### **Clause 136A – Quarterly reports**

Clause 136A requires the regulator to provide quarterly reports on the operations of the regulator under this Bill (ie. a report every 3 months). A copy of each report must be presented to the ACT Legislative Assembly within 15 sitting days after it is received by the Minister.

The report must include information on various matters relating to that quarter, including GMO licences issued, breaches of licence conditions of which the regulator is aware and any auditing/monitoring of GMO dealings that has occurred.

### **Clause 137 – Reports to Legislative Assembly**

Clause 137 provides that the regulator may, at any time, cause a report about matters relating to the regulator's functions to be presented to the Legislative Assembly. The report must be presented to the Legislative Assembly within 15 sitting days after it is received by the Minister.

## **Division 9.6 Record of GMO and GM Product Dealings**

### **Clause 138 – Record of GMO and GM product dealings**

Clause 138 sets out the information that must be included in the GM record (the record of GMO and GM product dealings which is to be maintained by the regulator). The GM record must contain specific information about GMO licences and notifiable low risk dealings. The GM record must also contain any information prescribed by the

regulations regarding GM products mentioned in designated notifications provided to the regulator under any Act.

However, the GM record is not required to contain confidential commercial information.

The GM record must also contain a description of each dealing on the GMO register and any condition to which the dealing is subject. This information must be entered on the Record as soon as is reasonably practicable.

#### **Clause 139 – Inspection of record**

No provision is included here; only a note that the Commonwealth Act requires the regulator to permit any person to inspect the GM record.

### **Division 9.7    Reviews of notifiable low risk dealings and exemptions**

#### **Clause 140 – Regulator may review notifiable low risk dealings**

Clause 140 allows the regulator, at any time, to consider whether a dealing with a GMO should become a notifiable low risk dealing, or whether an existing notifiable low risk dealing should no longer be recognised as such. In making these decisions, the regulator must consider the matters in subclauses 74 (2) and 74 (3), which include whether the proposed dealings involve an intentional release of a GMO into the environment; whether the GMO can be biologically contained and whether the dealing poses risks to the health and safety of people or the environment.

#### **Clause 141 – Regulator may review exemptions**

Clause 141 allows the regulator, at any time, to consider whether an exempt dealing should no longer be such; and whether another dealing should become an exempt dealing.

#### **Clause 142 – Regulator may give notice of consideration**

Clause 142 enables the regulator to publish a notice, at any time, inviting written submissions with respect to any matter the regulator may consider under clauses 140 and 141 (review of exemptions or notifiable low risk dealings).

This clause sets out the matters that the regulator must include in the notice and requires the regulator to also give notice to the States, the gene technology technical advisory committee and prescribed Commonwealth agencies. A notice may relate to a single matter or a class of matters.

#### **Clause 143 – What regulator may do after consideration**

Clause 143 allows the regulator, after completion of the process outlined at clause 140, to recommend to the Ministerial Council that a dealing be declared a notifiable low risk dealing; or that an existing declaration of a notifiable low risk dealing under regulations be withdrawn.



If the matter relates to whether a dealing should be an exempt dealing or should cease to be an exempt dealing, the regulator may recommend to the Ministerial Council that the regulations be amended accordingly.

#### **Clause 144 – Regulator not required to review matters**

Clause 144 clarifies that the requirement to review notifiable low risk dealings or exemptions is at the discretion of the regulator.

### **Part 10 – Enforcement**

#### **Clause 145 – Simplified outline – pt 10**

Clause 145 provides a simplified outline of Part 10.

#### **Clause 146 – Regulator may give directions**

Clause 146 provides that, if a licence holder or a person covered by a licence is not acting in compliance with the Bill and it is necessary for the regulator to exercise his or her powers in order to protect the health and safety of people or the environment, then the regulator may give written directions to direct that person to take reasonable steps to comply with the Bill.

Subclause 146 (3) provides for an offence if the person intentionally fails to take the steps, as directed by the regulator.

If the person does not take the necessary action within the period of time specified by the regulator, the regulator may arrange for those steps to be taken.

