

# EXPOSURE DRAFT

2022-2023-2024

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT

## **Gene Technology Amendment Bill 2024**

**No.     , 2024**

*(Health)*

**A Bill for an Act to amend the *Gene Technology Act 2000*, and for related purposes**

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1 **A Bill for an Act to amend the *Gene Technology Act***  
2 ***2000*, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act is the *Gene Technology Amendment Act 2024*.

6 **2 Commencement**

7 (1) Each provision of this Act specified in column 1 of the table  
8 commences, or is taken to have commenced, in accordance with  
9 column 2 of the table. Any other statement in column 2 has effect  
10 according to its terms.  
11

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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedules 1 and 2	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

1 Note: This table relates only to the provisions of this Act as originally  
2 enacted. It will not be amended to deal with any later amendments of  
3 this Act.

4 (2) Any information in column 3 of the table is not part of this Act.  
5 Information may be inserted in this column, or information in it  
6 may be edited, in any published version of this Act.

### 7 3 Schedules

8 Legislation that is specified in a Schedule to this Act is amended or  
9 repealed as set out in the applicable items in the Schedule  
10 concerned, and any other item in a Schedule to this Act has effect  
11 according to its terms.

## Schedule 1—Main amendments

### *Gene Technology Act 2000*

#### **1 Section 8**

Repeal the section.

#### **2 Section 9**

Omit “policy principles, policy guidelines and codes of practice”,  
substitute “policy principles and policy guidelines”.

#### **3 Subsection 10(1)**

Insert:

*aggravated contravention* has the meaning given by section 35A.

#### **4 Subsection 10(1) (definition of *aggravated offence*)**

Omit “section 38”, substitute “section 35”.

#### **5 Subsection 10(1)**

Insert:

*authorisation requirements*, for a notifiable dealing, has the  
meaning given by subsection 75(3).

*authorised compliance officer* means:

- (a) the Regulator; or
- (b) an authorised inspector.

*authorised GMO dealing* has the meaning given by section 31A.

*authorised inspector* means a person appointed as an authorised  
inspector under section 140.

*business day* means a day that is not a Saturday, a Sunday, a day  
specified in the regulations or a public holiday in the Australian  
Capital Territory.

*CCI* is short for confidential commercial information.

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## Schedule 1 Main amendments

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1                    *certification*, in relation to a facility, means the certification of a  
2 facility to a particular containment level under section 84.

3                    *civil penalty order* has the meaning given by subsection 163(4).

4                    *civil penalty provision* has the meaning given by section 162A.

### 5                    **6 Subsection 10(1)**

6                    Insert:

7                    *Commonwealth agency* means a non-corporate Commonwealth  
8 entity (within the meaning of the *Public Governance, Performance*  
9 *and Accountability Act 2013*).

### 10                   **7 Subsection 10(1) (definition of Commonwealth authority)**

11                   Repeal the definition, substitute:

12                   *Commonwealth authority* means:

- 13                   (a) a corporate Commonwealth entity (within the meaning of the  
14 *Public Governance, Performance and Accountability Act*  
15 *2013*); or  
16                   (b) a Commonwealth company (within the meaning of that Act).

### 17                   **8 Subsection 10(1)**

18                   Insert:

19                   *conduct* means:

- 20                   (a) an act; or  
21                   (b) a failure to act.

### 22                   **9 Subsection 10(1) (definition of confidential commercial** 23 **information)**

24                   Repeal the definition, substitute:

25                   *confidential commercial information* means information that:

- 26                   (a) is a trade secret relating to a dealing with a GMO; or  
27                   (b) relates to a dealing with a GMO and has commercial value  
28 that would be, or could reasonably be expected to be,  
29 destroyed or diminished if the information were disclosed.



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Main amendments Schedule 1

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1 **10 Subsection 10(1)**

2 Insert:

3 *consideration period*, for an application to which Division 1A of  
4 Part 12 applies, has the meaning given by section 178F.

5 Note: Section 178A sets out the applications to which Division 1A of  
6 Part 12 applies.

7 **11 Subsection 10(1) (definition of *containment level*)**

8 After “the degree”, insert “or type”.

9 **12 Subsection 10(1)**

10 Insert:

11 *damage*, in relation to data, includes damage by erasure or  
12 corruption of, or loss of access to, data, or the addition of other  
13 data.

14 *data storage device* has the same meaning as in the *Online Safety*  
15 *Act 2021*.

16 **13 Subsection 10(1) (definition of *deal with*)**

17 Repeal the definition, substitute:

18 *deal with*, in relation to a GMO, has the meaning given by section  
19 12A.

20 **14 Subsection 10(1)**

21 Insert:

22 *entrusted person* means a person who is, or was:

- 23 (a) the Regulator; or  
24 (b) a member of the staff assisting the Regulator as mentioned in  
25 section 133; or  
26 (c) a person engaged as a consultant under section 134; or  
27 (d) a seconded officer made available to the Regulator under  
28 section 135; or  
29 (e) a person acting under the direction or authority of the  
30 Regulator.

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## Schedule 1 Main amendments

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1 **15 Subsection 10(1) (definition of *Environment Minister*)**

2 Repeal the definition.

3 **16 Subsection 10(1)**

4 Insert:

5 *equipment* includes electronic equipment.

6 **17 Subsection 10(1) (definition of *Ethics and Community***  
7 ***Committee*)**

8 Repeal the definition.

9 **18 Subsection 10(1)**

10 Insert:

11 *evidential burden*, in relation to a matter, means the burden of  
12 adducing or pointing to evidence that suggests a reasonable  
13 possibility that the matter exists or does not exist.

14 **19 Subsection 10(1) (definition of *evidential material*)**

15 Repeal the definition, substitute:

16 *evidential material* means any of the following:

- 17 (a) a thing with respect to which an offence provision of this  
18 Act, or a civil penalty provision under this Act, has been  
19 contravened or is suspected, on reasonable grounds, to have  
20 been contravened;
- 21 (b) a thing that there are reasonable grounds for suspecting will  
22 afford evidence as to the contravention of such an offence  
23 provision or a civil penalty provision;
- 24 (c) a thing that there are reasonable grounds for suspecting is  
25 intended to be used for the purpose of contravening such an  
26 offence provision or a civil penalty provision.

27 **20 Subsection 10(1) (definition of *gene technology*)**

28 Repeal the definition, substitute:

29 *gene technology* has the meaning given by section 12B.

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1 **21 Subsection 10(1)**

2 Insert:

3 *Gene Technology Ethics and Community Consultative*  
4 *Committee* means the Gene Technology Ethics and Community  
5 Consultative Committee established by section 106.

6 **22 Subsection 10(1) (definition of *genetically modified***  
7 ***organism*)**

8 Repeal the definition, substitute:

9 *genetically modified organism* has the meaning given by  
10 section 12C.

11 **23 Subsection 10(1)**

12 Insert:

13 *GMO permit* means a permit issued under section 72AD.

14 *inadvertent*, in relation to the possession of a GMO by person,  
15 means:

16 (a) the person did not know the GMO was a GMO when it came  
17 into their possession; or

18 (b) the person did not know the GMO had come into their  
19 possession when it came into their possession.

20 **24 Subsection 10(1) (definition of *inadvertent dealings***  
21 ***application*)**

22 Repeal the definition, substitute:

23 *inadvertent dealings application* means an application for a GMO  
24 licence to authorise dealings:

25 (a) with a GMO that has come into the possession of the  
26 applicant inadvertently; and

27 (b) for purposes limited to, and incidental to, one or more of the  
28 following:

29 (i) disposing of the GMO (which includes destroying the  
30 GMO or rendering the GMO non-viable);

31 (ii) exporting the GMO.

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## Schedule 1 Main amendments

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1 **25 Subsection 10(1) (definition of *Institutional Biosafety***  
2 ***Committee*)**

3 Omit “written guidelines issued by the Regulator under”, substitute “the  
4 rules under”.

5 **26 Subsection 10(1)**

6 Insert:

7 *investigation powers* has the meaning given by sections 152A,  
8 152B and 152C.

9 *investigation warrant* means:

10 (a) a warrant issued by an issuing officer under section 156; or

11 (b) a warrant signed by an issuing officer under section 156A.

12 *issuing officer* means a magistrate.

13 *mitochondrial donation licence* has the same meaning as in the  
14 *Research Involving Human Embryos Act 2002*, and includes a  
15 purported mitochondrial donation licence (within the meaning of  
16 that Act).

17 *mitochondrial donation technique* has the same meaning as in the  
18 *Research Involving Human Embryos Act 2002*.

19 *monitoring powers* has the meaning given by sections 146A,  
20 146B, 146C, 146CA and 146D.

21 *monitoring warrant* means a warrant issued under section 149.

22 *non-notifiable dealing* has the meaning given by  
23 subsection 75E(1).

24 *notifiable dealing* has the meaning given by subsection 74(1).

25 **27 Subsection 10(1) (definition of *notifiable low risk dealing*)**

26 Repeal the definition.

27 **28 Subsection 10(1)**

28 Insert:

29 *organisation* means any of the following:

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- 1 (a) a Commonwealth agency;
- 2 (b) a Commonwealth authority;
- 3 (c) a State agency;
- 4 (d) a body corporate;
- 5 (e) an individual.

6 *permit dealing* has the meaning given by subsection 72AB(1).

7 *permit holder* means the holder of a GMO permit.

8 *person assisting* an authorised inspector has the meaning given by  
9 subsection 143(1).

10 *person covered by a GMO permit* means a person authorised by a  
11 GMO permit to deal with a GMO.

## 12 **29 Subsection 10(1) (definition of *premises*)**

13 Repeal the definition, substitute:

14 *premises* includes the following:

- 15 (a) a structure, vehicle, vessel or aircraft;
- 16 (b) a place (including an area of land and whether or not  
17 enclosed or built on);
- 18 (c) a facility;
- 19 (d) a part of a thing referred to in paragraph (a), (b) or (c).

## 20 **30 Subsection 10(1)**

21 Insert:

22 *RARMP* means a risk assessment and risk management plan  
23 prepared under section 48.

24 *Regulator information*:

- 25 (a) means information provided to the Regulator under, or for  
26 the purposes of, this Act or a legislative instrument made  
27 under this Act, and includes information about the affairs of a  
28 person the disclosure of which could reasonably be expected  
29 to found an action by a person (other than the  
30 Commonwealth) for breach of a duty of confidence; but

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1 (b) does not include information in the public domain (except as  
2 a result of a contravention of this Act).

3 Note: *Regulator information* includes CCI.

4 *relevant conviction* means a conviction for an offence against a  
5 law of the Commonwealth, a State or a foreign country, being a  
6 law relating to the health and safety of people or the environment,  
7 if:

8 (a) less than 10 years have elapsed since the day on which the  
9 offence was committed; and

10 (b) the offence was punishable on conviction:

11 (i) for a natural person—by a fine of \$5,000 or more, or by  
12 a term of imprisonment of one year or more; or

13 (ii) for a body corporate—by a fine of \$25,000 or more.

14 *relevant data* has the meaning given by subsection 146B(4).

15 *rules* means the rules made under section 193A.

16 *subject to an infringement notice* has the meaning given by  
17 section 164.

18 *subject to a publication requirement*, for Regulator information,  
19 has the meaning given by section 184.

20 *subject to investigation* has the meaning given by section 151A.

21 *subject to monitoring* has the meaning given by subsections  
22 145A(1) and (2).

### 23 **31 Subsection 10(1) (definition of *thing*)**

24 Repeal the definition, substitute:

25 *thing* includes, but is not limited to, the following:

26 (a) equipment;

27 (b) a substance or material;

28 (c) an animal, plant or other biological entity (including a  
29 GMO);

30 (d) any part or product of an animal, plant or other biological  
31 entity (including a GMO);

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- 1 (e) any thing that is, or is intended to be, used in relation to  
2 dealing with a GMO;  
3 (f) a structure, facility, vehicle, vessel or aircraft;  
4 (g) information in a form capable of being communicated,  
5 analysed or processed (whether by an individual or by  
6 computer or other automated means).

7 **32 Section 11**

8 Repeal the section.

9 **33 Subsection 12(1)**

10 Omit “notice in the *Gazette*”, substitute “notifiable instrument”.

11 **34 Subsection 12(2)**

12 Omit “Gazette notice”, substitute “notifiable instrument made”.

13 **35 Paragraph 12(2)(a)**

14 Omit “notice”, substitute “instrument”.

15 **36 At the end of Division 2 of Part 2**

16 Add:

17 **12A Meaning of deal with**

18 (1) ***Deal with***, in relation to a GMO, means any of the following:

19 (a) produce the GMO, which includes:

- 20 (i) make the GMO; or  
21 (ii) develop the GMO; or  
22 (iii) manufacture the GMO; or  
23 (iv) breed the GMO; or  
24 (v) propagate the GMO; or  
25 (vi) grow the GMO; or  
26 (vii) raise the GMO; or  
27 (viii) culture the GMO;

28 (b) store the GMO;

29 (c) use the GMO, which includes:

- 30 (i) conduct experiments with the GMO; or

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- 1 (ii) use the GMO in the course of manufacture of a thing  
2 that is not the GMO; or  
3 (iii) release the GMO into the environment;  
4 (d) supply the GMO;  
5 (e) import the GMO;  
6 (f) transport the GMO;  
7 (g) dispose of the GMO, which includes:  
8 (i) destroy the GMO; or  
9 (ii) render the GMO non-viable;  
10 (h) undertake a dealing of a kind specified in the regulations for  
11 the purposes of this paragraph;  
12 and includes possess the GMO for the purposes of, or in the course  
13 of, a dealing mentioned in any of paragraphs (a) to (h).

