

# Gene Technology (GM Crop Moratorium) Act 2003 No 12

[2003-12]



New South Wales

## Status Information

### Currency of version

Historical version for 15 December 2004 to 16 November 2005 (accessed 2 May 2024 at 13:54)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **Does not include amendments by**  
Sch 2.1 to this Act (not commenced — to commence on 1.12.2005)
- **See also**  
[Gene Technology \(GM Crop Moratorium\) Amendment \(Postponement of Expiry\) Bill 2005](#)
- **Note**  
The Act expires on 3.3.2006 — see section 43.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Gene Technology (GM Crop Moratorium) Act 2003 No 12



New South Wales

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

## Part 1 Preliminary

### 1 Name of Act

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

### 2 Commencement

- (1) This Act commences on the date of assent, except as provided by subsection (2).
- (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*.

### 3 Purpose

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:

- (a) GM crops,
  - (b) non-GM crops,
- for marketing purposes.

### 4 Definitions

- (1) In this Act:

**Advisory Council** means the New South Wales Agricultural Advisory Council on Gene Technology established under this Act.

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

**Department** means the Department of Agriculture.

**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.

**Director-General** means the Director-General of the Department.

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

**exercise** a function includes perform a duty.

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

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

**gene technology** has the same meaning as in the [Gene Technology Act 2000](#) of the Commonwealth.

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

- (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.

**inspector** means an inspector appointed under section 22.

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

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

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

## 5 Food plants

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.

## Part 2 Moratorium on cultivating certain GM plants

### Division 1 Moratorium orders

#### 6 Moratorium orders to prohibit GM food crops

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.

**Note—**

Section 43 provides that the Act expires on 3 March 2006.

**Editorial note—**

For moratorium orders published under this section, see Gazettes No 119 of 25.7.2003, p 7513 and No 198 of 24.12.2003, p 11686.

## **7 Offence of contravening moratorium order**

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.

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.

## **8 Exemptions from moratorium order**

- (1) The Minister may by order published in the Gazette (an **exemption order**) confer exemptions from the operation of a moratorium order.
- (2) The Minister is not to make an exemption order unless the Advisory Council has been provided with the following material (and any other material that the Minister considers to be relevant) and has been asked to provide, in consideration of the material provided, its written recommendation as to whether an exemption order should be made—if the exemption order is to be made on the written application of a person, a copy of the application.
- (3) The Minister may make an exemption order without a recommendation if the Minister has given the Advisory Council at least 28 days to provide its recommendation.
- (4) If the Minister makes an exemption order and the Advisory Council recommended that the exemption order should not be made, the Minister must provide written reasons to the Advisory Council for not following its recommendation.
- (5) The Minister is to make public any written reasons that the Minister provides to the Advisory Council under subsection (4) and also the recommendation to which those written reasons relate.
- (6) 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.
- (6A) Without limiting subsection (6), an exemption order may be subject to conditions that relate to one or more of the following:
  - (a) the handling, storage, transport or other use (including destruction or disposal) of any GM food plant that is permitted to be cultivated by the exemption order,
  - (b) the ongoing use or monitoring of any land on which any such plant has been

cultivated.

(6B) The Advisory Council is to consult with the Australian Grain Harvesters Association before an exemption order is granted in relation to the harvesting of GM food plants and the cleaning of equipment that has been used to harvest such plants.

(6C) A person who cultivates, or has cultivated, a GM food plant as permitted by an exemption order must not, without reasonable excuse, contravene, or cause or permit any other person to contravene, any condition to which the exemption order is subject.

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.

(6D) A person cannot be prosecuted for both an offence against subsection (6C) and an offence against section 7 in relation to the same act or omission.

(7) The cultivation of a GM food plant as permitted by an exemption order is not prohibited by a moratorium order.

(8) An exemption order can form part of a moratorium order or can be a separate order.

**Editorial note—**

For exemption orders published under this section, see Gazettes No 119 of 25.7.2003, p 7516 (see also Gazette No 198 of 24.12.2003, p 11684); No 198 of 24.12.2003, p 11684 and No 89 of 25.5.2004, pp 3143, 3150, 3157.

## **9 Notification of making an order**

(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:

- (a) in a newspaper circulating throughout the State, and
- (b) on the Department's web page on the Internet, and
- (c) in the case of an exemption order that does not apply to the whole State, in a newspaper circulating throughout the area in which the exemption order is to apply.

(1A) In the case of an exemption order, the Minister is to cause details of the precise location of the area of land to which the exemption order relates:

- (a) to be published with the notice of the order, and
- (b) to be forwarded to each of the following:
  - (i) the local council for each local government area in which GM food plants are to be cultivated under the order,



(ii) the rural lands protection board for each district in which GM food plants are to be cultivated under the order,

(iii) any other persons or bodies prescribed by the regulations.

