

New South Wales

# Gene Technology (GM Crop Moratorium) Bill 2003

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

This Bill is cognate with the *Gene Technology (New South Wales) Bill 2003*.

## Overview of Bill

The object of this Bill is to recognise and designate New South Wales as an area in which certain genetically modified plants may not be cultivated, in order to preserve the identity of GM crops or non-GM crops, or both, for marketing purposes. The proposed Act will expire on 3 March 2006.

In order to achieve its object, the Bill:

- (a) enables the Minister to make an order (a *moratorium order*) prohibiting the cultivation in New South Wales of a specified GM food plant or class of GM food plants, and
- (b) makes it an offence (maximum penalty: in the case of a corporation, 1,250 penalty units or, in any other case, 500 penalty units or imprisonment for 2 years, or both) if a person cultivates a GM food plant in contravention of a moratorium order knowing, or being reckless as to whether, the plant is a GM food plant, and

- (c) enables the Minister to make an order (an *exemption order*) to confer exemptions from the operation of a moratorium order, and
- (d) enables the Minister to direct a person to take certain action in relation to a plant that is part of an offending crop, including destroying the plant, and
- (e) enables the Minister to seize and dispose of any plant that is part of an offending crop, and
- (f) enables the Minister to direct a person not to cultivate a plant on land on which an offending crop has been grown, and
- (g) provides for an appeal to the Supreme Court in relation to certain directions given by the Minister, and
- (h) makes it an offence (maximum penalty: in the case of a corporation, 1,250 penalty units or, in any other case, 500 penalty units or imprisonment for 2 years, or both) if a person tries to dispose of a plant that the person has reasonable grounds to suspect has been cultivated in contravention of a moratorium order, and
- (i) makes it an offence (maximum penalty: 20 penalty units) if a person suspects that a plant has been cultivated in contravention of a moratorium order and fails to notify the Director-General of the Department of Agriculture, and
- (j) confers inspectorial powers on persons appointed by the Director-General under the proposed Act.

## Outline of provisions

### Part 1 Preliminary

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent (except as provided by the proposed section).

**Clause 3** states the purpose of the proposed Act (which is to recognise and designate New South Wales as an area in which certain genetically modified plants may not be cultivated, in order to preserve the identity of GM crops or non-GM crops, or both, for marketing purposes).

**Clause 4** defines certain expressions used in the proposed Act.

**Clause 5** provides that for the purposes of the proposed Act, a *food plant* is a species or variety of plant that the Minister is satisfied is, when grown in New South Wales, primarily grown to be used (whether or not after processing) as, or as an ingredient of, food for human consumption.

## **Part 2 Moratorium on cultivating certain GM plants**

### **Division 1 Moratorium orders**

**Clause 6** provides that the Minister may by order published in the Gazette (a *moratorium order*) prohibit the cultivation in New South Wales of a specified GM food plant or class of GM food plants.

**Clause 7** makes it an offence (maximum penalty: in the case of a corporation, 1,250 penalty units or, in any other case, 500 penalty units or imprisonment for 2 years, or both) if a person cultivates a GM food plant in contravention of a moratorium order knowing, or being reckless as to whether, the plant is a GM food plant.

**Clause 8** provides that the Minister may by order published in the Gazette (an *exemption order*) confer exemptions from the operation of a moratorium order. An exemption may be conferred so as to apply to a specified person or class of persons or within a specified area or in any other specified way and it may be conferred subject to conditions or unconditionally. The cultivation of a GM food plant as permitted by an exemption order is not prohibited by a moratorium order.

**Clause 9** requires the Minister, as soon as practicable after making an order and publishing it in the Gazette, to cause notice of the order to be published in a newspaper circulating throughout the State.

**Clause 10** provides that an order takes effect on the day on which it is published in the Gazette or on a later day specified in the order.

**Clause 11** provides that an order cannot be challenged, reviewed or called into question in proceedings before any court or tribunal.

**Clause 12** requires the Director-General to keep a register of the orders made under the proposed Division. The Director-General is to cause the contents of the register to be made available for inspection free of charge by the public at the Department's head office and on the Department's website on the Internet.

### **Division 2 Enforcement of moratorium orders**

**Clause 13** provides that if the Minister is in possession of a certificate (of a type referred to in proposed section 18) that relates to a plant (the *tested plant*) and the Minister believes on reasonable grounds that the tested plant is a GM food plant specified in a moratorium order and the tested plant was not cultivated pursuant to an exemption order, the Minister may do one or more of the following:

- (a) give a written direction to the owner or person having custody or control of the tested plant or any plant that is or was part of the offending crop requiring that person to take such action in relation to the plant as may be specified,
- (b) authorise an inspector to seize and dispose of or destroy the tested plant or any plant that is or was part of the offending crop and any container in which such a plant is growing or stored if the owner or person having custody or control of the plant has been given a direction under the proposed section and failed to comply with the requirements of the direction or if the Minister considers that seizure and disposal or destruction of the plant is required urgently,
- (c) in order to prevent the contamination of future crops, give a written direction to the owner or occupier of land on which the Minister reasonably believes the tested plant or the offending crop has been cultivated, directing that person not to cultivate any plant of a species or variety specified in the direction on the land for such period as is specified.

The proposed section defines *offending crop* as the crop in which the tested plant has been cultivated.

**Clause 14** makes it an offence (maximum penalty: in the case of a corporation, 1,250 penalty units or, in any other case, 500 penalty units or imprisonment for 2 years, or both) if a person who is given a written direction under the proposed Division fails, without reasonable excuse, to comply with the requirements of the direction.