### 14 **12B Meaning of *gene technology***

15 ***Gene technology*** means a technique for the synthesis or  
16 modification of genes or other genetic material, but does not  
17 include:

- 18 (a) sexual reproduction; or  
19 (b) homologous recombination; or  
20 (c) a mitochondrial donation technique, when used as authorised  
21 or purportedly authorised by a mitochondrial donation  
22 licence; or  
23 (d) a technique specified, or a technique that belongs to a class of  
24 techniques specified, in the regulations for the purposes of  
25 this paragraph.

### 26 **12C Meaning of *genetically modified organism***

27 ***Genetically modified organism*** means:

- 28 (a) an organism that has been produced or modified by gene  
29 technology; or  
30 (b) an organism that has inherited particular traits from an  
31 organism (the ***initial organism***), being traits that occurred in  
32 the initial organism because of gene technology; or  
33 (c) a thing specified in the regulations to be a genetically  
34 modified organism, or that belongs to a class of things



- 1 specified in the regulations to be genetically modified  
2 organisms;  
3 but does not include:  
4 (d) a human being; or  
5 (e) a thing specified in the regulations not to be a genetically  
6 modified organism, or that belongs to a class of things  
7 specified in the regulations not to be genetically modified  
8 organisms.

### 37 Subparagraph 14(2)(b)(ii)

9 Omit “licence”, substitute “GMO licence or GMO permit”.

### 38 At the end of Division 3 of Part 2

10 Add:

### 15A Minister and Regulator not required to consider certain risks

- 11  
12  
13  
14 (1) This section applies if the Minister or the Regulator is required  
15 under this Act to take into account, be satisfied or give advice in  
16 relation to, risks posed by dealings with a GMO.
- 17 (2) The Minister or Regulator is not required to consider a particular  
18 risk if:  
19 (a) the risk is dealt with under any of the following Acts, or a  
20 legislative instrument made under any of the following Acts:  
21 (i) the *Agricultural and Veterinary Chemicals Code Act*  
22 *1994*;  
23 (ii) the *Food Standards Australia New Zealand Act 1991*;  
24 (iii) the *Industrial Chemicals Act 2019*;  
25 (iv) the *Therapeutic Goods Act 1989*;  
26 (v) an Act prescribed by the regulations; and  
27 (b) the risk is prescribed by the regulations.
- 28 (3) The Minister or Regulator is not required to consider any risks  
29 posed by the dealings to a weed, pest or pathogen if the Minister or  
30 Regulator (as the case requires) is satisfied that a purpose of the  
31 dealings is to suppress or eradicate the weed, pest or pathogen.

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1 **39 Paragraph 17(1)(c)**

2 Omit “Ethics and Community Committee”, substitute “Gene  
3 Technology Ethics and Community Consultative Committee”.

4 **40 Paragraph 18(1)(b)**

5 Before “under the corresponding”, insert “, or has paid an infringement  
6 notice, in respect of the act or omission”.

7 **41 Subsection 18(2)**

8 Omit “has been ordered to pay a pecuniary penalty”, substitute “has  
9 paid a pecuniary penalty or has paid an amount stated in an  
10 infringement notice”.

11 **42 Section 20**

12 Omit “licence,”, substitute “GMO licence, GMO permit,”.

13 **43 Subdivision B of Division 4 of Part 2 (heading)**

14 Repeal the heading, substitute:

15 **Subdivision B—Policy principles and policy guidelines**

16 **44 Subsection 21(1) (note 1)**

17 Repeal the note, substitute:

18 Note 1: The Regulator must not issue a GMO licence or a GMO permit if the  
19 Regulator is satisfied that to do so would be inconsistent with a policy  
20 principle (see sections 57 and 72AD).

21 **45 At the end of section 21**

22 Add:

23 (4) Section 42 (disallowance) of the *Legislation Act 2003* does not  
24 apply to a policy principle issued under subsection (1).

25 **46 Paragraph 22(1)(c)**

26 Omit “Ethics and Community Committee”, substitute “Gene  
27 Technology Ethics and Community Consultative Committee”.

1 **47 Section 23**

2 Before “The Ministerial Council”, insert “(1)”.

3 **48 At the end of section 23**

4 Add:

5 (2) A policy guideline is not a legislative instrument.

6 **49 Section 24**

7 Repeal the section.

8 **50 After paragraph 27(a)**

9 Insert:

10 (aa) to perform functions in relation to GMO permits as set out in  
11 Part 5AAA;

12 **51 Paragraphs 27(c) and (d)**

13 Repeal the paragraphs, substitute:

14 (c) to make rules under section 193A;

15 (d) to provide technical and procedural guidance in relation to  
16 GMOs;

17 (da) to exercise monitoring, compliance and enforcement powers  
18 under this Act;

19 (db) to provide information and advice to the Minister about the  
20 operation of this Act or a corresponding State law;

21 **52 After paragraph 27(k)**

22 Insert:

23 (ka) to promote an internationally consistent approach to GMO  
24 regulation, including through the harmonisation, where  
25 appropriate, of regulatory practices in relation to GMOs;

26 **53 After section 27**

27 Insert:

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1 **27A Rules for transport, storage and disposal of GMOs**

2 The rules may specify technical and procedural requirements  
3 relating to the transportation, storage and disposal of GMOs.

4 **54 Subsection 29(1)**

5 Omit “The Regulator”, substitute “Subject to this section, the  
6 Regulator”.

7 **55 Subsection 29(1)**

8 After “powers or functions”, insert “, other than the powers or functions  
9 under section 181 (internal review) or 193A (rules)”.

10 **56 After subsection 29(1)**

11 Insert:

12 (1A) The Regulator may delegate the following powers or functions  
13 only to an SES employee or acting SES employee of the  
14 Department or an authorised inspector:

- 15 (a) section 164D (withdrawal of an infringement notice);  
16 (b) section 165 (acceptance of undertakings);  
17 (c) section 165A (enforcement of undertakings);

18 (1B) The Regulator may delegate the following powers or functions  
19 only to an SES employee or acting SES employee of the  
20 Department:

- 21 (a) section 166 (grant of injunctions);  
22 (b) section 167 (Regulator may give directions).

23 **57 Paragraphs 30(a) and (b)**

24 After “licence”, insert “or GMO permit”.

25 **58 Part 4**

26 Repeal the Part, substitute:

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1 **Part 4—Offences and civil penalty provisions**

2 **Division 1—Outline and operation of this Part**

3 **31 Simplified outline**

4 The following is a simplified outline of this Part:

5 This Part deals with offences and civil penalty provisions.

6 A dealing with a GMO by a person is prohibited unless the dealing  
7 is an authorised GMO dealing, which is a dealing that:

- 8 (a) is authorised by a GMO licence or GMO permit; or  
9 (b) is specified in an emergency dealing determination; or  
10 (c) is a notifiable dealing and the authorisation requirements  
11 (if any) have been complied with; or  
12 (d) is a non-notifiable dealing; or  
13 (e) is included on the GMO Register.

14 A dealing with a GMO is also an authorised GMO dealing if done  
15 by a person exercising powers or performing functions conferred  
16 on them under this Act or the regulations, or by a person providing  
17 assistance to the Regulator at the Regulator's request.

18 Certain persons must comply with the conditions to which a GMO  
19 licence, a GMO permit, an emergency dealing determination, a  
20 notifiable dealing, a dealing on the GMO Register, a certification  
21 of a facility, and an accreditation of an organisation are subject.

22 A person is prohibited from interfering with an authorised GMO  
23 dealing and from providing false or misleading information to the  
24 Regulator under this Act.

25 Heavier penalties are imposed for an offence or contravention of a  
26 civil penalty provision where the offence or contravention causes,  
27 or is likely to cause, significant damage to the health and safety of  
28 people or to the environment.

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## Schedule 1 Main amendments

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### 31A Meaning of *authorised GMO dealing*

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- (1) A dealing with a GMO by a person is an ***authorised GMO dealing*** if:
- (a) the dealing with the GMO by the person is authorised by a GMO licence; or
  - (b) the dealing with the GMO by the person is authorised by a GMO permit; or
  - (c) the dealing with the GMO is specified in an emergency dealing determination; or
  - (d) the dealing with the GMO is a notifiable dealing, and the authorisation requirements (if any) for the notifiable dealing have been complied with by, or in relation to, the person; or
  - (e) the dealing with the GMO is a non-notifiable dealing; or
  - (f) the dealing with the GMO is included on the GMO Register.
- (2) A dealing with a GMO by a person is also an ***authorised GMO dealing*** if the dealing with the GMO is done:
- (a) by the person in the performance or purported performance of a function, or the exercise or purported exercise of a power, conferred on the person by this Act or the regulations; or
  - (b) by the person:
    - (i) in providing or purporting to provide assistance to the Regulator; and
    - (ii) as the result of a request, direction or other requirement made of the person by the Regulator in the performance or purported performance of a function, or the exercise or purported exercise of a power, conferred on the Regulator by this Act or the regulations; or
  - (c) by the person in accordance with a direction given by the Regulator under section 167; or
  - (d) by the person in accordance with a requirement made by an authorised inspector under paragraph 161A(2)(d).

1 **Division 2—Dealings with GMOs must be authorised**

2 **32 Dealings with GMOs must be authorised—offence**

- 3 A person commits an offence if:
- 4 (a) the person deals with a GMO; and
  - 5 (b) the person knows that the GMO is a GMO; and
  - 6 (c) the dealing with the GMO by the person is not an authorised
  - 7 GMO dealing.

- 8 Penalty:
- 9 (a) in the case of an aggravated offence—imprisonment for
  - 10 10 years or 4,000 penalty units;
  - 11 (b) in any other case—imprisonment for 5 years or 1,000 penalty
  - 12 units.

13 **32A Dealings with GMOs must be authorised—civil penalty**

14 **provision**

- 15 A person is liable to a civil penalty if:
- 16 (a) the person deals with a GMO; and
  - 17 (b) the dealing with the GMO by the person is not an authorised
  - 18 GMO dealing.

- 19 Civil penalty:
- 20 (a) in the case of an aggravated contravention—1,000 penalty
  - 21 units;
  - 22 (b) in any other case—500 penalty units.

23 **Division 3—Breach of conditions**

24 **Subdivision A—Licence holders and permit holders**

25 **33 Breach of condition by licence holder or permit holder—offence**

- 26 (1) A person commits an offence if:
- 27 (a) the person holds a GMO licence or a GMO permit; and
  - 28 (b) the person takes an action or omits to take an action; and

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1 (c) the action or omission breaches a condition of the GMO  
2 licence, or the GMO permit, held by the person.

3 Penalty:

4 (a) in the case of an aggravated offence—imprisonment for 5  
5 years or 1,000 penalty units;

6 (b) in any other case—imprisonment for 2 years or 500 penalty  
7 units.

8 (2) A person commits an offence if:

9 (a) the person held a GMO licence or a GMO permit; and

10 (b) the GMO licence or GMO permit is not in force; and

11 (c) a condition of the GMO licence or GMO permit continues to  
12 apply because of subsection 72AN(7); and

13 (d) the person takes an action or omits to take an action; and

14 (e) the action or omission breaches the condition.

15 Penalty: Imprisonment for 2 years or 500 penalty units.

16 (3) The maximum penalty for each day that an offence under  
17 subsection (1) or (2) continues is 10% of the maximum penalty that  
18 can be imposed in respect of that offence.

19 Note: If, for example, a condition of a GMO licence or a GMO permit  
20 requires an act or thing to be done within a particular period or before  
21 a particular time, subsections (1) and (2) are continuing offences  
22 under section 4K of the *Crimes Act 1914*.

### 23 **33A Breach of condition by licence holder or permit holder—civil** 24 **penalty provision**

25 (1) A person is liable to a civil penalty if:

26 (a) the person holds a GMO licence or a GMO permit; and

27 (b) the person takes an action or omits to take an action; and

28 (c) the action or omission breaches a condition of the GMO  
29 licence, or the GMO permit, held by the person.

30 Civil penalty: 500 penalty units.

31 (2) A person is liable to a civil penalty if:

32 (a) the person held a GMO licence or a GMO permit; and

33 (b) the GMO licence or GMO permit is not in force; and

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- 1 (c) a condition of the GMO licence or GMO permit continues to  
2 apply because of subsection 72AN(7); and  
3 (d) the person takes an action or omits to take an action; and  
4 (e) the action or omission breaches the condition.

5 Civil penalty: 500 penalty units.

6 **Subdivision B—Persons covered by GMO licences and GMO**  
7 **permits**

8 **33B Breach of condition by person covered by GMO licence or**  
9 **GMO permit—offence**

- 10 (1) A person commits an offence if:  
11 (a) the person is a person covered by a GMO licence or a GMO  
12 permit; and  
13 (b) the person takes an action or omits to take an action; and  
14 (c) the action or omission breaches a condition of the GMO  
15 licence, or the GMO permit.

16 Note: It is a condition of a GMO licence and a GMO permit that the holder  
17 of the licence or permit inform any person covered by the licence or  
18 permit of any condition that applies to the person (see section 72AN).

19 Penalty:

- 20 (a) in the case of an aggravated offence—imprisonment for 5  
21 years or 1,000 penalty units;  
22 (b) in any other case—imprisonment for 2 years or 500 penalty  
23 units.

- 24 (2) The maximum penalty for each day that an offence under  
25 subsection (1) continues is 10% of the maximum penalty that can  
26 be imposed in respect of that offence.

27 Note: If, for example, a condition of a GMO licence or a GMO permit  
28 requires an act or thing to be done within a particular period or before  
29 a particular time, subsection (1) is a continuing offence under  
30 section 4K of the *Crimes Act 1914*.

