

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

[2003-12]



New South Wales

## Status Information

### Currency of version

Current version for 11 December 2020 to date (accessed 6 May 2024 at 14:43)

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

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Editorial note**

The Parliamentary Counsel's Office is progressively updating certain formatting styles in versions of NSW in force legislation published from 29 July 2019. For example, colons are being replaced by em-dashes (em-dashes). Text of the legislation is not affected.

This version has been updated.

- **Note**

The Act expires on 1.7.2021 — see section 43.

### Responsible Minister

- Minister for Agriculture

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### 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](#).

File last modified 27 July 2021

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



New South Wales

## Contents

**Long title** ..... 5

**Part 1 Preliminary** ..... 5

1 Name of Act ..... 5

2 Commencement ..... 5

3 Object of Act ..... 5

4 Definitions ..... 5

5 Food plants ..... 7

**Part 2 Moratorium on commercial cultivation of GM food plants** ..... 7

**Division 1 Moratorium** ..... 7

6 Moratorium on commercial cultivation of licensed GM food plants ..... 7

7 Offence of contravening prohibition on commercial cultivation of licensed GM food plants ..... 7

7A Approval of licensed GM food plants for commercial cultivation ..... 7

8 Exemptions from operation of section 6 ..... 9

9 Notification of making an order ..... 10

10 Commencement of order ..... 10

11 Order cannot be challenged ..... 11

12 Secretary to keep register of orders ..... 11

13 Expert Committee on Gene Technology ..... 11

13A Confidentiality ..... 12

13B Disclosure of pecuniary interests ..... 12

<b>Division 2 Enforcement of moratorium</b>	13
14 Minister's directions	13
15 Offence—failure to comply with Minister's direction	14
16 Costs of complying with Minister's direction	14
17 Appeal to Supreme Court	15
18 Direction cannot be challenged	15
19 Certificate is conclusive proof that plant is genetically modified	16
<b>Division 3 Other offences</b>	16
20 Offence—disposal of offending plants	16
21 Offence—failure to report contravention of section 6	17
<b>Part 3 Enforcement</b>	18
22 Appointment of inspectors	18
23 Powers of inspectors	18
24 Provisions relating to exercise of powers	19
25 Requirement to provide information and records	20
26 Power of inspectors to require answers	20
27 Power to demand name and address	21
28 Limitation on self-incrimination	21
29 Search warrants	21
30 Offences—enforcement	22
31 Disposal of seized items	22
32 Injunctions to prevent contravention of Act	23
<b>Part 4 Miscellaneous</b>	23
32A Special protection from liability for spread of GM food plants	23
33 No compensation payable	24
34 Summary proceedings for offences	24
35 Penalty notices	24
36 Onus of proof concerning reasonable excuse	25
37 Offences by corporations	25
38 Delegation	25
39 Describing plants	26

40 Savings, transitional and other provisions..... 26

41 (Repealed) ..... 26

42 Regulations..... 26

43 Expiry of Act ..... 26

**Schedule 1 Savings, transitional and other provisions ..... 26**

**Schedule 2 (Repealed) ..... 28**

# 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 Object of Act

The object of this Act is to establish a regime to regulate—

- (a) the commercial cultivation of licensed GM food plants, and
  - (b) the conduct of experiments on licensed GM food plants,
- in New South Wales for marketing purposes.

### 4 Definitions

- (1) In this Act—

**approved GM food plant** means a GM food plant approved for commercial cultivation under section 7A.

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

**deal with**, in relation to a crop or GM food plant, has a meaning that corresponds to **deal with**, in relation to a GMO, under the *Gene Technology Act 2000* of the

Commonwealth.

**Department** means Regional NSW.

**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.

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

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

**Expert Committee** means the New South Wales Expert Committee on Gene Technology established under section 13.

**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.

**GMO licence** has the same meaning as it has in the [Gene Technology Act 2000](#) of the Commonwealth.

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

**licensed GM food plant** means a GM food plant in respect of which a GMO licence is in force authorising dealings with the GM food plant that are inherently necessary for commercial cultivation of the GM food plant.