**Clause 15** provides that:

- (a) a person given a written direction under the proposed Division is liable for any costs incurred in complying with the requirements of the direction, and
- (b) the owner or person having custody or control of any plant or container that is seized and disposed of or destroyed under proposed section 13 (3) is liable for any costs incurred, and
- (c) the owner or person having custody or control of any plant that is the subject of a certificate referred to in proposed section 18 is liable for the costs of the test referred to in that certificate.

Any costs incurred by the Minister are taken to be a debt due to the Minister from the person and in any proceedings for the recovery of any such debt, a certificate signed by the Minister stating the amount of the costs and the manner in which they were incurred is evidence of the matters certified.

**Clause 16** provides that a person aggrieved by a direction given to the person under proposed section 13 (2) may appeal to the Supreme Court against the direction. An appeal can be made even if the direction has been executed and an appeal does not affect a direction appealed against until the Supreme Court finally determines the appeal. On the hearing of an appeal, the Supreme Court may make an order reversing, affirming or amending the direction, remit the matter back to the Minister, make an order giving a direction that the Minister could give, make an order awarding compensation or make such other order in relation to the appeal as the Court sees fit. If the Supreme Court gives a direction that the Minister may give, the direction is taken to be a direction of the Minister under that provision (other than for the purposes of an appeal under the proposed section). An award of compensation may only be made in relation to losses suffered directly by the person given the direction appealed against and may only be made to the extent that the appeal is successful. The Supreme Court cannot award exemplary or punitive damages or damages in the nature of aggravated damages.

**Clause 17** provides that except as provided by the proposed Division, a direction under the proposed Division cannot be challenged, reviewed or called into question in proceedings before any court or tribunal.

**Clause 18** provides that a certificate signed by the person in charge of an approved laboratory (that is accredited by the National Association of Testing Authorities, Australia or prescribed by the regulations) stating that a Polymerase Chain Reaction test (or such other test as may be prescribed by the regulations) has been conducted on a plant, and that the test shows that the plant has been genetically modified, is conclusive proof that the plant has been genetically modified.

### **Division 3      Other offences**

**Clause 19** makes it an offence (maximum penalty: in the case of a corporation, 1,250 penalty units or, in any other case, 500 penalty units or imprisonment for 2 years, or both) if the owner or person having custody or control of a plant does any of the following if the person is aware or has reasonable grounds to suspect that the plant has been cultivated in contravention of a moratorium order or is or was part of a crop in which a plant was cultivated in contravention of a moratorium order:

- (a) transfer ownership, custody or control of the plant,
- (b) offer the plant for sale,
- (c) offer to supply the plant,
- (d) destroy the plant,

(e) move the plant to another location,

except in accordance with a permit issued by the Director-General or a direction under proposed Division 2.

**Clause 20** makes it an offence (maximum penalty: 20 penalty units) if a person, who is aware or suspects that a plant has been cultivated in contravention of a moratorium order, fails to notify the Director-General of certain matters within 2 days of becoming aware or forming that suspicion. However, a person is not required to notify the Director-General of a matter if the person has a reasonable excuse or if the person believes on reasonable grounds that the Director-General has already been notified of the matter. A person who is required to notify the Director-General of a matter under the proposed section is not excused from that requirement because of any duty of confidentiality or other restriction on disclosure or because provision of the information may tend to incriminate the person or make the person liable to a penalty. A notification provided is not admissible in evidence in any criminal proceedings against the person who provided the notification except proceedings for an offence against the proposed section.

### **Part 3 Enforcement**

**Clause 21** provides that the Director-General may appoint any officer of the Department of Agriculture, or any person whom the Director-General considers is suitably qualified for the purpose, to be an inspector for the purposes of the proposed Act.

**Clause 22** provides that an inspector may at any reasonable time enter and inspect any premises for the purpose of ascertaining whether or not a provision of the proposed Act, or any regulation made under the proposed Act, is being or has been complied with or contravened. The proposed section sets out the powers of an inspector while on premises entered under the proposed section or under the authority of a search warrant. The proposed section does not authorise an inspector to enter any part of premises that is being used for residential purposes except with the consent of the occupier or under the authority of a search warrant.

**Clause 23** provides that a power to enter premises, or to make an inspection or take other action on premises, may not be exercised unless the inspector proposing to exercise the power is in possession of a certificate of authority, gives reasonable notice to the occupier of the premises of the intention to exercise the power (unless the giving of notice would defeat the purpose for which it is intended to exercise the power), exercises the power at a reasonable time, unless it is being exercised in an emergency, and uses no more force than is reasonably necessary to effect the entry or make the inspection. If damage is

caused by an inspector exercising a power to enter premises, a reasonable amount of compensation is recoverable from the Crown.

**Clause 24** provides that an inspector may by notice in writing, require a person to furnish to the inspector such information or records (or both) as the inspector requires by the notice, being information that relates to the question of whether or not the proposed Act or the regulations are being or have been contravened.

**Clause 25** provides that an inspector may require a person whom the inspector suspects on reasonable grounds to have knowledge of matters in respect of which information is reasonably required for the purposes of the proposed Act to answer questions in relation to those matters. An inspector may, by notice in writing, require a corporation to nominate a director or officer of the corporation to be the corporation's representative for the purpose of answering questions and answers given by a person so nominated bind the corporation.

**Clause 26** provides that an inspector may require a person whom the inspector suspects on reasonable grounds to have contravened or to be contravening the proposed Act or the regulations to state his or her full name and residential address.

**Clause 27** provides that a person who is required under the proposed Part to answer a question or to produce a thing is not excused from answering the question or producing that thing on the ground that it might tend to incriminate the person or make the person liable to a penalty. The answer to the question or production of the thing is not admissible in evidence against the person in any criminal proceedings (except proceedings for an offence under proposed section 29 (1)–(3)) if the person objected at the time on the ground that it might incriminate the person, or the person was not warned on that occasion that the person may object on the ground that it might incriminate the person.