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1 **33C Breach of condition by person covered by GMO licence or**  
2 **GMO permit—civil penalty provision**

3 A person is liable to a civil penalty if:

- 4 (a) the person is a person covered by a GMO licence or a GMO  
5 permit; and  
6 (b) the person takes an action or omits to take an action; and  
7 (c) the action or omission breaches a condition of the GMO  
8 licence, or the GMO permit.

9 Note: It is a condition of a GMO licence and a GMO permit that the holder  
10 of the licence or permit inform any person covered by the licence or  
11 permit of any condition that applies to the person (see section 72AN).

12 Civil penalty: 500 penalty units.

13 **Subdivision C—Persons with knowledge of, or recklessness as**  
14 **to, certain conditions**

15 **33D Breach of condition by person—offence**

16 (1) A person commits an offence if:

- 17 (a) the person takes an action or omits to take an action; and  
18 (b) the action or omission breaches a condition to which any of  
19 the following is subject:  
20 (i) a notifiable dealing;  
21 (ii) an emergency dealing determination;  
22 (iii) a dealing with a GMO that is included on the GMO  
23 Register; and  
24 (c) the notifiable dealing, dealing specified in the emergency  
25 dealing determination, or dealing included on the GMO  
26 Register (as the case requires) is not otherwise authorised by  
27 a GMO licence.

28 Penalty:

- 29 (a) in the case of an aggravated offence—imprisonment for 5  
30 years or 1,000 penalty units;  
31 (b) in any other case—imprisonment for 2 years or 500 penalty  
32 units.

1 (2) The maximum penalty for each day that an offence under  
2 subsection (1) continues is 10% of the maximum penalty that can  
3 be imposed in respect of that offence.

4 Note: If, for example, a condition referred to in paragraph (1)(b) requires an  
5 act or thing to be done within a particular period or before a particular  
6 time, subsection (1) is a continuing offence under section 4K of the  
7 *Crimes Act 1914*.

## 8 **33E Breach of condition by person—civil penalty provision**

9 A person is liable to a civil penalty if:

- 10 (a) the person takes an action or omits to take an action; and  
11 (b) the action or omission breaches a condition to which any of  
12 the following is subject:  
13 (i) a notifiable dealing;  
14 (ii) an emergency dealing determination;  
15 (iii) a dealing with a GMO that is included on the GMO  
16 Register; and  
17 (c) the notifiable dealing, dealing specified in the emergency  
18 dealing determination, or dealing included on the GMO  
19 Register (as the case requires), is not otherwise authorised by  
20 a GMO licence.

21 Civil penalty: 500 penalty units.

## 22 **Subdivision D—Certification and accreditation holders**

### 23 **33F Breach of condition by holder of certification or accreditation—** 24 **offences**

- 25 (1) A person commits an offence if:  
26 (a) the person holds a certification of a facility; and  
27 (b) the person takes an action or omits to take an action; and  
28 (c) the action or omission breaches a condition of the  
29 certification held by the person.

30 Penalty:

- 31 (a) in the case of an aggravated offence—imprisonment for 5  
32 years or 1,000 penalty units;

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1 (b) in any other case—imprisonment for 2 years or 500 penalty  
2 units.

3 (2) A person commits an offence if:

- 4 (a) the person holds an accreditation of an organisation; and  
5 (b) the person takes an action or omits to take an action; and  
6 (c) the action or omission breaches a condition of the  
7 accreditation held by the person.

8 Penalty: Imprisonment for 2 years or 500 penalty units.

9 (3) The maximum penalty for each day that an offence under  
10 subsection (1) or (2) continues is 10% of the maximum penalty that  
11 can be imposed in respect of that offence.

12 Note: If, for example, a condition of a certification of a facility or an  
13 accreditation of an organisation requires an act or thing to be done  
14 within a particular period or before a particular time, subsections (1)  
15 and (2) are continuing offences under section 4K of the *Crimes Act*  
16 *1914*.

### 17 **33G Breach of condition by holder of certification or** 18 **accreditation—civil penalty provision**

19 A person is liable to a civil penalty provision if:

- 20 (a) the person holds a certification of a facility or an  
21 accreditation of an organisation; and  
22 (b) the person takes an action or omits to take an action; and  
23 (c) the action or omission breaches a condition of the  
24 certification, or the accreditation, held by the person.

25 Civil penalty: 500 penalty units.

## 26 **Division 4—Other offences and civil penalties**

### 27 **34 Interference with dealings with GMOs—offence**

28 A person commits an offence if:

- 29 (a) the person engages in conduct; and  
30 (b) in engaging in the conduct, the person intends to prevent or  
31 hinder authorised GMO dealings that are being undertaken at  
32 a premises; and
-

- 1 (c) either of the following applies:  
2 (i) the conduct results in damage to, destruction of, or  
3 interference with, the premises;  
4 (ii) the conduct involves damaging, destroying, or  
5 interfering with a thing at, or removing a thing from, the  
6 premises; and  
7 (d) the owner or occupier of the premises, or the owner of the  
8 thing (as the case requires), has not consented to the conduct.
- 9 Penalty: Imprisonment for 2 years or 500 penalty units.

## 10 **34A Interference with dealings with GMOs—civil penalty provision**

- 11 A person is liable to a civil penalty if:  
12 (a) the person engages in conduct; and  
13 (b) the conduct occurs at premises where authorised GMO  
14 dealings are being undertaken; and  
15 (c) either of the following applies:  
16 (i) the conduct results in damage to, destruction of, or  
17 interference with, the premises;  
18 (ii) the conduct involves damaging, destroying, or  
19 interfering with a thing at, or removing a thing from, the  
20 premises; and  
21 (d) the owner or occupier of the premises, or the owner of the  
22 thing (as the case requires), has not consented to the conduct.
- 23 Civil penalty: 500 penalty units.

## 24 **34B False or misleading information or document—offence**

- 25 (1) A person commits an offence if:  
26 (a) the person gives information (whether orally or in writing):  
27 (i) in connection with an application made to the Regulator  
28 under this Act; or  
29 (ii) in compliance or purported compliance with this Act;  
30 and  
31 (b) the person knows that the information is false or misleading  
32 in a material particular.

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- 1                   Penalty: Imprisonment for 1 year or 60 penalty units.
- 2           (2) A person commits an offence if:
- 3               (a) the person produces a document:
- 4                   (i) in connection with an application made to the Regulator
- 5                   under this Act; or
- 6                   (ii) in compliance or purported compliance with this Act;
- 7                   and
- 8               (b) the person knows that the document is false or misleading in
- 9               a material particular; and
- 10              (c) the person does not:
- 11                   (i) indicate to the person to whom the document is
- 12                   produced that it is false or misleading, and the respect in
- 13                   which it is false or misleading; and
- 14                   (ii) if the person producing the document is in possession
- 15                   of, or can reasonably acquire, the correct information—
- 16                   provide the correct information to the person to whom
- 17                   the document is produced.
- 18                   Penalty: Imprisonment for 1 year or 60 penalty units.

### 19 **34C False or misleading information or document—civil penalty**

#### 20 **provisions**

- 21           (1) A person is liable to a civil penalty if:
- 22               (a) the person gives information (whether orally or in writing):
- 23                   (i) in connection with an application made to the Regulator
- 24                   under this Act; or
- 25                   (ii) in compliance or purported compliance with this Act;
- 26                   and
- 27               (b) the information is false or misleading in a material particular.
- 28                   Civil penalty:           60 penalty units.
- 29           (2) A person is liable to a civil penalty if:
- 30               (a) the person produces a document:
- 31                   (i) in connection with an application made to the Regulator
- 32                   under this Act; or

- 1 (ii) in compliance or purported compliance with this Act;  
2 and  
3 (b) the document is false or misleading in a material particular;  
4 and  
5 (c) the person does not:  
6 (i) indicate to the person to whom the document is  
7 produced that it is false or misleading, and the respect in  
8 which it is false or misleading; and  
9 (ii) if the person producing the document is in possession  
10 of, or can reasonably acquire, the correct information—  
11 provide the correct information to the person to whom  
12 the document is produced.

13 Civil penalty: 60 penalty units.

## 14 **Division 5—Aggravated offences and contraventions**

### 15 **35 Aggravated offences—significant damage to health or safety of** 16 **people or to the environment**

- 17 (1) An offence is an *aggravated offence* if the commission of the  
18 offence causes significant damage, or is likely to cause significant  
19 damage, to the health and safety of people or to the environment.
- 20 (2) In order to prove an aggravated offence, the prosecution must  
21 prove that the person who committed the offence:  
22 (a) intended the person’s conduct to cause significant damage to  
23 the health and safety of people or to the environment; or  
24 (b) was reckless as to whether that conduct would cause  
25 significant damage to the health and safety of people or to the  
26 environment.
- 27 (3) If the prosecution intends to prove an aggravated offence, the  
28 charge must allege the relevant aggravated offence.

### 29 **35A Aggravated contraventions—significant damage to health or** 30 **safety of people or to the environment**

- 31 (1) A contravention of a civil penalty provision is an *aggravated*  
32 *contravention* if the act or omission that constituted the

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- 1                   contravention causes significant damage, or is likely to cause  
2                   significant damage, to the health and safety of people or to the  
3                   environment.
- 4                   (2) If an authorised compliance officer intends to prove that a person  
5                   has committed an aggravated contravention, the authorised  
6                   compliance officer’s application for a civil penalty order in relation  
7                   to the contravention must specify the relevant aggravated  
8                   contravention.
- 9                   (3) If, in proceedings for a civil penalty order in relation to an  
10                  aggravated contravention of a provision, a court of competent  
11                  jurisdiction:  
12                  (a) is not satisfied that the person has committed an aggravated  
13                  contravention of that provision; and  
14                  (b) is satisfied, on the balance of probabilities, that the person  
15                  has contravened that provision;  
16                  the court may make a civil penalty order against the person not for  
17                  the aggravated contravention but for the contravention of that  
18                  provision.

### 59 Part 5 (heading)

Omit “Licensing system”, substitute “GMO licences”.

### 60 Section 39

Repeal the section, substitute:

#### 39 Simplified outline

The following is a simplified outline of this Part:

This Part provides for a licensing system under which a person may apply to the Regulator for a GMO licence. A GMO licence authorises one or more dealings with one or more GMOs.

In some circumstances, the Regulator must prepare a risk assessment and risk management plan and consult in relation to the plan.



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Main amendments Schedule 1

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The Regulator must not issue a GMO licence unless satisfied of certain things, including that any risks associated with the proposed dealings will be managed and that the person is a suitable person to hold a GMO licence.

A GMO licence is subject to conditions.

A GMO licence may be suspended, cancelled, varied, transferred to another person or surrendered.

## 61 Division 2 of Part 5 (heading)

Omit “Licence”, substitute “GMO licence”.

## 62 Section 40 (heading)

Before “licence”, insert “GMO”.

## 63 Subsection 40(1)

Before “licence”, insert “GMO”.

## 64 At the end of subsection 40(1)

Add:

Note: Division 1A of Part 12 sets out requirements for applications.

## 65 Subsections 40(2) and (3)

Repeal the subsections.

## 66 Subsection 40(4)

Before “licence”, insert “GMO”.

## 67 Subsections 40(5) and (6)

Repeal the subsections.

## 68 Section 40A (heading)

Omit “Licences”, substitute “GMO licences”.

## 69 Section 40A (note)

Repeal the note, substitute:

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1                   Note:       Section 47 has the effect that the Regulator may expedite  
2                                   consideration of an application to deal with a GMO in certain ways if  
3                                   the GMO has come into a person’s possession inadvertently. That  
4                                   section has effect whether the application is made under section 40, or  
5                                   is taken to have been made under this section.

6       **70 Sections 41 and 42**

7                   Repeal the sections.

8       **71 Subsection 43(1)**

9                   Before “licence”, insert “GMO”.

10      **72 At the end of subsection 43(1)**

11                  Add “and Division 1A of Part 12”.

12      **73 Paragraphs 43(2)(a) to (d)**

13                  Repeal the paragraphs.

14      **74 Paragraph 43(2)(e)**

15                  Before “licence”, insert “GMO”.

16      **75 Paragraph 43(2)(f)**

17                  Repeal the paragraph, substitute:

18                               (f) the Regulator is satisfied (having regard to the matters  
19                               specified in section 72AM) that the applicant is not a suitable  
20                               person to hold a GMO licence.

21      **76 Subsection 43(3)**

22                  Repeal the subsection.

23      **77 Section 44 (heading)**

24                  Repeal the heading, substitute:

25      **44 Regulator may consult before considering application**

26      **78 Section 44**

27                  After “this Part”, insert “and Division 1A of Part 12”.

1 **79 Section 44**

2 Omit “the applicant, or another regulatory agency,”, substitute “any  
3 person or body the Regulator may consult under section 46”.

4 **80 Section 45**

5 Repeal the section.

6 **81 Divisions 3 and 4 of Part 5**

7 Repeal the Divisions, substitute:

8 **Division 3—Consideration of GMO licence applications**

9 **46 Regulator may consult on application**

10 For the purposes of considering an application for a GMO licence,  
11 the Regulator may consult one or more of the following about any  
12 aspect of the application:

- 13 (a) the applicant;
- 14 (b) a State;
- 15 (c) the Gene Technology Technical Advisory Committee;
- 16 (d) relevant Commonwealth authorities or agencies;
- 17 (e) any other person or body the Regulator considers  
18 appropriate.