This provision effectively enables remedial action to deal with non-compliance. The action may be by the regulator or via the direction of the regulator, for example, where a condition of licence has been breached resulting in the accidental release of a GMO and there is a need to re-contain the GMO.

Subclause 146 (5) provides that if costs are incurred by the Regulator in taking steps to bring the activity back into compliance with the legislation, such costs may be recovered from the licence holder or the person covered by the licence (as applicable).

This clause should also be read in conjunction with clause 158, which enables an inspector to take immediate action where there is an imminent risk of danger to health and safety of people or to the environment. In such circumstances, the inspector can take such steps as are necessary without first giving written notice requiring a person to take the necessary steps to rectify the situation.

### **Clause 147 – Injunctions**

Clause 147 provides that the Supreme Court may grant injunctions to prevent a person from undertaking any conduct that would be an offence against this Bill. Similarly, if a person has failed, is failing, or is about to fail to do a thing (and such failure would be an offence under the Bill) then the Supreme Court may grant an injunction requiring the person to do the thing.

The Supreme Court may discharge or vary an injunction and may issue an interim injunction to be in force while an application is being considered by the regulator.

Subclause 147 (6) provides that the powers of the Supreme Court that are set out under this clause are in addition to any other powers of the Supreme Court.

### **Clause 148 – Forfeiture**

Clause 148 provides that a court may order forfeiture of any thing used or involved in the commission of an offence. The forfeited thing becomes the property of the Territory and may be dealt with in accordance with directions of the regulator.

## **Part 11 Powers of inspection**

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

#### **Clause 149 – Simplified outline – pt 11**

Clause 149 provides a simplified outline of Part 11.

### **Division 11.2 Appointment of inspectors and identity cards**

#### **Clause 150 – Appointment of inspectors**

Clause 150 authorises the regulator to appoint people to be inspectors. Such people may be public servants or people appointed or employed by the Commonwealth. Subclause 150 (2) requires inspectors to comply with any directions of the regulator.

#### **Clause 151 – Identity card**

Clause 151 requires the regulator to issue a photographic identity card to an inspector. Subclause 151 (3) provides that it is an offence if a person fails to return his or her identity card to the regulator, as soon as practicable after ceasing to be an inspector. Subclause 151 (4) provides that this is a strict liability offence.

Subclause 151 (5) requires an inspector to carry his or her identity card at all times when undertaking functions as an inspector.

## **Division 11.3 Monitoring powers**

### **Clause 152 – Powers available to inspectors for monitoring compliance**

Clause 152 sets out the powers of inspectors in relation to entry to premises and monitoring of compliance. An inspector may only enter premises under this clause if the occupier of the premises has consented to the entry; the entry is made under a warrant; or entry is at a reasonable time and the occupier of the premises is the holder of a licence under the Bill.

Subclause 152 (3) makes it clear that the powers of entry do not extend to a person's place of residence.

### **Clause 153 – Monitoring powers**

Clause 153 describes the monitoring powers that an inspector may exercise for the purposes of finding out whether the Bill or regulations have been complied with. For example, the power to search premises, examine things, take samples and make records.

## **Division 11.4 Offence-related powers**

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

If an inspector finds evidential material on a premises, he or she may seize the material (provided that entry was gained to the premises under a warrant).

When, under a warrant, an inspector is searching for a particular thing, the inspector may seize another thing if he or she believes on reasonable grounds that it is evidential material. The clause describes the circumstances under which such seizure may be undertaken.

### **Clause 155 – Offence-related powers of inspectors for premises**

Clause 155 describes the powers that an inspector may exercise under subclause 154 (2) (b), in relation to seizure of evidential material. These powers include searching premises, examining things, taking samples and making records.

### **Clause 156 – Use of equipment at premises**

Clause 156 authorises an inspector to operate equipment at premises in order to see whether any evidential material is accessible. On finding such material, the inspector may take copies of the evidential material in documentary or other form (eg. disk or tape); or may seize the equipment if it is not practicable to put the material into documentary form or to copy it.

However, the inspector may only seize the equipment if entry to the premises was under a warrant.