**Clause 28** permits an inspector to apply to an authorised justice for a search warrant for premises if the inspector believes on reasonable grounds that a provision of the proposed Act or the regulations is being or has been contravened on the premises, or that there is on the premises evidence of a contravention of a provision of the proposed Act or the regulations.

**Clause 29** creates a number of offences (maximum penalty: 10 penalty units or imprisonment for 3 months, or both) if a person, without reasonable excuse, neglects or fails to comply with a requirement made of the person by an inspector, or if a person furnishes any information or makes a statement in purported compliance with a requirement made by an inspector under the proposed Act, knowing that it is false or misleading in a material respect, or if a person, without reasonable excuse, hinders or obstructs an inspector, or if a person, without reasonable excuse, removes or tampers with anything that has been seized or any sample that has been taken under the proposed Act.

**Clause 30** provides that any item seized under the proposed Act is forfeited to the Crown and may be destroyed or disposed of in such manner as the Minister directs. However, if any seized item is forfeited to the Crown and the Minister is satisfied that there has been no contravention of the proposed Act or the regulations in relation to the seized item, and the seized item has not been disposed of or destroyed, the Minister must immediately cause the seized item to be delivered to such person as appears to the Minister to be the person who would, but for the forfeiture, have been entitled to it. If any seized item is delivered to a person under the proposed section, such proprietary and other interests as existed immediately before the forfeiture are revived.

**Clause 31** provides that if a person has contravened, is contravening or is proposing to contravene a provision of the proposed Act, the Supreme Court may, on the application of the Minister, grant an injunction restraining the person from doing so or requiring the person to do any act or thing necessary to avoid or remedy the contravention.

#### **Part 4      Miscellaneous**

**Clause 32** provides that compensation is not payable by or on behalf of the Crown in relation to anything that is authorised by or under the proposed Act.

**Clause 33** provides that proceedings for an offence under the proposed Act or the regulations may be dealt with summarily before a Local Court or before the Supreme Court in its summary jurisdiction. If proceedings are brought in a Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 100 penalty units or such other amount as may be prescribed by the regulations.

**Clause 34** provides that an inspector or other prescribed person (an *authorised officer*) may serve a penalty notice on a person if it appears to the authorised officer that the person has committed an offence under the proposed Act or the regulations, being an offence prescribed by the regulations.

**Clause 35** provides that in any proceedings for an offence against a provision of the proposed Act or the regulations, the onus of proving that a person had a reasonable excuse (as referred to in the provision) lies with the defendant.

**Clause 36** provides for proceedings for offences in relation to officers of corporations.

**Clause 37** permits the Minister to delegate to an authorised person the exercise of any of the Minister's powers under the proposed Act or the regulations, other than the power to make an order under proposed Division 1 of Part 2, the power to give a direction or authorisation under proposed section 13 and the power of delegation. The proposed section also permits the Director-General to delegate

to an authorised person the exercise of any of the functions delegated to the Director-General by the Minister, or any of the other functions of the Director-General under the proposed Act or the regulations, other than the power of delegation.

**Clause 38** provides that for the purposes of the proposed Act, a plant may be described by its scientific name, its common name or in any other way.

**Clause 39** is a formal provision giving effect to the savings, transitional and other provisions in Schedule 1.

**Clause 40** is a formal provision giving effect to the amendments to the Acts specified in Schedule 2.

**Clause 41** enables the Governor to make regulations in connection with the proposed Act. The regulations may create offences punishable by a penalty not exceeding 100 penalty units.

**Clause 42** provides that the proposed Act expires on 3 March 2006.

## **Schedule 1 Savings, transitional and other provisions**

**Schedule 1** contains provisions of a savings and transitional nature.

## **Schedule 2 Amendment of Acts**

**Schedule 2.1** amends the *Gene Technology (GM Crop Moratorium) Act 2003* (the proposed Act) to enable the proposed Act to be amended to take account of the proposed repeal of the *Search Warrants Act 1985* and its replacement by the *Law Enforcement (Powers and Responsibilities) Act 2002*.

**Schedule 2.2** amends the *Fines Act 1996* to permit penalty notices to be issued under the proposed Act.

**Schedule 2.3 and 2.4** amend the *Law Enforcement (Powers and Responsibilities) Act 2002* and the *Search Warrants Act 1985*, respectively, to permit a search warrant to be issued under the proposed Act.

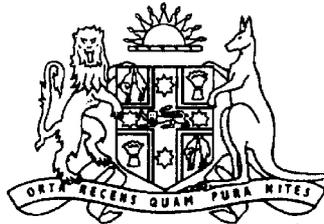
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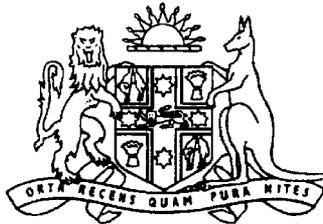
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New South Wales

# Gene Technology (GM Crop Moratorium) Bill 2003

No. , 2003

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## A Bill for

An Act to enable a moratorium to be imposed on the cultivation of certain genetically modified plants; and for other purposes.