19 **Division 4—Risk assessment and risk management plans**

20 **47 Applications to which this Division applies**

21 This Division applies to an application for a GMO licence, other  
22 than an inadvertent dealings application.

23 **48 Preparation of risk assessment and risk management plans**

- 24 (1) Before issuing a GMO licence, the Regulator must prepare a risk  
25 assessment and risk management plan (the *RARMP*) in relation to  
26 the dealings proposed to be authorised by the GMO licence.
  - 27 (2) In preparing the RARMP, the Regulator must take into account the  
28 following:
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- 1 (a) the risks posed by the dealings to the health and safety of  
2 people and to the environment;  
3 (b) the means of managing those risks in such a way as to protect  
4 the health and safety of people and to protect the  
5 environment;  
6 (c) any other matter prescribed by the regulations for the  
7 purposes of this paragraph.

8 Note: Despite subsection (2), the Regulator is not required to consider risks  
9 posed by the dealings proposed to be authorised by the GMO licence  
10 in certain circumstances (see section 15A).

### 11 **49 Consultation on risk assessment and risk management plans**

- 12 (1) After a RARMP has been prepared, the Regulator:  
13 (a) must consult each person or body (if any) prescribed by the  
14 regulations on the RARMP; and  
15 (b) must consult the public on the RARMP if the Regulator is  
16 satisfied that any dealing to be authorised by the GMO  
17 licence would involve:  
18 (i) a GMO that is derived from a parent organism that is  
19 novel; or  
20 (ii) a GMO that displays a novel trait that occurs because of  
21 gene technology; and  
22 (c) may consult the public on the RARMP if the Regulator  
23 considers it to be in the public interest to do so.

24 Note 1: The regulations may prescribe by class: see subsections 33(3A) and  
25 (3B) of the *Acts Interpretation Act 1901*.

26 Note 2: If the Regulator must, or decides to, publicly consult on a RARMP,  
27 the information in the RARMP is subject to a publication requirement  
28 (see Subdivision A of Division 3 of Part 12). In those circumstances,  
29 the Regulator must undertake certain steps before publicly disclosing  
30 the information.

- 31 (2) Despite paragraph (1)(b), the Regulator is not required to consult  
32 the public on the RARMP if the Regulator is satisfied that each  
33 dealing covered by subparagraph (1)(b)(i) or (ii) will:  
34 (a) be conducted in a facility that is certified under Division 2 of  
35 Part 7; or  
36 (b) involve using the GMO:

- 1 (i) by administering it into a human for therapeutic  
2 purposes; or  
3 (ii) to produce therapeutic goods (within the meaning of the  
4 *Therapeutic Goods Act 1989*); or  
5 (c) be conducted in accordance with rules made for the purposes  
6 of section 27A (rules for transport, storage and disposal of  
7 GMOs).
- 8 (3) The Regulator may remove CCI contained in the RARMP before  
9 consultation under subsection (1) if the Regulator considers there is  
10 no public interest in publicly disclosing the CCI.

## 11 **50 Notice to applicant of public consultation**

- 12 (1) Before the Regulator consults the public on a RARMP, the  
13 Regulator must give the applicant written notice of the  
14 consultation.
- 15 (2) The notice must be given within 60 business days after the  
16 Regulator receives the application for the GMO licence.

## 17 **51 Public consultation process**

- 18 To consult the public on a RARMP, the Regulator must publish, on  
19 the internet, a notice that:  
20 (a) includes either:  
21 (i) a copy of the RARMP; or  
22 (ii) if the Regulator has removed CCI from the RARMP  
23 under subsection 49(3) or because of a decision made  
24 under subparagraph 187A(1)(b)(ii) not to disclose CCI  
25 in the RARMP—a copy of the RARMP with the CCI so  
26 removed; and  
27 (b) includes information (if any) prescribed by the regulations in  
28 relation to the dealings proposed to be authorised by the  
29 GMO licence; and  
30 (c) invites written submissions in relation to the RARMP; and  
31 (d) specifies the closing date for submissions, which must not be  
32 earlier than 20 business days after the day the notice is  
33 published.

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1 **82 Division 5 of Part 5 (heading)**

2 Omit “licence”, substitute “GMO licence application”.

3 **83 Section 55**

4 Repeal the section, substitute:

5 **55 Decision on application for GMO licence**

6 (1) After taking any steps required by Division 4, and any other action  
7 the Regulator considers appropriate for the purpose of deciding an  
8 application for a GMO licence, the Regulator must, within the  
9 consideration period for the application, decide:

10 (a) to issue the licence; or

11 (b) to refuse to issue the licence.

12 Note 1: See section 178F for the consideration period for the application.

13 Note 2: If the application for a GMO licence relates to multiple dealings with  
14 one or more GMOs, or a specified dealing with multiple GMOs, the  
15 Regulator may decide to issue one or more GMO licences authorising  
16 some or all of the multiple dealings, or authorising the specified  
17 dealing with some or all of the multiple GMOs.

18 Note 3: A decision to issue, or refuse to issue, a GMO licence is a reviewable  
19 decision (see section 179), and the Regulator must give the applicant  
20 written notice of the decision (see section 180).

21 (2) If the Regulator decides to issue the licence, the Regulator may  
22 impose conditions to which the licence is subject.

23 Note: A decision to impose conditions is a reviewable decision (see  
24 section 179), and the Regulator must give the applicant written notice  
25 of the decision (see section 180).

26 **84 Section 56 (heading)**

27 Omit “the licence”, substitute “GMO licence”.

28 **85 Subsection 56(1)**

29 Omit “issue the licence”, substitute “issue a GMO licence”.

30 **86 After subsection 56(1)**

31 Insert:

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1 Note: Despite subsection (1), the Regulator is not required to consider risks  
2 posed by the dealings in certain circumstances (see section 15A).

3 **87 Paragraphs 56(2)(a) to (c)**

4 Repeal the paragraphs, substitute:

- 5 (a) the RARMP for the application for the GMO licence;  
6 (b) any submissions received as a result of consultation under  
7 subsection 49(1) in relation to the RARMP for the  
8 application for the GMO licence;

9 **88 Subsection 56(2) (note)**

10 Omit “, (b) and (c)”, substitute “and (b)”.

11 **89 Section 57 (heading)**

12 Omit “the licence”, substitute “GMO licence”.

13 **90 Subsections 57(1) and (2)**

14 Omit “issue the licence”, substitute “issue a GMO licence”.

15 **91 At the end of subsection 57(2)**

16 Add “(having regard to the matters specified in section 72AM)”.

17 **92 Sections 58 and 59**

18 Repeal the sections.

19 **93 Section 60 (heading)**

20 Before “licence”, insert “GMO”.

21 **94 Subsection 60(1)**

22 Omit “A licence”, substitute “A GMO licence”.

23 **95 Paragraph 60(1)(a)**

24 Omit “that period;”, substitute “that period, unless it is cancelled or  
25 surrendered before the end of that period;”.

26 **96 Subsection 60(2)**

27 Omit “A licence”, substitute “A GMO licence”.

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- 1 **97 Subsection 60(3)**  
2 Repeal the subsection.
- 3 **98 Division 6 of Part 5 (heading)**  
4 Before “licences”, insert “GMO”.
- 5 **99 Section 61 (heading)**  
6 Omit “Licence”, substitute “GMO licence”.
- 7 **100 Paragraph 61(a)**  
8 Omit “sections 63, 64 and 65”, substitute “Division 3 of Part 5AA”.
- 9 **101 Paragraph 61(b)**  
10 Omit “prescribed by the regulations”, substitute “specified in the rules”.
- 11 **102 Paragraph 61(d)**  
12 After “section 71”, insert “or section 71A”.
- 13 **103 Section 62 (heading)**  
14 Omit “prescribed”, substitute “specified”.
- 15 **104 Subsection 62(1)**  
16 Omit “Licence”, substitute “GMO licence”.
- 17 **105 Subsection 62(2)**  
18 Omit “Licence”, substitute “GMO licence”.
- 19 **106 Paragraph 62(2)(l)**  
20 Repeal the paragraph, substitute:  
21 (l) requiring compliance with the rules made for the purposes of  
22 section 27A (rules for transport, storage and disposal of  
23 GMOs);
- 24 **107 Subsection 62(3)**  
25 Omit “Licence”, substitute “GMO licence”.
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1 **108 Sections 63 to 67**

2 Repeal the sections.

3 **109 Division 7 of Part 5 (heading)**

4 Repeal the heading, substitute:

5 **Division 7—Suspension, transfer, cancellation and**  
6 **variation of GMO licences**

7 **110 Section 68 (heading)**

8 Before “licence”, insert “GMO”.

9 **111 Paragraph 68(b)**

10 Omit “has committed an offence against this Act or the regulations”,  
11 substitute “has contravened this Act or a corresponding State law”.

12 **112 At the end of paragraph 68(f)**

13 Add “(having regard to the matters specified in section 72AM)”.

14 **113 Section 69 (heading)**

15 Before “licence”, insert “GMO”.

16 **114 Section 70 (heading)**

17 Before “licence”, insert “GMO”.

18 **115 After subsection 70(1)**

19 Insert:

20 Note: Division 1A of Part 12 sets out requirements for applications.

21 **116 Subsection 70(2)**

22 Repeal the subsection, substitute:

23 (2) If the Regulator receives an application under subsection (1) to  
24 transfer the licence, the Regulator must, within the consideration  
25 period for the application, decide:

26 (a) to transfer the licence; or

27 (b) to refuse to transfer the licence.

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1 Note: See section 178F for the consideration period for the application.

2 **117 At the end of subsection 70(4)**

3 Add “(having regard to the matters specified in section 72AM)”.

4 **118 Subsection 70(5)**

5 Repeal the subsection, substitute:

6 (5) If the Regulator decides to transfer the licence under  
7 subsection (2), the Regulator must notify the licence holder and the  
8 transferee, in writing, of the Regulator’s decision as soon as  
9 practicable after making the decision.

10 Note: A decision to refuse to transfer a GMO licence is a reviewable  
11 decision (see section 179), and the Regulator must give the applicants  
12 written notice of the decision (see section 180).

13 **119 Paragraph 70(6)(c)**

14 After “transfer”, insert “(unless the Regulator varies the conditions)”.

15 **120 Section 71**

16 Repeal the section, substitute:

17 **71 Variation of GMO licence on Regulator’s initiative**

18 (1) The Regulator may, at any time by notice in writing given to a  
19 licence holder, vary a GMO licence.

20 Note: A decision to vary a GMO licence is a reviewable decision (see  
21 section 179), and the Regulator must give the applicant written notice  
22 of the decision (see section 180).

23 (2) Without limiting subsection (1), the Regulator may:  
24 (a) impose conditions to which the licence is subject; or  
25 (b) remove or vary conditions to which the licence is subject and  
26 which were imposed by the Regulator; or  
27 (c) extend or reduce the authority granted by the licence.

28 (3) However, the Regulator must not vary the GMO licence under  
29 subsection (1) unless the Regulator is satisfied that the risks posed  
30 by the dealings proposed to be authorised by the licence as varied

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1 (the *proposed dealings*) are able to be managed in such a way as to  
2 protect:

- 3 (a) the health and safety of people; and  
4 (b) the environment.

5 Note: Despite this subsection, the Regulator is not required to consider risks  
6 posed by the proposed dealings in certain circumstances (see  
7 section 15A).

8 (4) In addition, the Regulator must not vary the GMO licence under  
9 subsection (1) if:

- 10 (a) the Regulator is satisfied that if the proposed dealings were  
11 included in an application under section 40 for a GMO  
12 licence:  
13 (i) Division 4 of this Part would apply to the licence  
14 application; and  
15 (ii) the Regulator would be required, or would decide, to  
16 consult about the RARMP for the licence application  
17 under section 49 (consultation on RARMP); and  
18 (b) the Regulator did not so consult under section 49 about the  
19 RARMP for the original application for the licence.

20 (5) Further, the Regulator must not vary the GMO licence under  
21 subsection (1) if:

- 22 (a) the dealings (other than dealings covered by the rules made  
23 for the purposes of section 27A) authorised by the GMO  
24 licence are authorised to be done in a facility that is certified  
25 under Division 2 of Part 7; and  
26 (b) the proposed dealings (other than dealings covered by the  
27 rules made for the purposes of section 27A) would not be  
28 done in such a facility.

29 Note: The rules made for the purposes of section 27A specify technical and  
30 procedural requirements relating to the transportation, storage and  
31 disposal of GMOs.

## 32 **71A Variation of GMO licence on application by licence holder**

33 (1) The holder of a GMO licence may apply to the Regulator to vary  
34 the licence.

35 Note: Division 1A of Part 12 sets out requirements for applications.

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- 1 (2) If the Regulator receives an application under subsection (1) to  
2 vary a GMO licence, the Regulator must, within the consideration  
3 period for the application, decide:  
4 (a) to vary the licence; or  
5 (b) to refuse to vary the licence.
- 6 Note 1: See section 178F for the consideration period for the application.  
7 Note 2: If the application for a variation relates to more than one aspect of the  
8 licence, the Regulator may decide to vary some or all of those aspects  
9 of the licence.  
10 Note 3: A decision to vary, or refuse to vary, a GMO licence on application by  
11 the licence holder is a reviewable decision (see section 179), and the  
12 Regulator must give the applicant written notice of the decision (see  
13 section 180).
- 14 (3) Without limiting subsection (1), the Regulator may:  
15 (a) impose conditions to which the GMO licence is subject; or  
16 (b) remove or vary conditions to which the licence is subject and  
17 which were imposed by the Regulator; or  
18 (c) extend or reduce the authority granted by the licence.
- 19 (4) However, the Regulator must not vary the GMO licence under  
20 subsection (2) unless the Regulator is satisfied that the risks posed  
21 by the dealings proposed to be authorised by the licence as varied:  
22 (a) are able to be managed in such a way as to protect:  
23 (i) the health and safety of people; and  
24 (ii) the environment; and  
25 (b) are covered by:  
26 (i) the RARMP for the original application for the licence;  
27 or  
28 (ii) the RARMP for an application for another licence, but  
29 only if that other licence was issued.
- 30 Note: Despite subsection (4), the Regulator is not required to consider risks  
31 posed by the dealings proposed to be authorised by the licence as  
32 varied in certain circumstances (see section 15A).
- 33 (5) In addition, the Regulator must not vary the GMO licence under  
34 subsection (2) if:  
35 (a) the Regulator is satisfied that, were the dealings proposed to  
36 be authorised as a result of the variation to be included in an  
37 application under section 40 for a GMO licence:
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- 1 (i) Division 4 of this Part would apply to the licence  
2 application; and  
3 (ii) the Regulator would be required, or would decide, to  
4 consult about the RARMP for the licence application  
5 under section 49 (consultation on RARMP); and  
6 (b) the Regulator did not so consult under section 49 about the  
7 RARMP for the original application for the licence.
- 8 (6) Further, the Regulator must not vary the GMO licence under  
9 subsection (2) if:  
10 (a) the dealings (other than dealings covered by the rules made  
11 for the purposes of section 27A) authorised by the GMO  
12 licence are authorised to be done in a facility that is certified  
13 under Division 2 of Part 7; and  
14 (b) the dealings (other than dealings covered by the rules made  
15 for the purposes of section 27A) proposed to be authorised as  
16 a result of the variation would not be done in a facility that is  
17 certified under Division 2 of Part 7.
- 18 Note: The rules made for the purposes of section 27A specify technical and  
19 procedural requirements relating to the transportation, storage and  
20 disposal of GMOs.