## **Division 11.5 Expert assistance**

### **Clause 157 – Expert assistance to operate thing**

Clause 157 authorises the inspector, under certain conditions, to secure a thing until it has been operated by an expert. This may be necessary to prevent evidential material from being destroyed or altered. For example, an expert may be needed to extract data from a computer or certain equipment.

The inspector must notify the occupier of the premises of the intention to secure the thing. The thing must not be secured for more than 24 hours; however, if the inspector believes that the expert assistance will not be available within 24 hours, the inspector may apply to the Magistrates Court for an extension of the period.

## **Division 11.6 Emergency powers**

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

Clause 158 applies in cases where an inspector has reasonable grounds for suspecting that there may be, on any premises, a particular thing that is not in compliance with the requirements of the Bill or regulations; and where it is necessary to take action to avoid an imminent risk of death, serious illness, serious injury or to protect the environment.

In such circumstances, without a warrant or the consent of an occupier, an inspector may enter premises, search the premises for the particular thing and secure the thing on the premises until a warrant is obtained to seize it. If the inspector believes on reasonable grounds that a person has failed to comply with any requirements of the Bill in relation to the thing, the inspector can require the person to take necessary steps to comply with the Bill. Alternatively, the inspector can take steps, or arrange for steps to be taken, as the inspector considers appropriate.

If the regulator incurs costs through an inspector taking reasonable steps, or arranging steps to be taken, the regulator can recover the costs of taking those steps from the person who has not complied with the Act in relation to the thing.

## **Division 11.7 Obligations and incidental powers of inspectors**

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

Clause 159 provides that an inspector cannot exercise any of the powers under Part 11 in relation to premises if the occupier of those premises asks to see the inspector's identity card and the inspector does not comply with the request.

### **Clause 160 - Consent**

Clause 160 sets out the requirements for an inspector when seeking an occupier's consent for the inspector to enter premises. For example, when seeking entry to certain premises, an inspector must produce his or her identity card and explain the purpose of

entry and other matters. The inspector must inform the person that he or she may refuse consent.

If the occupier consents to entry, the inspector must ask the occupier to sign a written acknowledgement of the details of the encounter, as provided for in subclauses 160 (2) and (3). If the question arises in court of whether the occupier gave consent for entry, and such an acknowledgement is not provided, the court must presume that the occupier of the premises did not consent to entry by the inspector.

#### **Clause 161 – Details of warrant to be given to occupier etc**

Clause 161 requires the inspector to make available a copy of a warrant to the occupier of the premises or a person representing the occupier. This copy need not include the signature of the magistrate. The inspector must also identify himself or herself to the occupier or person representing the occupier.

#### **Clause 162 – Announcement before entry**

Clause 162 provides requirements for an inspector to follow before entering premises under a warrant. The inspector must announce that he or she is authorised to enter the premises. Before entering, the inspector must give anyone at the premises the opportunity to allow the inspector to enter the premises.

However, an inspector does not have to comply with these steps if she or he believes on reasonable grounds that immediate entry is required to ensure a person's safety, to prevent serious damage to the environment or to ensure that the effective execution of the warrant is not frustrated.

#### **Clause 163 – Compensation for damage**

Clause 163 details the circumstances in which compensation is payable by the regulator to the owner of a thing that has been damaged by insufficient care being taken in operating the thing or in selecting a person to operate the thing.

### **Division 11.8 Power to search goods, baggage etc.**

#### **Clause 164 – Power to search goods, baggage etc**

Clause 164 applies to any goods that are to be, are being, or have been taken from an aircraft that flies in and out of the ACT. The clause empowers an inspector to examine goods and open and search baggage or a container, if he or she believes on reasonable grounds that the goods may be, or may contain, evidential material.

The inspector is authorised to ask questions regarding the goods of a person who appears to be associated with the goods. Subclause 164 (4) provides for an offence if the person fails to answer a question put to them about the goods. This is a strict liability offence.

#### **Clause 165 – Seizure of goods**

Clause 165 provides that an inspector may seize any goods referred to in clause 164 (eg. goods being taken from an aircraft) if he or she has reasonable grounds to suspect that the goods are evidential material.