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**The Legislature of New South Wales enacts:** 1

**Part 1 Preliminary** 2

**1 Name of Act** 3

This Act is the *Gene Technology (GM Crop Moratorium) Act 2003*. 4

**2 Commencement** 5

(1) This Act commences on the date of assent, except as provided by subsection (2). 6  
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(2) Schedule 2.1 and 2.3 commence on the commencement of Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002*. 8  
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**3 Purpose** 11

The purpose of this Act is to recognise and designate New South Wales as an area in which certain genetically modified plants may not be cultivated, in order to preserve the identity of one or both of the following: 12  
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(a) GM crops, 16

(b) non-GM crops, 17

for marketing purposes. 18

**4 Definitions** 19

(1) In this Act: 20

*cultivate* a plant, includes plant, tend, nurture or harvest the plant. 21

*Department* means the Department of Agriculture. 22

*director* of a corporation means a person who is a director of the corporation within the meaning of the *Corporations Act 2001* of the Commonwealth. 23  
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*Director-General* means the Director-General of the Department. 26

*exemption order* means an order in force under section 8. 27

*exercise* a function includes perform a duty. 28

*food plant* has the meaning given by section 5. 29

*function* includes a power, authority or duty. 30

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**gene technology** has the same meaning as in the *Gene Technology Act 2000* of the Commonwealth.

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**GM food plant** means a food plant that has been genetically modified, that is, a food plant that:

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- (a) has been modified by gene technology, or
- (b) has inherited from another plant particular traits that occurred in that other plant because of gene technology.

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**inspector** means an inspector appointed under section 21.

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**moratorium order** means an order in force under section 6.

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**plant** includes the seed or any part of a plant whether living or dead and whether attached to a plant or not.

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- (2) Notes included in this Act do not form part of this Act.

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## 5 Food plants

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For the purposes of this Act, a **food plant** is a species or variety of plant that the Minister is satisfied is, when grown in New South Wales, primarily grown to be used (whether or not after processing) as, or as an ingredient of, food for human consumption.

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<b>Part 2</b>	<b>Moratorium on cultivating certain GM plants</b>	1
<b>Division 1</b>	<b>Moratorium orders</b>	2
<b>6</b>	<b>Moratorium orders to prohibit GM food crops</b>	3
	The Minister may by order published in the Gazette (a <i>moratorium order</i> ) prohibit the cultivation in New South Wales of a specified GM food plant or class of GM food plants.	4 5 6
	<b>Note.</b> Section 42 provides that the Act expires on 3 March 2006.	7
<b>7</b>	<b>Offence of contravening moratorium order</b>	8
	A person must not cultivate a GM food plant in contravention of a moratorium order knowing, or being reckless as to whether, the plant is a GM food plant.	9 10 11
	Maximum penalty: in the case of a corporation, 1,250 penalty units or, in any other case, 500 penalty units or imprisonment for 2 years, or both.	12 13 14
<b>8</b>	<b>Exemptions from moratorium order</b>	15
(1)	The Minister may by order published in the Gazette (an <i>exemption order</i> ) confer exemptions from the operation of a moratorium order.	16 17
(2)	An exemption may be conferred so as to apply to a specified person or class of persons or within a specified area or in any other specified way. An exemption may be conferred subject to conditions or unconditionally.	18 19 20 21
(3)	The cultivation of a GM food plant as permitted by an exemption order is not prohibited by a moratorium order.	22 23
(4)	An exemption order can form part of a moratorium order or can be a separate order.	24 25
<b>9</b>	<b>Notification of making an order</b>	26
(1)	As soon as practicable after making an order under this Division and publishing it in the Gazette, the Minister must cause notice of the order to be published in a newspaper circulating throughout the State.	27 28 29 30
(2)	Failure to comply with subsection (1) does not invalidate an order.	31

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<b>10</b>	<b>Commencement of order</b>	1
	An order made under this Division takes effect on the day on which it is published in the Gazette or on a later day specified in the order.	2 3
<b>11</b>	<b>Order cannot be challenged</b>	4
	An order made under this Division cannot be challenged, reviewed or called into question in proceedings before any court or tribunal.	5 6
<b>12</b>	<b>Director-General to keep register of orders</b>	7
(1)	The Director-General is to keep a register of the orders made under this Division.	8 9
(2)	The register is to contain such particulars of each order made under this Division and is to be kept in such manner and form as the Director-General may from time to time determine, subject to the regulations.	10 11 12 13
(3)	The Director-General is to cause the contents of the register to be made available for inspection free of charge by the public at the Department's head office and on the Department's website on the Internet.	14 15 16 17
<b>Division 2</b>	<b>Enforcement of moratorium orders</b>	18
<b>13</b>	<b>Minister's directions</b>	19
(1)	The Minister may only take action under this section if the Minister is in possession of a certificate that relates to a plant (the <i>tested plant</i> ) and the Minister believes on reasonable grounds that:	20 21 22
(a)	the tested plant is a GM food plant specified in a moratorium order, and	23 24
(b)	the tested plant was not cultivated pursuant to an exemption order.	25 26
(2)	The Minister may give a written direction to a person who is the owner or person having custody or control of the tested plant, or any plant that is or was part of the offending crop, requiring that person to do any of the following:	27 28 29 30
(a)	retain ownership, custody or control of the plant for a specified period,	31 32
(b)	hold the plant at a particular location for a specified period,	33

(c) destroy the plant in such manner and within such time as may be specified, 1  
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(d) take such other action in relation to the plant as may be specified. 3  
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**Note.** Section 16 provides for an appeal to the Supreme Court against a direction of the Minister given under subsection (2). 5  
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(3) The Minister or an inspector acting under the written authority of the Minister may seize and dispose of or destroy the tested plant and any plant that is or was part of the offending crop and any container in which such a plant is growing or stored, if: 7  
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(a) the owner or person having custody or control of the plant has been given a direction under this section and failed to comply with the requirements of the direction, or 11  
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(b) the Minister considers that seizure and disposal or destruction of the plant is required urgently. 14  
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(4) In order to prevent the contamination of future crops, the Minister may give a written direction to the owner or occupier of land on which the Minister reasonably believes the tested plant or the offending crop has been cultivated, directing that person not to cultivate any plant of a species or variety specified in the direction on the land for such period as is specified. 16  
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(5) In this section: 22