**non-GM food plant** means a food plant that is not a GM food plant.

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

**relevant industry**, in relation to a licensed GM food plant or class of licensed GM food plants, means an industry or sector of an industry dealing with or proposing to deal with the licensed GM food plant or class of licensed GM food plants.

**Secretary** means the Secretary of the Department.

- (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 commercial cultivation of GM food plants**

### **Division 1 Moratorium**

#### **6 Moratorium on commercial cultivation of licensed GM food plants**

The cultivation in New South Wales of a licensed GM food plant is prohibited unless—

- (a) the GM food plant has been approved for commercial cultivation under section 7A, or
- (b) cultivation of the GM food plant is permitted by an exemption order under section 8.

#### **7 Offence of contravening prohibition on commercial cultivation of licensed GM food plants**

A person who cultivates a plant that is a GM food plant in contravention of section 6 knowing that, or being reckless as to whether, the plant is a licensed GM food plant is guilty of 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.

#### **7A Approval of licensed GM food plants for commercial cultivation**

- (1) On application by a representative of a relevant industry the Minister may, by order published in the Gazette, declare that a specified licensed GM food plant, or class of licensed GM food plants, is approved for commercial cultivation in all or part of New South Wales.
- (2) The application must—
  - (a) be made in writing, and
  - (b) address the criteria specified in subsection (3), and
  - (c) be accompanied by the fee (if any) prescribed by the regulations, and
  - (d) be supported by documentation verifying the applicant's status as a representative of the relevant industry concerned.
- (3) The Minister must not make a declaration under this section unless the Minister is satisfied that the relevant industry meets the following criteria—
  - (a) the relevant industry has adequately identified the requirements demanded by

key domestic and international markets for the GM food plant,

- (b) the relevant industry has identified the threshold levels for the accidental or unintended presence of GM traits in food plants that are acceptable in those key domestic and international markets,
- (c) the relevant industry has, or is capable of having, supply chain management processes in place that adequately address those requirements, including (if it is a market requirement that GM food plants and non-GM food plants be segregated) processes to segregate GM food plants and non-GM food plants,
- (d) any approvals or any other form of authorisation required by or under any law of the key domestic or international markets relating to the importation of GM food plants have been, or can be, obtained,
- (e) the relevant industry meets any other criteria prescribed by the regulations.

(4) Before making a declaration under this section, the Minister must request the Expert Committee to provide advice (not later than 28 days after the request) in relation to whether or not—

- (a) the relevant industry meets the criteria referred to in subsection (3), and
- (b) the GM food plant is authorised or permitted to be cultivated in another State or a Territory under a law of that State or Territory,

and must take into account any advice provided by the Expert Committee before the end of that 28 day period (the **initial request period**).

- (5) The Minister must (subject to subsections (6) and (7)) determine the application for a declaration within 14 days after the end of the initial request period (the **initial determination period**).
- (6) At any time before the end of the initial determination period, the Minister may request the Expert Committee to provide, within 14 days (the **further request period**), further advice or information on the matters concerned.
- (7) The Minister must (irrespective of whether or not the Expert Committee has provided the further advice or information as requested) determine the application not later than 14 days after the end of the further request period.
- (8) Subsection (4) does not limit the factors that the Minister may take into account in deciding whether or not to make a declaration under subsection (1).
- (9) An order under this section in relation to a licensed GM food plant is automatically revoked if the GMO licence in respect of the GM food plant is suspended or cancelled by the Regulator under the [Gene Technology Act 2000](#) of the Commonwealth.