## 21 **121 Subsection 72(1)**

22 Before “licence”, insert “GMO”.

## 23 **122 Paragraph 72(2)(c)**

24 Omit “may”, substitute “must”.

## 25 **123 Paragraph 72(3)(a)**

26 Repeal the paragraph, substitute:

- 27 (a) if the licence holder is required to give information under  
28 paragraph (2)(b)—must give the information; and

## 29 **124 Subsection 72(3)**

30 Omit “The period must not end earlier than 30 days after the day on  
31 which the notice was given.”, substitute “The period specified must be  
32 not less than 20 business days starting on the day after the day the  
33 notice is given.”.

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1 **125 Subsection 72(5)**

2 Omit “suspension, cancellation or”.

3 **126 Subsection 72(6)**

4 Omit “an imminent risk of death, serious illness, serious injury or  
5 serious damage to the environment”, substitute “a significant risk to  
6 human health and safety or to the environment”.

7 **127 Subsection 72(7)**

8 Omit “or complexity”.

9 **128 After Part 5**

10 Insert:

11 **Part 5AAA—GMO permits**

12 **Division 1—Simplified outline**

13 **72AA Simplified outline**

14 The following is a simplified outline of this Part:

15 This Part provides for a permit system under which a person may  
16 apply to the Regulator for a GMO permit. A GMO permit  
17 authorises one or more permit dealings.

18 A dealing with a GMO is a permit dealing if it is in a class of  
19 dealings specified in the regulations to be permit dealings.

20 The Regulator must not issue a GMO permit unless satisfied that  
21 the person is a suitable person to hold a GMO permit and that  
22 issuing the permit would not be inconsistent with a policy  
23 principle.

24 A GMO permit is subject to conditions.

25 A GMO permit may be suspended, cancelled or surrendered.

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## 1 Division 2—Permit dealings

### 2 72AB Permit dealings

- 3 (1) A dealing with a GMO is a *permit dealing* if it is in a class of  
4 dealings specified in the regulations to be permit dealings.
- 5 (2) Without limiting subsection (1), regulations made for the purposes  
6 of that subsection may specify classes of dealings by reference to:  
7 (a) specified dealings or specified kinds of dealings; or  
8 (b) dealings with specified GMOs or specified kinds of GMOs;  
9 or  
10 (c) particular circumstances, including, for example:  
11 (i) the purpose of the dealings; or  
12 (ii) the ways in which any risks posed by the dealings are to  
13 be managed so as to protect the health and safety of  
14 people and to protect the environment; or  
15 (iii) the location of the dealings; or  
16 (iv) the training or experience required of a person  
17 undertaking the dealings; or  
18 (v) dealings permitted or authorised under another Act.
- 19 (3) Before the Governor-General makes regulations specifying a class  
20 of dealings to be permit dealings, the Minister must be satisfied  
21 that any risk to the health and safety of people, or to the  
22 environment, posed by any dealing in the class of dealings:  
23 (a) is known; and  
24 (b) can be managed through:  
25 (i) requiring a permit holder to be a suitable person to hold  
26 a permit (having regard to the matters specified in  
27 section 72AM); and  
28 (ii) permit conditions.
- 29 Note: Despite subsection (3), the Minister is not required to consider risks  
30 posed by a dealing in the class of dealings in certain circumstances  
31 (see section 15A).
- 32 (4) In specifying a class of dealings under subsection (1), the  
33 regulations may provide for the rules to specify a matter in relation  
34 to the class.

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- 1 (5) Without limiting subsection (4), the regulations may provide for  
2 the rules to specify:  
3 (a) the kind or kinds of GMOs in a class; or  
4 (b) the physical containment level for GMOs in a class.
- 5 (6) Regulations made for the purposes of subsection (4) may require  
6 the Regulator to be satisfied of, or take into account, certain  
7 matters before making rules specifying a matter in relation to a  
8 class.

### 9 **Division 3—GMO permit applications**

#### 10 **72AC Person may apply for GMO permit**

11 A person may apply to the Regulator for a GMO permit that  
12 authorises one or more specified permit dealings by a person or  
13 persons.

14 Note: Division 1A of Part 12 sets out requirements for applications.

### 15 **Division 4—Decision on GMO permit application etc.**

#### 16 **72AD Decision on application for GMO permit**

- 17 (1) If a person applies for a GMO permit, the Regulator must, within  
18 the consideration period for the application, decide:  
19 (a) to issue the GMO permit; or  
20 (b) to refuse to issue the GMO permit.

21 Note 1: See section 178F for the consideration period for the application.

22 Note 2: A decision to issue, or refuse to issue, a GMO permit authorising a  
23 specified permit dealing is a reviewable decision (see section 179),  
24 and the Regulator must give the applicant written notice of the  
25 decision (see section 180).

- 26 (2) The Regulator must not issue a GMO permit unless the Regulator  
27 is satisfied that the applicant is a suitable person to hold a permit  
28 (having regard to the matters specified in section 72AM).
- 29 (3) The Regulator must not issue a GMO permit if the Regulator is  
30 satisfied that issuing the permit would be inconsistent with a policy  
31 principle in force under section 21.



1 **72AE GMO permit conditions**

- 2 (1) A GMO permit is subject to:
- 3 (a) the conditions set out in Division 3 of Part 5AA; and
- 4 (b) any condition specified in the rules in relation to a permit
- 5 dealing authorised by the permit.
- 6 (2) The rules must specify conditions in relation to a permit dealing
- 7 authorised by a GMO permit.
- 8 (3) Without limiting subsection (2), the rules may specify conditions
- 9 relating to any of the following:
- 10 (a) the scope of the dealings authorised by the GMO permit;
- 11 (b) the purposes for which the dealings may be undertaken;
- 12 (c) documentation and record-keeping requirements in relation
- 13 to the dealings;
- 14 (d) the required level of containment in respect of the dealings,
- 15 including requirements relating to the certification of
- 16 facilities to specified containment levels;
- 17 (e) waste disposal requirements in relation to the dealings;
- 18 (f) measures to manage risks posed to the health and safety of
- 19 people, or to the environment in relation to the dealings;
- 20 (g) data collection, including studies to be conducted, in relation
- 21 to the dealings;
- 22 (h) auditing and reporting;
- 23 (i) actions to be taken in case of the release of a GMO from a
- 24 contained environment;
- 25 (j) the geographic area in which the dealings authorised by the
- 26 permit may occur;
- 27 (k) requiring compliance with the rules made for the purposes of
- 28 section 27A (rules for transport, storage and disposal of
- 29 GMOs);
- 30 (l) supervision of the dealings by, or monitoring by, Institutional
- 31 Biosafety Committees;
- 32 (m) contingency planning in respect of unintended effects of the
- 33 dealings;
- 34 (n) limiting the dissemination or persistence of the GMO or its
- 35 genetic material in the environment.

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1 **72AF Period of GMO permit**

- 2 (1) A GMO permit continues in force:
- 3 (a) if the permit is expressed to be in force for a particular
- 4 period—until the end of that period, unless it is cancelled or
- 5 surrendered before the end of that period; or
- 6 (b) otherwise—until it is cancelled or surrendered.
- 7 (2) A GMO permit is not in force throughout any period of suspension.

8 **Division 5—Suspension, cancellation and surrender of**

9 **GMO permits**

10 **72AG Suspension and cancellation of GMO permit**

- 11 The Regulator may, by notice in writing given to a permit holder,
- 12 suspend or cancel a GMO permit if:
- 13 (a) the Regulator believes on reasonable grounds that a condition
- 14 of the permit has been breached, whether by the permit
- 15 holder or by a person covered by the permit; or
- 16 (b) the Regulator believes on reasonable grounds that the permit
- 17 holder, or a person covered by the permit, has contravened
- 18 this Act or a corresponding State law; or
- 19 (c) any annual charge payable in respect of the permit remains
- 20 unpaid after the due date; or
- 21 (d) the permit was obtained improperly; or
- 22 (e) the Regulator becomes aware of risks associated with the
- 23 continuation of the permit dealings authorised by the permit,
- 24 and is satisfied that the permit holder has not proposed, or is
- 25 not in a position to implement, adequate measures to deal
- 26 with those risks; or
- 27 (f) the Regulator is satisfied that the permit holder is no longer a
- 28 suitable person to hold the permit (having regard to the
- 29 matters specified in section 72AM).

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1 **72AH Regulator to notify permit holder of proposed suspension or**  
2 **cancellation**

- 3 (1) Before suspending or cancelling a GMO permit under this  
4 Division, the Regulator must give written notice of the proposed  
5 suspension or cancellation to the permit holder.
- 6 (2) The notice:
- 7 (a) must state that the Regulator proposes to suspend or cancel  
8 the permit; and
  - 9 (b) may require the permit holder to give to the Regulator any  
10 information of a kind specified in the notice that is relevant  
11 to the proposed suspension or cancellation; and
  - 12 (c) must invite the permit holder to make a written submission to  
13 the Regulator about the proposed suspension or cancellation.
- 14 (3) The notice must specify a period within which the permit holder:
- 15 (a) if the permit holder is required to give information under  
16 paragraph (2)(b)—must give the information; and
  - 17 (b) may make a submission under paragraph (2)(c).
- 18 The period specified must be not less than 20 business days  
19 starting on the day after the day the notice is given.
- 20 (4) In considering whether to suspend or cancel a GMO permit, the  
21 Regulator must have regard to any submission made in response to  
22 an invitation under paragraph (2)(c).
- 23 (5) This section does not apply to a suspension or cancellation of a  
24 GMO permit if the Regulator considers that the suspension or  
25 cancellation is necessary in order to avoid a significant risk to  
26 human health and safety or to the environment.

27 **72AJ Surrender of GMO permit**

28 A permit holder may, with the consent of the Regulator, surrender  
29 the GMO permit.

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1 **Part 5AA—Other matters relating to GMO licences**  
2 **and GMO permits**  
3

4 **Division 1—Outline and operation of this Part**

5 **72AK Simplified outline**

6 The following is a simplified outline of this Part:

7 This Part sets out the matters that must be taken into account by the  
8 Regulator when deciding whether a person is suitable to hold a  
9 GMO licence or GMO permit.

10 It also sets out some of the conditions of GMO licences and GMO  
11 permits.

12 **72AL Application of this Part**

13 This Part applies in relation to GMO licences and GMO permits.

14 **Division 2—Suitable persons**

15 **72AM Matters to be taken into account in deciding whether a**  
16 **person is suitable to hold GMO licence or GMO permit**

- 17 (1) Without limiting the matters to which the Regulator may have  
18 regard in deciding whether a natural person is a suitable person to  
19 hold a GMO licence or GMO permit, the Regulator must have  
20 regard to:
- 21 (a) any relevant conviction of the person; and
  - 22 (b) any contravention of a provision of this Act or a  
23 corresponding State law by the person, if less than 5 years  
24 have elapsed since the day on which the contravention  
25 occurred; and
  - 26 (c) any revocation or suspension of a licence or permit (however  
27 described) held by the person under a law of the  
28 Commonwealth, a State or a foreign country, being a law

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- 1 relating to the health and safety of people or the environment;  
2 and  
3 (d) the capacity of the person to meet the conditions of the  
4 licence or permit.
- 5 (2) Without limiting the matters to which the Regulator may have  
6 regard in deciding whether a body corporate is a suitable person to  
7 hold a GMO licence or GMO permit, the Regulator must have  
8 regard to:
- 9 (a) any relevant conviction of the body corporate; and  
10 (b) if there is a relevant conviction of the body corporate:  
11 (i) whether the offence concerned was committed at a time  
12 when any person who is presently a director of the body  
13 corporate was a director; and  
14 (ii) whether the offence was committed at a time when any  
15 officer or shareholder of the body corporate who is  
16 presently in a position to influence the management of  
17 the body corporate was such an officer or shareholder;  
18 and  
19 (c) any contravention of a provision of this Act or a  
20 corresponding State law by the body corporate, if less than 5  
21 years have elapsed since the day on which the contravention  
22 occurred; and  
23 (d) any revocation or suspension of a licence or permit (however  
24 described) held by the body corporate under a law of the  
25 Commonwealth, a State or a foreign country, being a law  
26 relating to the health and safety of people or the environment;  
27 and  
28 (e) the capacity of the body corporate to meet the conditions of  
29 the licence or permit.
- 30 (3) Nothing in this section affects the operation of Part VIIC of the  
31 *Crimes Act 1914* (which includes provisions that, in certain  
32 circumstances, relieve persons from the requirement to disclose  
33 spent convictions and require persons aware of such convictions to  
34 disregard them).