*certificate* means a certificate referred to in section 18. 23

*offending crop* means the crop in which the tested plant has been cultivated. 24  
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#### 14 Offence—failure to comply with Minister’s direction 26

A person who is given a written direction under this Division must not fail, without reasonable excuse, to comply with the requirements of the direction. 27  
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Maximum penalty: in the case of a corporation, 1,250 penalty units or, in any other case, 500 penalty units or imprisonment for 2 years, or both. 30  
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#### 15 Costs of complying with Minister’s direction 33

(1) A person given a written direction under this Division is liable for any costs incurred in complying with the requirements of the direction. 34  
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- (2) The owner or person having custody or control of any plant or container that is seized and disposed of or destroyed under section 13 (3) is liable for any costs incurred and any such costs are taken to be a debt due to the Minister from that person. 1  
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- (3) The owner or person having custody or control of any plant that is the subject of a certificate referred to in section 18 is liable for the costs of the test referred to in that certificate and any such costs incurred by the Minister are taken to be a debt due to the Minister from that person. 5  
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- (4) In any proceedings for the recovery of any debt referred to in this section, a certificate signed by the Minister stating the amount of the costs and the manner in which they were incurred is evidence of the matters certified. 10  
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#### **16 Appeal to Supreme Court**

- (1) A person aggrieved by a direction given to the person under section 13 (2) may appeal to the Supreme Court against the direction. 14  
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- (2) An appeal under this section must be made within 14 days of the direction being given to the person or within such further period as the Supreme Court may allow in a particular case. 17  
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- (3) An appeal under this section can be made even if the direction appealed against has already been executed. 20  
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- (4) An appeal under this section does not affect the direction appealed against until the Supreme Court finally determines the appeal. 22  
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- (5) On the hearing of an appeal, the Supreme Court may do one or more of the following: 24  
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- (a) make an order reversing, affirming or amending the direction appealed against, 26  
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  - (b) remit the matter back to the Minister for a direction by the Minister in accordance with the order of the Court, 28  
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  - (c) make an order giving a direction that the Minister could give under section 13 (2), 30  
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  - (d) despite section 32, make an order awarding compensation against the Crown in accordance with subsection (7), 32  
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  - (e) make such other order in relation to the appeal as the Court sees fit. 34  
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- (6) If the Supreme Court gives a direction that the Minister may give under section 13 (2), the direction is taken to be a direction of the Minister under that provision (other than for the purposes of an appeal under this section). 1  
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- (7) An award of compensation under this section may only be made in relation to losses suffered directly by the person given the direction appealed against and may only be made to the extent that the appeal is successful. 5  
6  
7  
8
- (8) When awarding compensation under this section, the Supreme Court cannot award exemplary or punitive damages or damages in the nature of aggravated damages. 9  
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**17 Direction cannot be challenged** 12

Except as provided by this Division, a direction of the Minister under this Division cannot be challenged, reviewed or called into question in proceedings before any court or tribunal. 13  
14  
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**18 Certificate is conclusive proof that plant is genetically modified** 16

- (1) For the purposes of this Act, a certificate signed by the person in charge of an approved laboratory stating that: 17  
18
- (a) an approved test has been conducted on a plant, and 19
  - (b) the approved test shows that the plant has been genetically modified, 20  
21
- is conclusive proof that the plant has been genetically modified. 22
- (2) In this section: 23
- approved laboratory*** means: 24
- (a) a laboratory that is accredited by the National Association of Testing Authorities, Australia, or 25  
26
  - (b) such other laboratory as may be prescribed by the regulations. 27
- approved test*** means: 28
- (a) a Polymerase Chain Reaction test, or 29
  - (b) such other test as may be prescribed by the regulations. 30

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**Division 3      Other offences**
**19    Offence—disposal of offending plants**

The owner or person having custody or control of a plant must not do any of the following if the person is aware or has reasonable grounds to suspect that the plant has been cultivated in contravention of a moratorium order or is or was part of a crop in which a plant was cultivated in contravention of a moratorium order:

- (a) transfer ownership, custody or control of the plant,
- (b) offer the plant for sale,
- (c) offer to supply the plant,
- (d) destroy the plant,
- (e) move the plant to another location,

except in accordance with a permit issued by the Director-General or a direction under Division 2.

Maximum penalty: in the case of a corporation, 1,250 penalty units or, in any other case, 500 penalty units or imprisonment for 2 years, or both.

**20    Offence—failure to report contravention of moratorium order**

- (1) A person who is aware or suspects that a plant has been cultivated in contravention of a moratorium order must notify the Director-General of the matters in subsection (2) within 2 days of becoming aware or forming that suspicion.

Maximum penalty: 20 penalty units.

- (2) The Director-General must be notified of the following matters:
- (a) the location of the plant,
  - (b) the name of the owner or occupier of the land on which the plant is located,
  - (c) the location of the land on which the plant has been cultivated,
  - (d) the name of the owner or occupier of the land on which the plant has been cultivated,
  - (e) the basis for the person knowing or suspecting that the plant has been cultivated in contravention of a moratorium order,
  - (f) contact details for the person,