## **Division 11.9 General provisions relating to search and seizure**

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

Clause 166 relates to situations where an inspector seizes, under a warrant, a thing or information that can be readily copied. The inspector must, on request of the occupier or the occupier's representative who is present when the warrant is executed, give a copy of the thing or the information to that person as soon as practicable after the seizure. However, this clause does not apply where possession of the thing by the occupier could constitute an offence.

### **Clause 167 – Occupier entitled to be present during search**

Clause 167 provides that if a warrant is being executed, occupiers or their representatives may observe the search of the premises providing they do not impede the search. However, this does not prevent 2 or more areas of the premises from being searched at the same time.

### **Clause 168 – Receipts for things seized**

Clause 168 requires inspectors to provide receipts for things seized under this Part of the Bill; and provides that if 2 or more things are seized, they may be covered in the one receipt.

### **Clause 169 – Keeping seized things**

Clause 169 provides requirements for the return of things that have been seized. A thing must be returned if the reason for its seizure no longer exists or if the period of 60 days after its seizure ends (unless the thing is forfeited to the Territory).

Subclause 169 (2) provides exceptions, under which the return of the seized thing is not required.

### **Clause 170 – Magistrates Court may permit thing to be kept**

Clause 170 describes the circumstances under which an inspector may apply to the Magistrates Court to retain a thing and the circumstances in which the Court may make such an order.

### **Clause 171 – Disposal of goods if there is no owner or owner cannot be located**

Clause 171 allows the regulator to dispose of a thing seized under Part 11, when there is no owner or the owner cannot be located.

## **Division 11.10 Warrants**

### **Clause 172 – Monitoring warrants**

This clause provides that an inspector may apply to a magistrate for a warrant to enter premises to exercise his or her monitoring powers. The clause sets out what the



magistrate must be satisfied of before issuing the warrant and details the requirements for the warrant itself.

### **Clause 173 – Offence-related warrants**

Clause 173 provides that, in cases where there are reasonable grounds for suspecting that there is (or may be within the next 72 hours) evidential material at a premises, an inspector may apply to a magistrate for a warrant to enter premises and to search for and seize the evidential material (as provided for in clauses 154 (3) and 155). This clause sets out what the magistrate must be satisfied of before issuing the warrant and details the requirements for the warrant itself.

### **Clause 174 – Offence-related warrants by telephone, telex, fax, etc**

Clause 174 allows an inspector, in an urgent case, to apply for a warrant under clause 173 by telephone or other electronic means. The clause details the steps the inspector and magistrate must take in relation to the warrant.

### **Clause 175 – Offences relating to warrants**

Clause 175 sets out offences in relation to an application for a warrant. For example, in applying for a warrant, an inspector must not make a statement that he or she knows is false or misleading. Also the inspector must not represent something to be a warrant approved by a particular Magistrate, when in fact it is not.

## **Division 11.11 Other matters**

### **Clause 176 – Pt 11 not to abrogate privilege against selfincrimination**

No provision is included here; only a note that the Commonwealth Act preserves the privilege against selfincrimination. This clause is not necessary in this Bill because the ACT *Legislation Act 2001* deals with the issue of selfincrimination.

### **Clause 176A – Damage etc to be minimised**

Clause 176A requires an inspector, in carrying out his or her duties, to take all reasonable steps to cause as little inconvenience, detriment and damage as is practicable. This is to ensure that inspectors use their powers under the Bill appropriately.

If damage is caused to anything, the inspector must give written notice to the person who the inspector believes to be the owner of the thing.

### **Clause 176B – Compensation to be paid in certain circumstances**

Clause 176B allows for a person to claim compensation if that person suffers loss or expense because of the exercise of an inspector's function under the Bill. A court may order payment of reasonable compensation if it considers that such payment is just based on the circumstances of the case.

Subclause 176B (4) provides that regulations can be made specifying matters which must or must not be taken into account by the court as it considers a claim for compensation.