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### 1 **Division 3—Conditions of GMO licences and GMO** 2 **permits**

#### 3 **72AN Conditions about informing people of obligations**

- 4 (1) It is a condition of a GMO licence that the licence holder inform  
5 any person covered by the licence and to whom any of the  
6 following conditions apply, of the condition, including any  
7 variations of it:  
8 (a) a condition imposed by the Regulator at the time of issuing  
9 the licence;  
10 (b) a condition imposed by the Regulator under section 71 or  
11 71A after the licence is issued.
- 12 (2) It is a condition of a GMO licence and GMO permit that the  
13 licence holder or permit holder (as the case requires) inform any  
14 person who ceases to be authorised by the licence or permit to deal  
15 with a GMO of that cessation.
- 16 Note: A person may cease to be authorised by a GMO licence or GMO  
17 permit to deal with a GMO if, for example, the licence or permit is  
18 suspended or cancelled.
- 19 (3) The licence holder or permit holder (as the case requires) must  
20 inform the person of a matter in subsection (1) or (2):  
21 (a) within the period specified by the Regulator; or  
22 (b) if no period is specified—as soon as reasonably practicable  
23 after the licence holder or permit holder knows about the  
24 matter.
- 25 (4) Requirements in relation to the manner in which information is  
26 provided under subsection (1) or (2) may be:  
27 (a) specified in the rules; or  
28 (b) specified by the Regulator.
- 29 (5) Such requirements may include, but are not limited to, measures  
30 relating to labelling, packaging, conducting training and providing  
31 information.
- 32 (6) If such requirements are prescribed or specified, it is a condition of  
33 a GMO licence and GMO permit that the licence holder or permit  
34 holder (as the case requires) comply with the requirements.

- 1 (7) If a GMO licence or GMO permit is not in force, the conditions  
2 under subsections (1), (2) and (6) (if any) continue to apply in  
3 relation to the former licence holder or former permit holder as if  
4 the former holder were still the holder.

5 **72ANA Condition about record keeping during suspension**

6 If a condition of a GMO licence or GMO permit requires a licence  
7 holder or permit holder to make or maintain a record of dealings  
8 with a GMO, that condition continues to apply in relation to the  
9 holder during any period during which the licence or permit (as the  
10 case requires) is suspended.

11 **72AP Condition about monitoring**

- 12 (1) It is a condition of a GMO licence and GMO permit that if:  
13 (a) a person is authorised by the licence or permit to deal with a  
14 GMO; and  
15 (b) any of the following conditions of the licence or permit  
16 applies to the dealing by the person:  
17 (i) a condition specified in the rules;  
18 (ii) a condition imposed by the Regulator at the time of  
19 issuing the licence;  
20 (iii) a condition imposed by the Regulator under section 71  
21 or 71A after the licence is issued;  
22 the person must permit an authorised inspector to enter, at a  
23 reasonable time, premises where the dealing has been, or is being,  
24 undertaken, for one or more of the following purposes:  
25 (c) determining whether a provision subject to monitoring under  
26 Part 10 has been, or is being, complied with;  
27 (d) determining whether information subject to monitoring under  
28 Part 10 is correct.
- 29 (2) Subsection (1) does not limit the conditions that may be:  
30 (a) imposed by the Regulator for GMO licences; or  
31 (b) specified in the rules under paragraph 61(b) for GMO  
32 licences; or  
33 (c) specified in the rules under subsection 72AE(2) for permit  
34 dealings authorised by a GMO permit.

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### 1 **72AQ Condition about information to be given to the Regulator**

- 2 (1) It is a condition of a GMO licence and GMO permit that the  
3 licence holder or permit holder (as the case requires) inform the  
4 Regulator if the holder becomes aware of:
- 5 (a) information in relation to any risks to the health and safety of  
6 people, or to the environment, associated with the dealings  
7 authorised by the licence or permit; or
- 8 (b) any contraventions of the licence or permit by a person  
9 covered by the licence or permit; or
- 10 (c) any unintended effects of the dealings authorised by the  
11 licence or permit.
- 12 (2) The licence holder or permit holder must inform the Regulator of a  
13 matter in paragraph (1)(a), (b) or (c) within 48 hours of the holder  
14 becoming aware of the matter.
- 15 (3) For the purposes of subsections (1) and (2):
- 16 (a) the licence holder or permit holder is taken to have become  
17 aware of information of a kind mentioned in subsection (1) if  
18 the holder was reckless as to whether such information  
19 existed; and
- 20 (b) the licence holder or permit holder is taken to have become  
21 aware of contraventions, or unintended effects, of a kind  
22 mentioned in subsection (1) if the holder was reckless as to  
23 whether such contraventions had occurred, or such  
24 unintended effects existed.

### 25 **72AR Person may give information to Regulator**

- 26 A person covered by a GMO licence or GMO permit may inform  
27 the Regulator if the person:
- 28 (a) becomes aware of information in relation to any risks to the  
29 health and safety of people, or to the environment, associated  
30 with the dealings authorised by the licence or permit; or
- 31 (b) becomes aware of any contraventions of the licence or permit  
32 by the holder of the licence or permit, or any person covered  
33 by the licence or permit; or
- 34 (c) becomes aware of any contraventions of the Act relating to  
35 dealings purportedly authorised by the licence or permit; or



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1 (d) becomes aware of any unintended effects of the dealings  
2 authorised by the licence or permit.

## 3 **129 After subsection 72B(2)**

4 Insert:

5 Note 1: Despite paragraph (2)(c), the Regulator is not required to give advice  
6 in relation to risks posed by the dealings proposed to be specified in  
7 the emergency dealing determination in certain circumstances (see  
8 section 15A).

9 Note 2: Despite paragraph (2)(d), the Minister is not required to consider risks  
10 posed by the dealings proposed to be specified in the emergency  
11 dealing determination in certain circumstances (see section 15A).

## 12 **130 At the end of section 72B**

13 Add:

14 (5) Section 42 (disallowance) of the *Legislation Act 2003* does not  
15 apply to an emergency dealing determination.

## 16 **131 At the end of subsection 72C(5)**

17 Add:

18 Note: Despite subsection (5), the Minister and Regulator are not required to  
19 consider risks posed by the dealings proposed to be authorised by the  
20 GMO licence in certain circumstances (see section 15A).

## 21 **132 After subsection 72C(6)**

22 Insert:

23 (6A) Section 42 (disallowance) of the *Legislation Act 2003* does not  
24 apply to an extension of the period of effect of an emergency  
25 dealing determination.

## 26 **133 Division 3 of Part 5A (heading)**

27 Omit “Effect and conditions”, substitute “Conditions”.

## 28 **134 Section 72D (heading)**

29 Omit “authorises dealings,”, substitute “may be”.

## 30 **135 Subsection 72D(1)**

31 Repeal the subsection, substitute:

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- 1 (1) An emergency dealing determination is subject to the conditions  
2 specified in the determination (if any), and the condition set out in  
3 subsection (4) if applicable.

### 4 **136 Paragraph 72D(2)(s)**

5 Repeal the paragraph, substitute:

- 6 (s) requiring compliance with the rules made for the purposes of  
7 section 27A (rules for transport, storage and disposal of  
8 GMOs);

### 9 **137 Subsection 72D(4)**

10 Repeal the subsection, substitute:

- 11 (4) It is a condition of an emergency dealing determination that if:  
12 (a) a person undertakes a dealing specified in the emergency  
13 dealing determination; and  
14 (b) a condition (other than this condition) applies to the dealing  
15 by the person;  
16 the person must permit an authorised inspector to enter, at a  
17 reasonable time, premises where the dealing has been, or is being,  
18 undertaken for one or more of the following purposes:  
19 (c) determining whether a provision subject to monitoring under  
20 Part 10 has been, or is being, complied with;  
21 (d) determining whether information subject to monitoring under  
22 Part 10 is correct.

### 23 **138 Paragraph 72E(4)(a)**

24 Omit “imminent risk of death, serious illness, serious injury or serious  
25 environmental damage”, substitute “significant risk to human health and  
26 safety or to the environment”.

### 27 **139 Subsection 72E(5)**

28 Omit “30 days”, substitute “20 business days”.

### 29 **140 At the end of section 72E**

30 Add:

1 (6) Section 42 (disallowance) of the *Legislation Act 2003* does not  
2 apply to a variation, suspension or revocation of an emergency  
3 dealing determination.

4 **141 Part 6 (heading)**

5 Repeal the heading, substitute:

6 **Part 6—Notifiable dealings, non-notifiable dealings**  
7 **and dealings on the GMO Register**

8 **142 Section 73**

9 Repeal the section, substitute:

10 **73 Simplified outline**

11 The following is a simplified outline of this Part:

12 Divisions 2 and 2AA of this Part establish a system to regulate  
13 notifiable dealings. A dealing with a GMO is a notifiable dealing if  
14 it is in a class of dealings specified in the regulations to be  
15 notifiable dealings.

16 The Regulator must be notified about notifiable dealings.

17 Some notifiable dealings have authorisation requirements, which  
18 are specified in the regulations.

19 Notifiable dealings are subject to conditions.

20 Division 2A of this Part relates to non-notifiable dealings. A  
21 dealing with a GMO is a non-notifiable dealing if it is in a class of  
22 dealings specified in the regulations to be non-notifiable dealings.

23 Division 3 of this Part establishes the GMO Register.

24 The Regulator may determine that certain dealings are to be  
25 included on the GMO Register. If a dealing is included on the  
26 GMO Register, anyone may undertake the dealing, subject to any  
27 specified conditions.

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The GMO Register must be made publicly available on the internet.

### 143 Division 2 of Part 6

Repeal the Division, substitute:

### Division 2—Notifiable dealings

#### 74 Notifiable dealings

- (1) A dealing with a GMO is a *notifiable dealing* if it is in a class of dealings specified in the regulations to be notifiable dealings.
- (2) Without limiting subsection (1), regulations made for the purposes of that subsection may specify classes of dealings by reference to:
  - (a) specified dealings or specified kinds of dealings; or
  - (b) dealings with specified GMOs or specified kinds of GMOs; or
  - (c) particular circumstances, including, for example:
    - (i) the purpose of the dealings; or
    - (ii) the ways in which any risks posed by the dealings are to be managed so as to protect the health and safety of people and to protect the environment; or
    - (iii) the location of the dealings; or
    - (iv) the training or experience required of a person undertaking the dealings; or
    - (v) dealings permitted or authorised under another Act.
- (3) Before the Governor-General makes regulations specifying a class of dealings to be notifiable dealings, the Minister must be satisfied that any risk to the health and safety of people, or to the environment, posed by any dealing in the class of dealings:
  - (a) is known; and
  - (b) can be managed through the authorisation requirements (if any) or conditions relating to the dealing.

Note: Despite subsection (3), the Minister is not required to consider risks posed by a dealing in the class of dealings in certain circumstances (see section 15A).

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- 1 (4) In specifying a class of dealings under subsection (1), the  
2 regulations may provide for the rules to specify a matter in relation  
3 to the class.
- 4 (5) Without limiting subsection (4), the regulations may provide for  
5 the rules to specify:  
6 (a) the kind or kinds of GMOs in a class; or  
7 (b) the physical containment level for GMOs in a class.
- 8 (6) Regulations made for the purposes of subsection (4) may require  
9 the Regulator to be satisfied of, or take into account, certain  
10 matters before making rules specifying a matter in relation to a  
11 class.

## 75 Authorisation requirements

- 12
- 13 (1) If, under subsection 74(1), the regulations specify a class of  
14 dealings to be notifiable dealings, the regulations may specify any  
15 of the following requirements relevant to the notifiable dealing:  
16 (a) the actions (if any) required to be undertaken by an  
17 Institutional Biosafety Committee in relation to the class of  
18 notifiable dealing;  
19 (b) that a person must notify the Regulator about a notifiable  
20 dealing in the class before the dealing is undertaken;  
21 (c) any other requirement relevant to the notifiable dealing.
- 22 (2) If the regulations specify the matter referred to in paragraph (1)(b),  
23 the regulations must also specify any of the following requirements  
24 for the notifiable dealing:  
25 (a) the person (the *relevant notifier*) who must notify Regulator  
26 about the notifiable dealing;  
27 (b) the period in which the relevant notifier must notify the  
28 Regulator about the dealing;  
29 (c) the form the notification must take (which may be in a form  
30 approved by the Regulator);  
31 (d) the documents or information that must accompany the  
32 notification (if any) (which may be specified in writing by  
33 the Regulator);  
34 (e) the notification fee (if any) that must accompany the  
35 notification.

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- 1 (3) The requirements specified by the regulations for the purposes of  
2 this section for a notifiable dealing in a class of notifiable dealings  
3 are the *authorisation requirements* for the notifiable dealing.

### 4 **Division 2AA—Conditions of notifiable dealings**

#### 5 **75A Conditions of notifiable dealings**

- 6 (1) A notifiable dealing in a class of notifiable dealings is subject to:  
7 (a) the conditions in this Division; and  
8 (b) any condition specified in the rules in relation to the class.
- 9 (2) Without limiting paragraph (1)(b), the rules may specify conditions  
10 relating to any of the following:  
11 (a) the location or facilities at which the dealings must occur;  
12 (b) the training or expertise required of persons undertaking  
13 dealings.