(2) Failure to comply with subsection (1) or (1A) does not invalidate an order.

#### **10 Commencement of order**

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.

#### **11 Order cannot be challenged**

An order made under this Division cannot be challenged, reviewed or called into question in proceedings before any court or tribunal.

#### **12 Director-General to keep register of orders**

(1) The Director-General is to keep a register of the orders made under this Division.

(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.

(2A) The register is also to contain, in the case of an exemption order, details of the area of land to which the exemption order applies.

(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.

#### **13 Advisory Council**

(1) There is established by this Act a New South Wales Agricultural Advisory Council on Gene Technology, consisting of 10 members appointed by the Minister.

(2) The members of the Advisory Council are:

(a) a person appointed on the nomination of the Director-General of the Department of Agriculture, and

(b) a person appointed on the nomination of the NSW Farmers' Association, and

(c) a person appointed on the nomination of the Network of Concerned Farmers, and

(d) a person appointed on the nomination of the Nature Conservation Council of NSW Incorporated, and

(e) a person appointed on the nomination of Graincorp Limited, and

- (f) a person appointed on the nomination of Australian Wheat Board Pty Ltd, and
  - (g) a person appointed on the nomination of the Chief Executive of the Commonwealth Scientific and Industrial Research Organisation, and
  - (h) a person appointed on the nomination of the Chair of Avcare Limited, and
  - (i) a person appointed on the nomination of the Chair of the Grains Research and Development Corporation, and
  - (j) a person appointed to be the independent chairperson of the Advisory Council.
- (3) If an organisation referred to in subsection (2) ceases to exist or fails to nominate a member then the Minister is to appoint a member on the nomination of an organisation that the Minister determines is an organisation that has similar aims and objectives to the first organisation.
- (4) The functions of the Advisory Council are as follows:
- (a) to investigate any matter referred to the Advisory Council by the Minister,
  - (b) to provide advice in relation to proposed research trials for GM food plants referred by the Minister,
  - (c) to provide advice on current developments and issues in relation to GM technology and its application to agriculture,
  - (d) to provide policy advice in relation to licences issued under the [Gene Technology Act 2000](#) of the Commonwealth that relate to GM food plants.
- (5) The procedure of the Advisory Council is to be determined by the Minister or (subject to any determination of the Minister) by the Advisory Council.
- (6) A member of the Advisory Council is entitled to such allowances in connection with the work of the Council as the Minister approves in respect of the member.

## Division 2 Enforcement of moratorium orders

### 14 Minister's directions

- (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 **tested plant**) and the Minister believes on reasonable grounds that:
- (a) the tested plant is a GM food plant specified in a moratorium order, and
  - (b) the tested plant was not cultivated pursuant to an exemption order.
- (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:

- (a) retain ownership, custody or control of the plant for a specified period,
- (b) hold the plant at a particular location for a specified period,
- (c) destroy the plant in such manner and within such time as may be specified,
- (d) take such other action in relation to the plant as may be specified.

**Note—**

Section 17 provides for an appeal to the Supreme Court against a direction of the Minister given under subsection (2).

- (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:
  - (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
  - (b) the Minister considers that seizure and disposal or destruction of the plant is required urgently.
- (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.

- (5) In this section:

**certificate** means a certificate referred to in section 19.

**offending crop** means the crop in which the tested plant has been cultivated.

## **15 Offence—failure to comply with Minister’s direction**

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.

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.

## **16 Costs of complying with Minister’s direction**

- (1) A person given a written direction under this Division is liable for any costs incurred in

complying with the requirements of the direction.

- (2) The owner or person having custody or control of any plant or container that is seized and disposed of or destroyed under section 14 (3) is liable for any costs incurred and any such costs are taken to be a debt due to the Minister from that person.
- (3) The owner or person having custody or control of any plant that is the subject of a certificate referred to in section 19 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.
- (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.

## **17 Appeal to Supreme Court**

- (1) A person aggrieved by a direction given to the person under section 14 (2) may appeal to the Supreme Court against the direction.
- (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.
- (3) An appeal under this section can be made even if the direction appealed against has already been executed.
- (4) An appeal under this section does not affect the direction appealed against until the Supreme Court finally determines the appeal.
- (5) On the hearing of an appeal, the Supreme Court may do one or more of the following:
  - (a) make an order reversing, affirming or amending the direction appealed against,
  - (b) remit the matter back to the Minister for a direction by the Minister in accordance with the order of the Court,
  - (c) make an order giving a direction that the Minister could give under section 14 (2),
  - (d) despite section 33, make an order awarding compensation against the Crown in accordance with subsection (7),
  - (e) make such other order in relation to the appeal as the Court sees fit.
- (6) If the Supreme Court gives a direction that the Minister may give under section 14 (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).
- (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.