### **Clause 177 – Pt 11 does not limit power to impose licence conditions**

Clause 177 provides that this Part of the Bill does not limit the regulator’s power to impose licence conditions.

## **Part 12      Miscellaneous**

### **Division 12.1   Simplified outline of part 12**

#### **Clause 178 – Simplified outline – pt 12**

Clause 178 provides a simplified outline of Part 12.

### **Division 12.2   Review of decisions**

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

Clause 179 provides a table that lists the decisions that are reviewable and specifies who the ‘eligible person’ is in relation to a ‘reviewable decision’. For example, a decision to refuse to issue a licence is subject to review.

#### **Clause 180 – Notification of decisions and review rights**

Clause 180 requires the regulator, after making a reviewable decision, to give written notice to each eligible person. However, subclause 180 (3) provides that the validity of the decision is not affected if the regulator fails to comply with the notice requirements.

#### **Clause 181 – Internal review**

Clause 181 provides that an eligible person may apply to the regulator for an internal review of a reviewable decision (other than a decision made personally by the regulator). The clause sets out the timeframe for applications to be made. The regulator is required to review the decision personally. The regulator may affirm, vary or revoke the original reviewable decision. If the regulator revokes the decision, the regulator may make such other decision as the regulator considers appropriate.

#### **Clause 182 – Deadlines for making reviewable decisions**

Clause 182 provides that the regulator is taken to have rejected an application for a reviewable decision if the regulator has not notified the applicant of his or her decision during the specified period.

#### **Clause 183 – Review of decisions by Commonwealth Administrative Appeals Tribunal**

Clause 183 provides that an eligible person may apply to the Administrative Appeals Tribunal in relation to a reviewable decision if the person has exhausted his or her rights of internal review (under clause 181), or if the original reviewable decision was made personally by the Regulator and, as such, there is no opportunity for internal review.



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

No provision is included here; only a note that the Commonwealth Act allows a State to also apply for review under the Commonwealth *Administrative Decisions (Judicial Review) Act 1977* in relation to certain decisions, failures or conduct under the Commonwealth legislation. This means that, in the same way that an aggrieved person can apply for judicial review, a State or Territory can also apply for review of a decision.

## **Division 12.3 Confidential Commercial Information**

### **Clause 184 – Application for protection of confidential commercial information**

Clause 184 provides that a person may apply to the regulator for a declaration that certain information is confidential commercial information. The application must be in writing and in the form approved by the regulator.

### **Clause 185 – Regulator may declare information is confidential commercial information**

Clause 185 provides that if the regulator is satisfied that information is of a kind specified under subclauses 185 (1) (a) to (c), then he or she must declare that information to be confidential commercial information.

Subclause 185 (2) provides that the regulator may refuse to make a declaration if satisfied that the public interest in disclosure outweighs the prejudice that the disclosure would cause to any person.

The regulator must also refuse to declare information as confidential commercial information if the information relates to locations at which field trials involving GMOs are occurring or are proposed to occur (unless the regulator is satisfied that significant damage to public health and safety, the environment or property would be likely to occur if the locations were disclosed).

Clause 185 (3) provides that the regulator must give the applicant written notice of his or her decision about the application.

Subclause 185 (5) provides that if the regulator declares information to be confidential commercial information and the information relates to a location where field trials involving GMOs are occurring, or proposed to occur, the regulator is required to make the reasons for the declaration publicly available.

If the regulator refuses to make a declaration that something is confidential commercial information, the information is to be treated as confidential commercial information until any rights to review under clauses 181 or 183 are exhausted.

### **Clause 186 – Revocation of declaration**

Clause 186 enables the regulator to revoke a declaration that something is confidential commercial information (made under clause 185) if the regulator is satisfied that:

- the information no longer meets the criteria set out in clause 185; or
- that the public interest in disclosure of the information outweighs the prejudice that disclosure would cause to any person.

The revocation of a declaration does not take effect until any review rights under clauses 181 or 183 have been exhausted.

### **Clause 187 – Confidential commercial information must not be disclosed**

Clause 187 prohibits the disclosure of confidential commercial information except in the specified circumstances.