#### 14 **75B Condition about monitoring**

- 15 It is a condition of a notifiable dealing that if:  
16 (a) a person undertakes the dealing; and  
17 (b) a condition (other than this condition) applies to the dealing  
18 by the person;  
19 the person must permit an authorised inspector to enter, at a  
20 reasonable time, premises where the dealing has been, or is being,  
21 undertaken for one or more of the following purposes:  
22 (a) determining whether a provision subject to monitoring under  
23 Part 10 has been, or is being, complied with;  
24 (b) determining whether information subject to monitoring under  
25 Part 10 is correct.

#### 26 **75C Condition about notification—certain notifiable dealings**

- 27 (1) It is a condition of a notifiable dealing that if a person is not  
28 required to notify the Regulator about the dealing before the  
29 dealing is undertaken under paragraph 75(1)(b), a person must  
30 notify the Regulator about the notifiable dealing at another time.
- 31 (2) The rules must specify the following:
-

- 1 (a) the person (the *relevant notifier*) who must notify Regulator  
2 about the notifiable dealing;
- 3 (b) the period in which the relevant notifier must notify the  
4 Regulator about the dealing;
- 5 (c) the form the notification must take (which may be in a form  
6 approved by the Regulator);
- 7 (d) the documents or information that must accompany the  
8 notification (which may be specified in writing by the  
9 Regulator);
- 10 (e) the notification fee (if any) that must accompany the  
11 notification.
- 12 (3) If the condition in subsection (1) applies to a notifiable dealing, it  
13 is a condition of the notifiable dealing that the relevant notifier  
14 must comply with the requirements specified by the rules for the  
15 purposes of this section.

## 16 **75D Person may give information to Regulator**

- 17 A person undertaking a notifiable dealing may inform the  
18 Regulator if the person becomes aware of:
- 19 (a) information in relation to any risks to the health and safety of  
20 people, or to the environment, associated with the notifiable  
21 dealing; or
- 22 (b) any contravention of an authorisation requirement for the  
23 notifiable dealing; or
- 24 (c) any contravention of a condition of the notifiable dealing; or
- 25 (d) any contravention of the Act by any person in relation to the  
26 notifiable dealing; or
- 27 (e) any unintended effects of the notifiable dealing.

## 28 **Division 2A—Non-notifiable dealings**

### 29 **75E Non-notifiable dealings**

- 30 (1) A dealing with a GMO is a *non-notifiable dealing* if it is in a class  
31 of dealings specified in the regulations to be non-notifiable  
32 dealings.

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- 1 (2) Without limiting subsection (1), regulations made for the purposes  
2 of that subsection may specify classes of dealings by reference to:  
3 (a) specified dealings or specified kinds of dealings; or  
4 (b) dealings with specified GMOs or specified kinds of GMOs;  
5 or  
6 (c) particular circumstances, including, for example:  
7 (i) the purpose of the dealings; or  
8 (ii) the ways in which any risks posed by the dealings are to  
9 be managed so as to protect the health and safety of  
10 people and to protect the environment; or  
11 (iii) the location of the dealings; or  
12 (iv) the training or experience required of a person  
13 undertaking the dealings; or  
14 (v) dealings permitted or authorised under another Act.
- 15 (3) Before the Governor-General makes regulations specifying a class  
16 of dealings to be non-notifiable dealings, the Minister must be  
17 satisfied that any risk to the health and safety of people, or to the  
18 environment, posed by any dealing in the class of dealings:  
19 (a) is known; and  
20 (b) can be managed without conditions relating to the dealing.
- 21 Note: Despite subsection (3), the Minister is not required to consider risks  
22 posed by a dealing in the class of dealings in certain circumstances  
23 (see section 15A).
- 24 (4) In specifying a class of dealings under subsection (1), the  
25 regulations may provide for the rules to specify a matter in relation  
26 to the class.
- 27 (5) Without limiting subsection (4), the regulations may provide for  
28 the rules to specify:  
29 (a) the kind or kinds of GMOs in a class; or  
30 (b) the physical containment level for GMOs in a class.
- 31 (6) Regulations made for the purposes of subsection (4) may require  
32 the Regulator to be satisfied of, or take into account, certain  
33 matters before making rules specifying a matter in relation to a  
34 class.



1 **144 Subsection 76(3)**

2 Repeal the subsection, substitute:

3 (3) The GMO Register must be made available for public inspection  
4 on the internet.

5 **145 Paragraphs 78(1)(a) and (b)**

6 Repeal the paragraphs, substitute:

7 (a) the dealing is, or has been:

8 (i) authorised by a GMO licence; or

9 (ii) authorised by a GMO permit; or

10 (b) the GMO concerned would be a GM product if it were not  
11 specified in regulations, made under paragraph 12C(c), to be  
12 a genetically modified organism; or

13 (c) the dealing satisfies criteria prescribed by the regulations.

14 **146 Paragraph 78(2)(a)**

15 Omit “a licence”, substitute “a GMO licence or GMO permit”.

16 **147 At the end of subsection 78(2)**

17 Add:

18 Note: Division 1A of Part 12 sets out requirements for applications.

19 **148 At the end of section 78**

20 Add:

21 (4) Section 42 (disallowance) of the *Legislation Act 2003* does not  
22 apply to a determination under subsection (1).

23 **149 Paragraph 79(1)(a)**

24 After “dealing”, insert “to the health and safety of people or to the  
25 environment”.

26 **150 Paragraph 79(1)(b)**

27 Omit “hold, or be covered by a GMO licence”, substitute “hold or be  
28 covered by a GMO licence or GMO permit”.

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1 **151 After subsection 79(1)**

2 Insert:

3 Note: Despite subsection (1), the Regulator is not required to consider risks  
4 posed by the dealings in certain circumstances (see section 15A).

5 **152 Paragraph 79(2)(b)**

6 After “risks”, insert “to the health and safety of people or to the  
7 environment”.

8 **153 Paragraph 79(2)(b)**

9 Omit “a licence holder under section 65 or by another person under  
10 section 66”, substitute “the holder of a GMO licence or a GMO permit  
11 under section 72AQ or by another person under section 72AR”.

12 **154 At the end of paragraph 79(2)(c)**

13 Add “in order to manage risks to the health and safety of people or to  
14 the environment”.

15 **155 Paragraph 79(2)(d)**

16 After “licence”, insert “or GMO permit”.

17 **156 At the end of section 80**

18 Add:

19 (3) Section 42 (disallowance) of the *Legislation Act 2003* does not  
20 apply to a variation under subsection (1).

21 **157 Section 81**

22 Repeal the section.

23 **158 Section 82**

24 Repeal the section, substitute:

25 **82 Simplified outline**

26 The following is a simplified outline of this Part:

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Division 2 of this Part establishes a system under which the Regulator may certify facilities to particular containment levels. The rules may specify requirements for the certification of facilities to particular containment levels.

Division 3 of this Part enables the Regulator to accredit organisations. The rules may specify requirements that must be met in order for an organisation to be accredited under this Division.

Conditions to which a GMO licence, a GMO permit, an emergency dealing determination or a notifiable dealing may be subject may:

- (a) require that facilities be certified to particular containment levels; or
- (b) specify that dealings must be supervised by an Institutional Biosafety Committee established by an accredited organisation.

Authorisation requirements for notifiable dealings may also specify such matters.

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## **159 Sections 83, 84 and 85**

Repeal the sections, substitute:

### **83 Application for certification**

A person may apply to the Regulator for certification of a facility to a particular containment level under this Division.

Note: Division 1A of Part 12 sets out requirements for applications.

### **84 Decision on application for certification**

- (1) If a person applies for certification of a facility, the Regulator must, within the consideration period for the application, decide:
  - (a) to certify the facility to a particular containment level; or
  - (b) to refuse to certify the facility.

Note: See section 178F for the consideration period for the application.

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- 1 (2) If the Regulator certifies the facility to a particular containment  
2 level, the Regulator may decide that the facility is only certified for  
3 a particular period.
- 4 (3) Subject to subsection (4), when deciding whether to certify the  
5 facility to a particular containment level, the Regulator must be  
6 satisfied that:
- 7 (a) the facility meets the containment requirements specified in  
8 the rules made under section 90; and
- 9 (b) the facility or applicant meets any other criteria for  
10 certification specified in the rules made under section 90; and
- 11 (c) the applicant:
- 12 (i) has authority to admit or exclude other persons from the  
13 premises; and
- 14 (ii) has authority to maintain the facility, including the  
15 fittings and equipment within the facility; and
- 16 (iii) is capable of meeting the conditions of the certification.
- 17 (4) The Regulator is not required to be satisfied of a criterion in  
18 paragraph (3)(a) or (b) if the Regulator is satisfied that:
- 19 (a) the conditions the Regulator intends to impose at the time of  
20 certification under paragraph 86(1)(a) would render  
21 compliance with the criterion in paragraph (3)(a) or (b) of  
22 this section (as the case requires) unnecessary; and
- 23 (b) the applicant or facility (as the case requires) meets, or is  
24 capable of meeting, those conditions.
- 25 (5) If the Regulator certifies the facility under subsection (1), the  
26 Regulator must notify the applicant, in writing, of the Regulator’s  
27 decision as soon as practicable after certifying the facility.
- 28 Note: A decision to refuse to certify a facility to a particular containment  
29 level is a reviewable decision (see section 179), and the Regulator  
30 must give the applicant written notice of the decision (see  
31 section 180).

### 160 Section 86

32 Before “The certification”, insert “(1)”.

### 161 Paragraph 86(b)

34 After “section 87”, insert “or 87A”.

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1 **162 Paragraph 86(c)**

2 Omit “prescribed by the regulations”, substitute “specified in the rules”.

3 **163 At the end of section 86**

4 Add:

- 5 (2) It is also a condition of the certification of a facility that the holder  
6 of the certification must permit an authorised inspector to enter, at  
7 a reasonable time, the facility for one or more of the following  
8 purposes:
- 9 (a) determining whether a provision subject to monitoring under  
10 Part 10 has been, or is being, complied with;
  - 11 (b) determining whether information subject to monitoring under  
12 Part 10 is correct.
- 13 (3) Subsection (2) does not limit the conditions that may be:
- 14 (a) imposed by the Regulator at the time of certification; or
  - 15 (b) imposed by the Regulator under section 87 or 87A after  
16 certification; or
  - 17 (c) specified in the rules.

18 **164 Section 87 (at the end of the heading)**

19 Add “on Regulator’s initiative”.

20 **165 After section 87**

21 Insert:

22 **87A Variation of certification on application by holder**

23 (1) The holder of the certification of a facility may apply to the  
24 Regulator to vary the certification.

25 Note: Division 1A of Part 12 sets out requirements for applications.

26 (2) If the Regulator receives an application under subsection (1) to  
27 vary the certification of a facility, the Regulator must, within the  
28 consideration period for the application, decide:

- 29 (a) to vary the certification; or
- 30 (b) to refuse to vary the certification.

31 Note 1: See section 178F for the consideration period for the application.

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1 Note 2: A decision to vary, or refuse to vary, a certification is a reviewable  
2 decision (see section 179), and the Regulator must give the applicant  
3 written notice of the decision (see section 180).

4 **166 Section 88**

5 Before “The”, insert “(1)”.

6 **167 At the end of subsection 88(1)**

7 Add “or the Regulator is no longer satisfied of a matter the Regulator  
8 was required to be satisfied of under section 84 at the time of  
9 certification”.

10 **168 At the end of section 88**

11 Add:

12 (2) The Regulator may, by notice in writing, suspend the certification  
13 of a facility if the holder of the certification requests the Regulator,  
14 in writing, to do so.

15 **169 Subsection 89(1)**

16 Omit “Before suspending, cancelling or varying a certification under  
17 this Division”, substitute “Before varying a certification under  
18 section 87, or suspending or cancelling a certification under section 88”.

19 **170 Paragraph 89(2)(c)**

20 Omit “may”, substitute “must”.

21 **171 Subsection 89(3)**

22 Omit “The period must not end earlier than 30 days after the day on  
23 which the notice was given.”, substitute “The period specified must be  
24 not less than 20 business days starting on the day after the day the  
25 notice is given.”.

26 **172 Subsection 89(5)**

27 Omit “, cancellation or variation”.

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1 **173 Subsection 89(6)**

2 Omit “an imminent risk of death, serious illness, serious injury or  
3 serious damage to the environment”, substitute “a significant risk to  
4 human health and safety or to the environment”.

5 **174 Subsection 89(7)**

6 Omit “or complexity”.

7 **175 After section 89**

8 Insert:

9 **89AA Surrender of certification**

10 The holder of a certification of a facility may, with the consent of  
11 the Regulator, surrender the certification.

12 **176 At the end of subsection 89A(1)**

13 Add:

14 Note: Division 1A of Part 12 sets out requirements for applications.

15 **177 Subsections 89A(2), (3) and (4)**

16 Repeal the subsections, substitute:

17 (2) If the Regulator receives an application under subsection (1) to  
18 transfer the certification, the Regulator must, within the  
19 consideration period for the application, decide:

- 20 (a) to transfer the certification; or  
21 (b) to refuse to transfer the certification.

22 Note: See section 178F for the consideration period for the application.

23 (3) The Regulator must not transfer the certification if the Regulator is  
24 not satisfied of a matter, in relation to the transferee, that the  
25 Regulator was required to be satisfied of under section 84 at the  
26 time of certification.

27 (4) However, the Regulator may make minor variations to any  
28 conditions to which the certification is subject in order to facilitate  
29 the transfer of the certification.

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1 (4A) If the Regulator decides to transfer the certification under  
2 subsection (2), the Regulator must notify the holder of the  
3 certification and the transferee, in writing, of the Regulator’s  
4 decision as soon as practicable after making the decision.

5 Note: A decision to refuse to transfer a certification is a reviewable decision  
6 (see section 179), and the Regulator must give the applicants written  
7 notice of the decision (see section 180).