- (8) When awarding compensation under this section, the Supreme Court cannot award exemplary or punitive damages or damages in the nature of aggravated damages.

### **18 Direction cannot be challenged**

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.

### **19 Certificate is conclusive proof that plant is genetically modified**

- (1) For the purposes of this Act, a certificate signed by the person in charge of an approved laboratory stating that:

- (a) an approved test has been conducted on a plant, and
  - (b) the approved test shows that the plant has been genetically modified,
- is conclusive proof that the plant has been genetically modified.

- (2) In this section:

**approved laboratory** means:

- (a) a laboratory that is accredited by the National Association of Testing Authorities, Australia, or
- (b) such other laboratory as may be prescribed by the regulations.

**approved test** means:

- (a) a Polymerase Chain Reaction test, or
- (b) such other test as may be prescribed by the regulations.

## **Division 3 Other offences**

### **20 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.

## **21 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.

- (3) A person is not required to notify the Director-General of a matter under this section if:

- (a) the person has a reasonable excuse for not notifying the Director-General of the matter, or
- (b) the person believes on reasonable grounds that the Director-General has already been notified of the matter.

- (4) A person who is required to notify the Director-General of a matter under this section is not excused from that requirement because of any duty of confidentiality or other restriction on disclosure and the provision of information in accordance with this section does not constitute a breach of any such duty by that person.

- (5) A person who is required to notify the Director-General of a matter under this section is not excused from that requirement because provision of the information may tend to incriminate the person or make the person liable to a penalty.
- (6) A notification provided in accordance with this section is not admissible in evidence in any criminal proceedings against the person who provided the notification except proceedings for an offence against this section.

## **Part 3 Enforcement**

### **22 Appointment of inspectors**

- (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.
- (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.
- (3) A certificate of authority must:
  - (a) state that it is issued under the [Gene Technology \(GM Crop Moratorium\) Act 2003](#), and
  - (b) give the name of the person to whom it is issued, and
  - (c) state the date, if any, on which it expires, and
  - (d) describe the nature of the powers conferred and the source of the powers.

### **23 Powers of inspectors**

- (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.
- (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:
  - (a) inspect anything that the inspector reasonably believes may provide evidence of an offence against this Act or the regulations,
  - (b) take, remove and keep for analysis or testing a sample of any plant, or anything the inspector reasonably believes to be a plant,
  - (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,

- (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,
  - (e) make and take away copies of the whole or any part of any records or other information,
  - (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,
  - (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,
  - (h) seize and detain anything that the inspector reasonably believes may provide evidence of an offence against this Act or the regulations,
  - (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,
  - (j) take such photographs, films, audio, video and other recordings as the inspector considers necessary.
- (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.
- (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.
- (5) This section does not authorise an inspector to enter any part of premises that is being used for residential purposes except:
- (a) with the consent of the occupier, or
  - (b) under the authority of a search warrant.
- (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.

## **24 Provisions relating to exercise of powers**

- (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:



- (a) is in possession of a certificate of authority, and
  - (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
  - (c) exercises the power at a reasonable time, unless it is being exercised in an emergency, and
  - (d) uses no more force than is reasonably necessary to effect the entry or make the inspection.
- (2) Despite section 33, 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.
- (3) This section does not apply to a power conferred by a search warrant issued under the [Search Warrants Act 1985](#).

## **25 Requirement to provide information and records**

- (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.
- (2) A notice under this section:
- (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
  - (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.
- (3) The inspector to whom any record is furnished under this Part may take copies of it.
- (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.
- (5) This section applies whether or not a power of entry under this Act is being or has been exercised.

## **26 Power of inspectors to require answers**

- (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.

- (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.
- (3) Answers given by a person nominated under subsection (2) bind the corporation.

## **27 Power to demand name and address**

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.

## **28 Limitation on self-incrimination**

- (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.
- (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 30 (1)–(3)) if:
  - (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
  - (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.

## **29 Search warrants**

- (1) An inspector may apply to an authorised justice for a search warrant for premises if the inspector believes on reasonable grounds:
  - (a) that a provision of this Act or the regulations is being or has been contravened on the premises, or
  - (b) that there is on the premises evidence of a contravention of a provision of this Act or the regulations.
- (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:
  - (a) to enter and inspect any premises, and

(b) to exercise the powers, or any specified powers, of an inspector under this Part.

(3) Part 3 of the [Search Warrants Act 1985](#) applies to a search warrant issued under this section.

(4) In this section:

**authorised justice** has the same meaning as in the [Search Warrants Act 1985](#).

### **30 Offences—enforcement**

(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.

(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.

(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.

(4) A person who, without reasonable excuse, removes or tampers with anything that has been seized under this Act is guilty of an offence.