- (g) such other matters as may be prescribed by the regulations. 1
- (3) A person is not required to notify the Director-General of a matter 2  
under this section if: 3
  - (a) the person has a reasonable excuse for not notifying the 4  
Director-General of the matter, or 5
  - (b) the person believes on reasonable grounds that the Director- 6  
General has already been notified of the matter. 7
- (4) A person who is required to notify the Director-General of a matter 8  
under this section is not excused from that requirement because of 9  
any duty of confidentiality or other restriction on disclosure and the 10  
provision of information in accordance with this section does not 11  
constitute a breach of any such duty by that person. 12
- (5) A person who is required to notify the Director-General of a matter 13  
under this section is not excused from that requirement because 14  
provision of the information may tend to incriminate the person or 15  
make the person liable to a penalty. 16
- (6) A notification provided in accordance with this section is not 17  
admissible in evidence in any criminal proceedings against the 18  
person who provided the notification except proceedings for an 19  
offence against this section. 20

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<b>Part 3</b>	<b>Enforcement</b>	1
<b>21</b>	<b>Appointment of inspectors</b>	2
(1)	The Director-General may appoint any officer of the Department, or any person whom the Director-General considers is suitably qualified for the purpose, to be an inspector for the purposes of this Act.	3 4 5 6
(2)	On appointing an inspector under subsection (1), the Director-General must issue to the inspector a certificate of authority that authorises the inspector to exercise the powers conferred on an inspector by this Act.	7 8 9 10
(3)	A certificate of authority must:	11
(a)	state that it is issued under the <i>Gene Technology (GM Crop Moratorium) Act 2003</i> , and	12 13
(b)	give the name of the person to whom it is issued, and	14
(c)	state the date, if any, on which it expires, and	15
(d)	describe the nature of the powers conferred and the source of the powers.	16 17
<b>22</b>	<b>Powers of inspectors</b>	18
(1)	An inspector may at any reasonable time enter and inspect any premises for the purpose of ascertaining whether or not a provision of this Act, or any regulation made under this Act, is being or has been complied with or contravened.	19 20 21 22
(2)	While on premises entered under this section or under the authority of a search warrant under this Part, an inspector may do one or more of the following:	23 24 25
(a)	inspect anything that the inspector reasonably believes may provide evidence of an offence against this Act or the regulations,	26 27 28
(b)	take, remove and keep for analysis or testing a sample of any plant, or anything the inspector reasonably believes to be a plant,	29 30 31
(c)	inspect any records kept on those premises and require any person whom the inspector reasonably believes to have custody or control of those records to produce them for inspection,	32 33 34 35

- (d) require any person on those premises to answer questions or otherwise furnish information in relation to a contravention of this Act or the regulations, 1  
2  
3
- (e) make and take away copies of the whole or any part of any records or other information, 4  
5
- (f) take away and retain, for such period as may be reasonably necessary, any records or other information, or any part of them, in order to make copies of them, 6  
7  
8
- (g) take away and retain any records or other information, if the inspector concerned reasonably believes that the records or information are evidence of an offence against this Act or the regulations, until proceedings for the offence have been disposed of, 9  
10  
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- (h) seize and detain anything that the inspector reasonably believes may provide evidence of an offence against this Act or the regulations, 14  
15  
16
- (i) place anything seized as referred to in paragraph (h) in a container, or in a room, compartment or cabinet located on the premises where it was seized, and mark, fasten and seal that container or, as the case may be, the door or opening providing access to that room, compartment or cabinet, 17  
18  
19  
20  
21
- (j) take such photographs, films, audio, video and other recordings as the inspector considers necessary. 22  
23
- (3) Anything seized under this section may, at the option of the inspector who made the seizure or another inspector acting in place of that inspector, be detained on the premises where it was found or be removed to other premises and detained there. 24  
25  
26  
27
- (4) Before taking away a record or statement or anything seized under this section, an inspector must tender an appropriate receipt to the person from whom it was taken. 28  
29  
30
- (5) This section does not authorise an inspector to enter any part of premises that is being used for residential purposes except: 31  
32
  - (a) with the consent of the occupier, or 33
  - (b) under the authority of a search warrant. 34
- (6) An inspector must, when exercising on any premises any function of an inspector under this section, produce the inspector's certificate of authority if required to do so by the occupier of the premises. 35  
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<b>23</b>	<b>Provisions relating to exercise of powers</b>	1
(1)	A power conferred by this Act to enter premises, or to make an inspection or take other action on premises, may not be exercised unless the inspector proposing to exercise the power:	2
		3
		4
	(a) is in possession of a certificate of authority, and	5
	(b) gives reasonable notice to the occupier of the premises of the intention to exercise the power, unless the giving of notice would defeat the purpose for which it is intended to exercise the power, and	6
		7
		8
		9
	(c) exercises the power at a reasonable time, unless it is being exercised in an emergency, and	10
		11
	(d) uses no more force than is reasonably necessary to effect the entry or make the inspection.	12
		13
(2)	Despite section 32, if damage is caused by an inspector exercising a power to enter premises, a reasonable amount of compensation is recoverable as a debt owed by the Crown to the owner of the premises unless the occupier obstructed the exercise of the power.	14
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(3)	This section does not apply to a power conferred by a search warrant issued under the <i>Search Warrants Act 1985</i> .	18
		19
<b>24</b>	<b>Requirement to provide information and records</b>	20
(1)	An inspector may, by notice in writing given to a person, require the person to furnish to the inspector such information or records (or both) as the inspector requires by the notice, being information that relates to the question of whether or not this Act or the regulations are being or have been contravened.	21
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(2)	A notice under this section:	26
	(a) must specify the manner in which information or records are required to be furnished and a reasonable time by which the information or records are required to be furnished, and	27
		28
		29
	(b) may only require a person to furnish existing records that are in the person's possession or that are within the person's power to obtain lawfully.	30
		31
		32
(3)	The inspector to whom any record is furnished under this Part may take copies of it.	33
		34
(4)	If any record required to be furnished under this Part is in electronic, mechanical or other form, the notice requires the record to be furnished in written form, unless the notice otherwise provides.	35
		36
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(5)	This section applies whether or not a power of entry under this Act is being or has been exercised.	1 2
<b>25</b>	<b>Power of inspectors to require answers</b>	3
(1)	An inspector may require a person whom the inspector suspects on reasonable grounds to have knowledge of matters in respect of which information is reasonably required for the purposes of this Act to answer questions in relation to those matters.	4 5 6 7
(2)	An inspector may, by notice in writing, require a corporation to nominate, in writing within the time specified in the notice, a director or officer of the corporation to be the corporation's representative for the purpose of answering questions under this section.	8 9 10 11 12
(3)	Answers given by a person nominated under subsection (2) bind the corporation.	13 14
<b>26</b>	<b>Power to demand name and address</b>	15
	An inspector may require a person whom the inspector suspects on reasonable grounds to have contravened or to be contravening this Act or the regulations to state his or her full name and residential address.	16 17 18 19
<b>27</b>	<b>Limitation on self-incrimination</b>	20
(1)	A person who is required under this Part to answer a question or to produce a thing is not excused from answering the question or producing that thing on the ground that the answer to the question or the production of the thing might tend to incriminate the person or make the person liable to a penalty.	21 22 23 24 25
(2)	The answer to the question or production of the thing is not admissible in evidence against the person in any criminal proceedings (except proceedings for an offence under section 29 (1)–(3)) if:	26 27 28 29
(a)	the person objected at the time to answering the question or producing the thing on the ground that it might incriminate the person, or	30 31 32
(b)	the person was not warned on that occasion that the person may object to answering the question or producing the thing on the ground that it might incriminate the person.	33 34 35