The clause also discusses the application of the *Freedom of Information Act 1982* to the information covered by this clause.

Subsection 187 (6) defines the terms ‘court’ and ‘disclose’.

## **Division 12.4 Conduct by directors, employees and agents**

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

Clause 188 provides for the determination of the elements of offences when a body corporate is involved and when employees or agents of other persons are involved.

### **Clause 189 – Meaning of terms in s 188**

Clause 189 defines the meaning of some terms used in clause 188 of the Bill, these being ‘director’, ‘engage in conduct’ and ‘state of mind’.

## **Division 12.5 Transitional provisions**

### **Clause 190 – Transitional provision – dealings covered by genetic manipulation advisory committee advice to proceed**

Clause 190 provides for transitional arrangements in relation to dealings with GMOs approved prior to the commencement of the Bill. The clause only covers matters previously approved by the Genetic Manipulation Advisory Committee.

The effect of subclauses 190 (1) and (2) is that if an advice to proceed from the Genetic Manipulation Advisory Committee was in force in relation to a dealing with a GMO before the commencement of the licensing provisions of this Bill, then that dealing is deemed to be licensed under this Act. The licence is taken to be subject to any conditions imposed by the Genetic Manipulation Advisory Committee’s advice to proceed.

The deemed licence continues in force until the advice to proceed expires, the transition period ends, or the licence is cancelled or surrendered (whichever happens earlier).

The transition period is to be prescribed under regulations, and may not be longer than 2 years.

### **Clause 191 - Regulations may relate to transitional matters**

Clause 191 provides that regulations may be made in relation to transitional matters arising from the enactment of this Bill.

### **Clause 191A – Expiry of div 12.5**

Clause 191A provides that division 12.5 of the Bill expires 2 years after it commences. This is so that the transitional provisions do not need to stay in the legislation indefinitely and no amendment will be required to be passed in order to remove the provisions of division 12.5.

## **Division 12.6 Other provisions**

### **Clause 192 – False or misleading information or document**

Clause 192 provides a prohibition against knowingly giving false or misleading information or producing a document that is false or misleading in a material particular, in relation to an application or in compliance or purported compliance, with the Bill or regulations.

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

Clause 192A provides the penalty and the elements of an offence involving damaging, destroying or interfering with premises at which GMO dealings are being undertaken; or damaging, destroying, interfering with a thing, or removing a thing from, such premises.

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

No provision is included here; only a note that the Commonwealth Act prohibits the cloning of whole human beings. This matter is being considered for inclusion in separate legislation to cover human cloning and other reproductive issues.

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

No provision is included here; only a note that the Commonwealth Act prohibits experiments or research which involves putting human cells, or a combination of human cells and animal cells, into animal eggs. This matter is being considered for inclusion in separate legislation to cover human cloning and other reproductive issues.

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

No provision is included here; only a note that the Commonwealth Act prohibits experiments or research involving putting a combination of human cells and animal cells into a human uterus. This matter is being considered for inclusion in separate legislation to cover human cloning and other reproductive issues.

### **Clause 192E – Approved forms**

Clause 192E allows the regulator to approve forms for this Act and specifies that a certain form must be used for a particular purpose if it has been approved by the regulator for that purpose. An approved form is a notifiable instrument and must therefore be notified under the ACT *Legislation Act 2001*.

### **Clause 193 – Regulation-making power**

Clause 193 allows the Executive to make regulations for this Bill. Such regulations must be notified and presented to the Legislative Assembly in accordance with the ACT *Legislation Act 2001*. Subclause 193 (2) specifies that regulations may require a person to comply with codes of practice or guidelines that may be in force under this Bill.

### **Clause 194 – Review of operation of Act**

Clause 194 provides that the Minister must arrange for independent review as soon as practicable after 4 years of commencement of this Bill as legislation. A report of the review must be presented to the Legislative Assembly.

### **Dictionary**

The dictionary at the end of the bill sets out definitions for words and phrases used in the Bill. The definitions determine the meaning that is to be attributed to certain terms whenever they are used in the Bill or regulations.