(5) A person who, without reasonable excuse, removes or tampers with any sample taken under this Act is guilty of an offence.

(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.

(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:

(a) the inspector concerned produced at the relevant time the certificate of authority issued to the inspector under this Part, and

(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.

Maximum penalty: 10 penalty units or imprisonment for 3 months, or both.

### **31 Disposal of seized items**

(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.

(2) However, if:

- (a) any seized item is forfeited to the Crown under this section, and
- (b) the Minister is satisfied that there has been no contravention of this Act or the regulations in relation to the seized item, and
- (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,

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.

(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.

### **32 Injunctions to prevent contravention of Act**

- (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) The Court may, before considering the application, grant an interim injunction restraining the person from engaging in conduct pending the determination of the application.
- (3) The Court may rescind or vary such an injunction or interim injunction.
- (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.

## **Part 4 Miscellaneous**

### **33 No compensation payable**

- (1) Compensation is not payable by or on behalf of the Crown in relation to anything that is authorised by or under this Act.
- (2) In this section:

**compensation** includes damages or any other form of monetary compensation.

**the Crown** means the Crown within the meaning of the [Crown Proceedings Act 1988](#), and includes an officer, employee or agent of the Crown.

### **34 Summary proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations may be dealt with:
  - (a) summarily before a Local Court, or
  - (b) summarily before the Supreme Court in its summary jurisdiction.
- (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.

### **35 Penalty notices for certain offences**

- (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.
- (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.
- (3) A penalty notice may be served personally or by post.
- (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.
- (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.
- (6) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (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.
- (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.

(9) In this section:

**authorised officer** means:

- (a) an inspector, or
- (b) a person declared by the regulations to be an authorised officer for the purposes of this section.

### **36 Onus of proof concerning reasonable excuse**

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.

### **37 Offences by corporations**

- (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.
- (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.
- (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.

### **38 Delegation**

- (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 14 and this power of delegation.
- (2) The Director-General may delegate to an authorised person the exercise of:
  - (a) any of the functions delegated to the Director-General by the Minister, or
  - (b) any of the other functions of the Director-General under this Act or the regulations, other than this power of delegation.
- (3) In this section, **authorised person** means:
  - (a) a member of staff of the Department, or
  - (b) any person of a class prescribed by the regulations.

### **39 Describing plants**

For the purposes of this Act, a plant may be described by its scientific name, its common name or in any other way.

### **40 Savings, transitional and other provisions**

Schedule 1 has effect.

### **41 Amendment of Acts**

The Acts specified in Schedule 2 are amended as set out in that Schedule.

### **42 Regulations**

- (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.
- (2) The regulations may create offences punishable by a penalty not exceeding 100 penalty units.

### **43 Expiry of Act**

This Act expires on 3 March 2006.

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

(Section 40)

## **Part 1 General**

### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

    this Act

*Gene Technology (GM Crop Moratorium) Amendment Act 2004*

- (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.
- (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:
  - (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

- (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.

## **Part 2 Provisions consequent on the enactment of this Act**

### **2 Matter occurring before moratorium order made**

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.

## **Part 3 Provisions consequent on enactment of [Gene Technology \(GM Crop Moratorium\) Amendment Act 2004](#)**

### **3 Conditions imposed on exemption orders**

- (1) Section 8 (6C), as inserted by the [Gene Technology \(GM Crop Moratorium\) Amendment Act 2004](#), does not apply to a condition imposed on an exemption order before the commencement of that Act.
- (2) Nothing in subclause (1) affects any prosecution under section 7 in relation to a breach of a condition that was imposed on an exemption order before the commencement of that Act.

## **Schedule 2 Amendment of Acts**

(Section 41)

### **2.1 [Gene Technology \(GM Crop Moratorium\) Act 2003](#)**

#### **[1] Section 24 Provisions relating to exercise of powers**

Omit "[Search Warrants Act 1985](#)" from section 24 (3).

Insert instead "[Law Enforcement \(Powers and Responsibilities\) Act 2002](#)".

#### **[2] Section 29 Search warrants**

Omit "authorised justice" wherever occurring from section 29 (1) and (2).

Insert instead "authorised officer".

#### **[3] Section 29 (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 29 (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 35

## **2.3 Law Enforcement (Powers and Responsibilities) Act 2002 No 103**

### **Schedule 2 Search warrants under other Acts**

Insert in alphabetical order:

*Gene Technology (GM Crop Moratorium) Act 2003*, section 29

## **2.4 Search Warrants Act 1985 No 37**

### **Section 10 Definitions**

Insert in alphabetical order of Acts in the definition of **search warrant**:

section 29 of the *Gene Technology (GM Crop Moratorium) Act 2003*,