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<b>28 Search warrants</b>	1
(1) An inspector may apply to an authorised justice for a search warrant for premises if the inspector believes on reasonable grounds:	2
(a) that a provision of this Act or the regulations is being or has been contravened on the premises, or	3
(b) that there is on the premises evidence of a contravention of a provision of this Act or the regulations.	4
(2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an inspector named in the warrant:	5
(a) to enter and inspect any premises, and	6
(b) to exercise the powers, or any specified powers, of an inspector under this Part.	7
(3) Part 3 of the <i>Search Warrants Act 1985</i> applies to a search warrant issued under this section.	8
(4) In this section:	9
<i>authorised justice</i> has the same meaning as in the <i>Search Warrants Act 1985</i> .	10
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<b>29 Offences—enforcement</b>	19
(1) A person who, without reasonable excuse, neglects or fails to comply with a requirement made of the person by an inspector under this Act is guilty of an offence.	20
(2) A person who furnishes any information or makes a statement in purported compliance with a requirement made by an inspector under this Act, knowing that it is false or misleading in a material respect, is guilty of an offence.	21
(3) A person who, without reasonable excuse, hinders or obstructs an inspector in the exercise of any of the powers conferred by this Act is guilty of an offence.	22
(4) A person who, without reasonable excuse, removes or tampers with anything that has been seized under this Act is guilty of an offence.	23
(5) A person who, without reasonable excuse, removes or tampers with any sample taken under this Act is guilty of an offence.	24
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- (6) A person is not guilty of an offence of failing to comply with a requirement made by an inspector unless it is established by the prosecutor that the inspector concerned warned the person that a failure or refusal to comply with the requirement was an offence. 1  
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4
- (7) A person is not guilty of an offence of hindering or obstructing an inspector in the exercise of the inspector's powers at any premises unless it is established by the prosecutor that: 5  
6  
7
- (a) the inspector concerned produced at the relevant time the certificate of authority issued to the inspector under this Part, and 8  
9  
10
- (b) the person was informed by the inspector concerned, or otherwise knew, that the inspector was empowered to exercise the power to which the offence relates. 11  
12  
13
- Maximum penalty: 10 penalty units or imprisonment for 3 months, or both. 14  
15

**30 Disposal of seized items** 16

- (1) Any item seized under this Act is forfeited to the Crown and may be destroyed or disposed of in such manner as the Minister directs. 17  
18
- (2) However, if: 19
- (a) any seized item is forfeited to the Crown under this section, and 20  
21
- (b) the Minister is satisfied that there has been no contravention of this Act or the regulations in relation to the seized item, and 22  
23
- (c) the seized item has not been disposed of or destroyed in a manner that would prevent it from being dealt with in accordance with this subsection, 24  
25  
26
- the Minister must immediately cause the seized item to be delivered to such person as appears to the Minister to be the person who would, but for the forfeiture, have been entitled to it. 27  
28  
29
- (3) If any seized item is delivered to a person in accordance with subsection (2), such proprietary and other interests as existed immediately before the forfeiture are revived. 30  
31  
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**31 Injunctions to prevent contravention of Act**

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|  | 1                     |
| (1) If a person has contravened, is contravening or is proposing to contravene a provision of this Act, the Supreme Court may, on the application of the Minister, grant an injunction restraining the person from doing so or requiring the person to do any act or thing necessary to avoid or remedy the contravention. | 2<br>3<br>4<br>5<br>6 |
| (2) The Court may, before considering the application, grant an interim injunction restraining the person from engaging in conduct pending the determination of the application.   | 7<br>8<br>9           |
| (3) The Court may rescind or vary such an injunction or interim injunction.  | 10<br>11              |
| (4) The Minister is not to be required to give any undertaking as to damages or costs in respect of an application under this section.   | 12<br>13              |