- (10) An order under this section may be revoked by the Minister only if the Minister is satisfied, after consulting with and taking into account any advice of the Expert Committee, that the relevant industry concerned no longer meets one or more of the criteria referred to in subsection (3).
- (11) The Minister's determination of, or failure or refusal to determine, an application or decision to revoke an order under this section may not be challenged, reviewed, quashed or called into question before any court of law or administrative review body in any proceedings or restrained, removed or otherwise affected by any proceedings.
- (12) The Minister is to make public the reasons for making, or revoking, an order under this section.

**Editorial note—**

For orders under this section see Gazette No 33 of 14.3.2008, p 2267. From April 2021, PCO is no longer updating notes in provisions of in force titles about related gazette notices. To search for related gazette notices, please use the Gazette Search functionality.

## **8 Exemptions from operation of section 6**

- (1) The Minister may by order published in the Gazette (an **exemption order**) confer exemptions from the operation of section 6 to permit the cultivation of a licensed GM food plant for the principal purpose of conducting experiments.
- (2)–(5) (Repealed)
- (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) (Repealed)
- (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 section 6.

(8) (Repealed)

**Editorial note—**

For exemption orders published under this section, see Gazette No 147 of 1.12.2005, pp 9857, 9858. From April 2021, PCO is no longer updating notes in provisions of in force titles about related gazette notices. To search for related gazette notices, please use the Gazette Search functionality.

## **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 manner that the Minister is satisfied is likely to bring the notice to the attention of members of the public generally, 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 manner that the Minister is satisfied is likely to bring the notice to the attention of members of the public in 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) Local Land Services 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 Secretary to keep register of orders**

- (1) The Secretary 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 Secretary 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 Secretary 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 Expert Committee on Gene Technology**

- (1) The Minister is to establish a New South Wales Expert Committee on Gene Technology.
- (2) The Expert Committee is to consist of those persons who represent food plant industries, or who have other appropriate expertise, qualifications or experience that the Minister considers will enable them to make a valuable contribution to the Committee, as are appointed as members of the Committee by the Minister from time to time.
- (3) One of the members is to be appointed, in and by the instrument by which the member is appointed, as the independent chairperson of the Expert Committee.
- (4) A person appointed by the Minister under this section holds office for the term specified in the instrument of appointment but may be removed from office at any time by the Minister.
- (5) The Expert Committee has such functions as are conferred or imposed on it by or under this Act or by the Minister.
- (6) In particular, the Expert Committee has the function of evaluating and providing advice and information (if requested to do so by the Minister) on the matters referred to in section 7A within the periods specified in that section.
- (7) A member of the Expert Committee is entitled to such allowances in connection with the work of the Expert Committee as the Minister approves in respect of the member.
- (8) Subject to the regulations and any directions of the Minister, the Expert Committee is

to regulate its own procedure for the calling of meetings and the conduct of its business.

### **13A Confidentiality**

A member of the Expert Committee must not disclose information obtained in connection with the carrying out of the Committee's functions under section 13 except in any one or more of the following circumstances—

- (a) with the consent of the person from whom the information was obtained,
- (b) in connection with the carrying out of those functions,
- (c) in accordance with a requirement imposed by or under a law of the State (other than a requirement imposed by a subpoena or other compulsory process) or the Commonwealth.

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

### **13B Disclosure of pecuniary interests**

(1) If—

- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Expert Committee, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Expert Committee.

(2) A disclosure by a member at a meeting of the Expert Committee that the member—

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subsection (1).

(3) Particulars of any disclosure made under this section must be recorded by the Expert Committee in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee (if any)

determined by the Expert Committee.

- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Expert Committee otherwise determines—
  - (a) be present during any deliberation of the Expert Committee with respect to the matter, or
  - (b) take part in any decision of the Expert Committee with respect to the matter.
- (5) For the purposes of the making of a determination by the Expert Committee under subsection (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not—
  - (a) be present during any deliberation of the Expert Committee for the purpose of making the determination, or
  - (b) take part in the making by the Expert Committee of the determination.
- (6) A contravention of this section does not invalidate any decision of the Expert Committee.

## Division 2 Enforcement of moratorium

### 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, and
  - (b) the tested plant is not an approved GM food plant or 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 section 6 or is or was part of a crop in which a plant was cultivated in contravention of section 6—

- (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 Secretary 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 section 6**

- (1) A person who is aware or suspects that a plant has been cultivated in contravention of section 6 must notify the Secretary of the matters in subsection (2) within 2 days of becoming aware or forming that suspicion.

Maximum penalty—20 penalty units.

- (2) The Secretary 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 section 6,
- (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 Secretary of a matter under this section if—

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

- (4) A person who is required to notify the Secretary 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 Secretary 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 Secretary may appoint any officer of the Department, or any person whom the Secretary 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 Secretary 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 [\*Law Enforcement \(Powers and Responsibilities\) Act 2002\*](#).

## **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 officer 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 officer 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) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) In this section—

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

### **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**

### **32A Special protection from liability for spread of GM food plants**

- (1) If—
  - (a) a GM food plant is present on any land, and
  - (b) the existence of the GM food plant on the land is attributable to the spread, dissemination or persistence of the GM food plant, and
  - (c) the original introduction of that GM food plant to the land was not knowingly undertaken by or on behalf of any person who is, or who has been, an owner or occupier of the land,

no action may be brought in a New South Wales court or under a New South Wales law against a person who is an owner or occupier of the land on account of the fact that the GM food plant is present on the land or that the person has dealt with the GM food plant.

- (2) Subsection (1) does not apply if the relevant court is satisfied—

- (a) that a person who is an owner or occupier of the relevant land has deliberately dealt with a crop knowing that GM food plant was present in order to gain a commercial benefit, and
  - (b) that, in the interests of justice, another person's rights with respect to that GM food plant should be recognised or protected.
- (3) This section extends to any case where a GM food plant was present on land before the commencement of this section.

### **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 the Local Court, or
  - (b) summarily before the Supreme Court in its summary jurisdiction.
- (2) If proceedings are brought in the 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**

- (1) An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The [Fines Act 1996](#) applies to a penalty notice issued under this section.

**Note—**

The [Fines Act 1996](#) provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.



- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (6) In this section—

**authorised officer** means—

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

### **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 Secretary, 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 Secretary may delegate to an authorised person the exercise of—
  - (a) any of the functions delegated to the Secretary by the Minister, or
  - (b) any of the other functions of the Secretary 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 (Repealed)**

### **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 1 July 2021.

## **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\*](#)

[\*Gene Technology \(GM Crop Moratorium\) Amendment Act 2007\*](#)

- (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.

## **Part 4 Provisions consequent on enactment of [Gene Technology \(GM Crop Moratorium\) Amendment Act 2007](#)**

### **4 Definition**

In this Part—

**amending Act** means the [Gene Technology \(GM Crop Moratorium\) Amendment Act 2007](#).

### **5 Former members of the Advisory Council**

- (1) The Advisory Council established under section 13 as in force immediately before its substitution by the amending Act is taken, on that substitution, to be the Expert Committee.

- (2) Subject to section 13, the members that constituted the Advisory Council hold office as members of the Expert Committee for the remainder of the term for which they were appointed as members of the Advisory Council.
- (3) Subject to section 13, the person who held office as the independent chairperson of the Advisory Council immediately before the substitution of section 13 by the amending Act is taken to be the independent chairperson of the Expert Committee.

## **6 Orders**

- (1) The moratorium orders made under section 6, as in force immediately before its substitution by the amending Act, are repealed on that substitution.
- (2) Exemption orders Numbers 7 and 8 (published in Government Gazette No 147 of 1.12.2005 at pages 9857 and 9858, respectively) are taken, on the amendment of section 8 (1) by the amending Act, to have been made under section 8 (1) as amended and to permit the cultivation of the exempt GM food plants concerned subject to the conditions specified in the orders.

## **Schedule 2 (Repealed)**