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<b>Part 4</b>	<b>Miscellaneous</b>	1
<b>32</b>	<b>No compensation payable</b>	2
(1)	Compensation is not payable by or on behalf of the Crown in relation to anything that is authorised by or under this Act.	3 4
(2)	In this section:	5
	<i>compensation</i> includes damages or any other form of monetary compensation.	6 7
	<i>the Crown</i> means the Crown within the meaning of the <i>Crown Proceedings Act 1988</i> , and includes an officer, employee or agent of the Crown.	8 9 10
<b>33</b>	<b>Summary proceedings for offences</b>	11
(1)	Proceedings for an offence against this Act or the regulations may be dealt with:	12 13
(a)	summarily before a Local Court, or	14
(b)	summarily before the Supreme Court in its summary jurisdiction.	15 16
(2)	If proceedings are brought in a Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 100 penalty units or such other amount as may be prescribed by the regulations, despite any higher maximum monetary penalty provided in respect of the offence.	17 18 19 20 21
<b>34</b>	<b>Penalty notices for certain offences</b>	22
(1)	An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence under this Act or the regulations, being an offence prescribed by the regulations.	23 24 25 26
(2)	A penalty notice is a notice to the effect that, if the person served does not wish to have the matter dealt with by a court, the person may pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.	27 28 29 30 31
(3)	A penalty notice may be served personally or by post.	32
(4)	If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.	33 34 35

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- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor in any way as affecting or prejudicing, any civil claim, action or proceedings arising out of the same occurrence. 1  
2  
3  
4
- (6) The regulations may: 5
- (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and 6  
7  
8
- (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and 9  
10
- (c) prescribe different amounts of penalties for different offences or classes of offences. 11  
12
- (7) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty that could be imposed for the offence by a court. 13  
14  
15
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences. 16  
17  
18
- (9) In this section: 19
- authorised officer* means: 20
- (a) an inspector, or 21
- (b) a person declared by the regulations to be an authorised officer for the purposes of this section. 22  
23
- 35 Onus of proof concerning reasonable excuse** 24
- In any proceedings for an offence against a provision of this Act or the regulations, the onus of proving that a person had a reasonable excuse (as referred to in the provision) lies with the defendant. 25  
26  
27
- 36 Offences by corporations** 28
- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each executive officer of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the act or omission constituting the offence. 29  
30  
31  
32  
33
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision. 34  
35  
36

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(3)	Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or the regulations on any corporation by which an offence against the provision is actually committed.	1 2 3
<b>37</b>	<b>Delegation</b>	4
(1)	The Minister may delegate to the Director-General, or to an authorised person, the exercise of any of the Minister's powers under this Act or the regulations, other than the power to make an order under Division 1 of Part 2, the power to give a direction or authorisation under section 13 and this power of delegation.	5 6 7 8 9
(2)	The Director-General may delegate to an authorised person the exercise of:	10 11
(a)	any of the functions delegated to the Director-General by the Minister, or	12 13
(b)	any of the other functions of the Director-General under this Act or the regulations, other than this power of delegation.	14 15
(3)	In this section, <i>authorised person</i> means:	16
(a)	a member of staff of the Department, or	17
(b)	any person of a class prescribed by the regulations.	18
<b>38</b>	<b>Describing plants</b>	19
	For the purposes of this Act, a plant may be described by its scientific name, its common name or in any other way.	20 21
<b>39</b>	<b>Savings, transitional and other provisions</b>	22
	Schedule 1 has effect.	23
<b>40</b>	<b>Amendment of Acts</b>	24
	The Acts specified in Schedule 2 are amended as set out in that Schedule.	25 26
<b>41</b>	<b>Regulations</b>	27
(1)	The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.	28 29 30 31
(2)	The regulations may create offences punishable by a penalty not exceeding 100 penalty units.	32 33

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**42 Expiry of Act**

1

This Act expires on 3 March 2006.

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<b>Schedule 1 Savings, transitional and other provisions</b>	1
(Section 39)	2
<b>Part 1 General</b>	3
<b>1 Regulations</b>	4
(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:	5
this Act	6
(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.	7
(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:	8
(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	9
(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.	10
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<b>Part 2 Provisions consequent on the enactment of this Act</b>	19
	20
<b>2 Matter occurring before moratorium order made</b>	21
A moratorium order extends to plants that were planted before the making of the order, including plants that were planted before the date of assent to this Act, however, an act or omission occurring before the making of the order does not constitute an offence in relation to that order.	22
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## Schedule 2 Amendment of Acts

(Section 40)

### 2.1 Gene Technology (GM Crop Moratorium) Act 2003

#### [1] Section 23 Provisions relating to exercise of powers

Omit “*Search Warrants Act 1985*” from section 23 (3).

Insert instead “*Law Enforcement (Powers and Responsibilities) Act 2002*”.

#### [2] Section 28 Search warrants

Omit “authorised justice” wherever occurring from section 28 (1) and (2).

Insert instead “authorised officer”.

#### [3] Section 28 (3)

Omit “Part 3 of the *Search Warrants Act 1985*”.

Insert instead “Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002*”.

#### [4] Section 28 (4)

Omit the subsection. Insert instead:

(4) In this section:

*authorised officer* has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

### 2.2 Fines Act 1996 No 99

#### Schedule 1 Statutory provisions under which penalty notices issued

Insert in alphabetical order:

*Gene Technology (GM Crop Moratorium) Act 2003*, section 34

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<b>2.3 Law Enforcement (Powers and Responsibilities) Act 2002 No 103</b>	1
	2
<b>Schedule 2 Search warrants under other Acts</b>	3
Insert in alphabetical order:	4
<i>Gene Technology (GM Crop Moratorium) Act 2003</i> , section 28	5
	6
<b>2.4 Search Warrants Act 1985 No 37</b>	7
<b>Section 10 Definitions</b>	8
Insert in alphabetical order of Acts in the definition of <i>search warrant</i> :	9
section 28 of the <i>Gene Technology (GM Crop Moratorium) Act 2003</i> ,	10
	11