### 8 **178 After paragraph 89A(5)(b)**

9 Insert:

10 (ba) if the Regulator decided, under subsection 84(2), that  
11 the facility is only certified for a particular period—that  
12 period continues; and

### 13 **179 Paragraph 89A(5)(c)**

14 After “transfer”, insert “(unless the Regulator varies the conditions)”.

### 15 **180 Section 90**

16 Repeal the section, substitute:

### 17 **90 Rules for certification**

18 For the purposes of subsection 84(1) (decision on application for  
19 certification), the rules:

20 (a) must specify the containment requirements for the  
21 certification of a facility to a particular containment level;  
22 and

23 (b) may specify other criteria the facility or applicant must  
24 comply with for the certification of the facility to a particular  
25 containment level.

### 26 **181 Subsection 91(1)**

27 Omit “(1)”.

### 28 **182 Subsection 91(1) (notes 1 and 2)**

29 Repeal the notes, substitute:

30 Note: Division 1A of Part 12 sets out requirements for applications.



1 **183 Subsection 91(2)**

2 Repeal the subsection.

3 **184 Section 92**

4 Repeal the section, substitute:

5 **92 Decision on application for accreditation**

6 (1) If a person applies for accreditation of an organisation, the  
7 Regulator must, within the consideration period for the application,  
8 decide:

- 9 (a) to accredit the organisation; or  
10 (b) to refuse to accredit the organisation.

11 Note: See section 178F for the consideration period for the application.

12 (2) Subject to subsection (3), the Regulator must not accredit an  
13 organisation under subsection (1) unless the Regulator is satisfied  
14 of the following:

- 15 (a) if the organisation has established an Institutional Biosafety  
16 Committee:  
17 (i) the organisation will be able to maintain the Committee  
18 in accordance with the rules; and  
19 (ii) the organisation has appropriate indemnity  
20 arrangements for its Committee members;  
21 (b) if the organisation has not established an Institutional  
22 Biosafety Committee—the organisation will be in a position  
23 to use an Institutional Biosafety Committee established by an  
24 accredited organisation;  
25 (c) the organisation is a suitable organisation to be accredited,  
26 having regard to the criteria specified in the regulations;  
27 (d) the organisation meets, or is able to meet, any other  
28 requirements for accreditation specified in the rules;  
29 (e) the applicant is a suitable person to be the holder of the  
30 accreditation, having regard to the criteria specified in  
31 subsection (4) or (5) (as the case requires).

32 (3) The Regulator is not required to be satisfied of a criterion in  
33 paragraph (2)(a), (b), (c) or (d) if the Regulator is satisfied that:

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- 1 (a) the conditions the Regulator intends to impose at the time of  
2 accreditation under paragraph 94(a) would render compliance  
3 with a criterion in paragraph (2)(a), (b), (c) or (d) (as the case  
4 requires) unnecessary; and
- 5 (b) the applicant or organisation (as the case requires) meets, or  
6 is capable of meeting, those conditions.
- 7 (4) Without limiting the matters to which the Regulator may have  
8 regard in deciding whether a natural person is a suitable person to  
9 be the holder of the accreditation, the Regulator must have regard  
10 to:
- 11 (a) any relevant conviction of the person; and  
12 (b) any contravention of a provision of this Act or a  
13 corresponding State law by the person, if less than 5 years  
14 have elapsed since the day on which the contravention  
15 occurred; and
- 16 (c) any revocation or suspension of a licence or permit (however  
17 described) held by the person under a law of the  
18 Commonwealth, a State or a foreign country, being a law  
19 relating to the health and safety of people or the environment;  
20 and
- 21 (d) any suspension or cancellation of an accreditation held by the  
22 person under this Act or a corresponding State law.
- 23 (5) Without limiting the matters to which the Regulator may have  
24 regard in deciding whether a body corporate is a suitable person to  
25 be the holder of the accreditation, the Regulator must have regard  
26 to:
- 27 (a) any relevant conviction of the body corporate; and  
28 (b) if there is a relevant conviction of the body corporate:
- 29 (i) whether the offence concerned was committed at a time  
30 when any person who is presently a director of the body  
31 corporate was a director; and
- 32 (ii) whether the offence was committed at a time when any  
33 officer or shareholder of the body corporate who is  
34 presently in a position to influence the management of  
35 the body corporate was such an officer or shareholder;  
36 and

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- 1 (c) any contravention of a provision of this Act or a  
2 corresponding State law by the body corporate, if less than 5  
3 years have elapsed since the day on which the contravention  
4 occurred; and
- 5 (d) any revocation or suspension of a licence or permit (however  
6 described) held by the body corporate under a law of the  
7 Commonwealth, a State or a foreign country, being a law  
8 relating to the health and safety of people or the environment;  
9 and
- 10 (e) any suspension or cancellation of an accreditation held by the  
11 body corporate under this Act or a corresponding State law.
- 12 (6) Nothing in this section affects the operation of Part VIIC of the  
13 *Crimes Act 1914* (which includes provisions that, in certain  
14 circumstances, relieve persons from the requirement to disclose  
15 spent convictions and require persons aware of such convictions to  
16 disregard them).
- 17 (7) If the Regulator accredits an organisation under subsection (1), the  
18 Regulator must notify the applicant, in writing, of the Regulator’s  
19 decision as soon as practicable after accrediting the organisation.
- 20 Note: A decision to refuse to accredit an organisation is a reviewable  
21 decision (see section 179), and the Regulator must give the applicant  
22 written notice of the decision (see section 180).

## 23 **185 Section 93**

24 Repeal the section.

## 25 **186 Paragraph 94(b)**

26 After “section 95”, insert “or 95A”.

## 27 **187 Paragraph 94(c)**

28 Omit “prescribed by the regulations”, substitute “specified in the rules”.

## 29 **188 Section 95 (at the end of the heading)**

30 Add “on Regulator’s initiative”.

## 31 **189 After section 95**

32 Insert:

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## Schedule 1 Main amendments

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1 **95A Variation of accreditation on application by holder**

2 (1) The holder of the accreditation of an organisation may apply to the  
3 Regulator to vary the accreditation.

4 Note: Division 1A of Part 12 sets out requirements for applications.

5 (2) If the Regulator receives an application under subsection (1) to  
6 vary the accreditation of an organisation, the Regulator must,  
7 within the consideration period for the application, decide:

8 (a) to vary the accreditation; or

9 (b) to refuse to vary the accreditation.

10 Note 1: See section 178F for the consideration period for the application.

11 Note 2: A decision to vary, or refuse to vary, an accreditation is a reviewable  
12 decision (see section 179), and the Regulator must give the applicant  
13 written notice of the decision (see section 180).

14 **190 At the end of section 96**

15 Add “or the Regulator is no longer satisfied of a criterion the Regulator  
16 was required to be satisfied of under section 92 at the time of  
17 accreditation”.

18 **191 Subsection 97(1)**

19 Omit “Before suspending, cancelling or varying an accreditation under  
20 this Division,”, substitute “Before varying an accreditation under  
21 section 95, or suspending or cancelling an accreditation under  
22 section 96,”.

23 **192 Paragraph 97(2)(c)**

24 Omit “may”, substitute “must”.

25 **193 Subsection 97(3)**

26 Omit “The period must not end earlier than 30 days after the day on  
27 which the notice was given.”, substitute “The period specified must be  
28 not less than 20 business days starting on the day after the day the  
29 notice is given.”.

30 **194 Subsection 97(5)**

31 Repeal the subsection.

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1 **195 Subsection 97(6)**

2 Omit “an imminent risk of death, serious illness, serious injury or  
3 serious damage to the environment”, substitute “a significant risk to  
4 human health and safety or to the environment”.

5 **196 Subsection 97(7)**

6 Omit “or complexity”.

7 **197 After section 97**

8 Insert:

9 **97A Surrender of accreditation**

10 The holder of an accreditation of an organisation may, with the  
11 consent of the Regulator, surrender the accreditation.

12 **198 Section 98**

13 Repeal the section, substitute:

14 **98 Rules for Institutional Biosafety Committees and accreditation**

15 For the purposes of subsection 92(2), the rules:

- 16 (a) must specify requirements concerning the establishment and  
17 maintenance of Institutional Biosafety Committees; and  
18 (b) may specify any other requirement an organisation must  
19 meet, or be able to meet, for the accreditation of the  
20 organisation as an accredited organisation.

21 **199 Subsection 100(4)**

22 Repeal the subsection, substitute:

- 23 (4) Before appointing a member of the Committee, the Minister must  
24 consult:  
25 (a) the States; and  
26 (b) the Regulator.

27 **200 Subsection 100(7A)**

28 Omit “Ethics and Community Committee”, substitute “Gene  
29 Technology Ethics and Community Consultative Committee”.

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1 **201 Paragraph 101(d)**

2 Repeal the paragraph, substitute:

3 (d) legislative instruments and proposed legislative instruments  
4 made by the Regulator under this Act;

5 (e) the need for policy principles, policy guidelines, and  
6 technical and procedural guidance in relation to GMOs, and  
7 the content of such principles and guidance.

8 **202 At the end of section 104**

9 Add:

10 (5) A determination made under subsection (3) is not a legislative  
11 instrument.

12 **203 Section 106**

13 Omit “(the *Ethics and Community Committee*)”.

14 **204 Section 107 (heading)**

15 Omit “**Ethics and Community Committee**”, substitute “**Gene  
16 Technology Ethics and Community Consultative Committee**”.

17 **205 Section 107**

18 Omit “Ethics and Community Committee”, substitute “Gene  
19 Technology Ethics and Community Consultative Committee”.

20 **206 Paragraph 107(b)**

21 Repeal the paragraph.

22 **207 Paragraphs 107(d), (e) and (f)**

23 Repeal the paragraphs, substitute:

24 (d) the need for policy principles, policy guidelines and technical  
25 and procedural guidance in relation to GMOs and the content  
26 of such principles and guidance;

27 (e) risk communication, consultation and engagement with the  
28 community by the Regulator in relation to GMOs;

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1 **208 Subsection 108(1)**

2 Omit “Ethics and Community Committee” (wherever occurring),  
3 substitute “Gene Technology Ethics and Community Consultative  
4 Committee”.

5 **209 Subsection 108(2)**

6 Repeal the subsection, substitute:

7 (2) Before appointing a member of the Gene Technology Ethics and  
8 Community Consultative Committee (other than a member  
9 mentioned in paragraph (4)(b)), the Minister must consult:

- 10 (a) the States; and  
11 (b) the Regulator.

12 (2A) For a member of the Gene Technology Ethics and Community  
13 Consultative Committee mentioned in paragraph (4)(b), the  
14 Minister must:

- 15 (a) before appointing the member, consult the Regulator; and  
16 (b) after appointing the member, inform the States of the  
17 appointment.

18 **210 Subsections 108(3), (4), (5) and (6) and 109(1) and (2)**

19 Omit “Ethics and Community Committee”, substitute “Gene  
20 Technology Ethics and Community Consultative Committee”.

21 **211 Section 110**

22 Omit “Ethics and Community Committee” (wherever occurring),  
23 substitute “Gene Technology Ethics and Community Consultative  
24 Committee”.

25 **212 Subsection 111(1)**

26 Omit “Ethics and Community Committee”, substitute “Gene  
27 Technology Ethics and Community Consultative Committee”.

28 **213 Subsections 112(1) and (2)**

29 Omit “Ethics and Community Committee”, substitute “Gene  
30 Technology Ethics and Community Consultative Committee”.

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1 **214 Section 117**

2 Omit “Division 7 permits the Regulator to review notifiable low risk  
3 dealings and exemptions.”, substitute:

4 Division 7 provides for the appointment of authorised inspectors.  
5 Division 8 deals with powers conferred on issuing officers.  
6 Division 9 allows an authorised inspector to be assisted by other  
7 persons in particular circumstances.

8 **215 Paragraph 130(1)(c)**

9 Omit “subsections 40(6) and 83(3)”, substitute “paragraph 75(2)(e),  
10 75C(2)(e) or 178B(1)(d)”.

11 **216 Paragraph 130(1)(g)**

12 Omit “subsection 146(5) or 158(4)”, substitute “subsection 161A(4) or  
13 167(8)”.

14 **217 Section 131 (heading)**

15 After “**Recovery**”, insert “, **waiver and refund**”.

16 **218 Section 131**

17 Before “The following”, insert “(1)”.

18 **219 At the end of section 131**

19 Add:

- 20 (2) The Regulator may wholly or partly waive, or wholly or partly  
21 refund, the following amounts, in the circumstances prescribed by  
22 the regulations:
- 23 (a) fees that would otherwise be payable to the Commonwealth  
24 under this Act, the regulations, or a corresponding State law;
  - 25 (b) amounts that would otherwise be payable to the  
26 Commonwealth in connection with the performance of the  
27 Regulator’s functions.



1 **220 Subparagraph 132(a)(ii)**

2 Omit “inspector under paragraph 158(2)(e)”, substitute “authorised  
3 inspector under paragraph 161A(2)(e)”.

4 **221 At the end of section 132**

5 Add:  
6 ; and (c) in making any other payments which the Regulator is  
7 authorised or required to make under this Act or the  
8 regulations.

9 **222 Paragraph 136(1A)(a)**

10 After “licences”, insert “and GMO permits”.

11 **223 Paragraph 136(1A)(b)**

12 After “licence”, insert “, or a GMO permit,”.

13 **224 Paragraph 136(1A)(e)**

14 Repeal the paragraph, substitute:  
15 (e) monitoring, compliance and enforcement activities  
16 undertaken during the financial year.

17 **225 Subsection 136(1A)(note)**

18 Omit “Auditing and monitoring”, substitute “Monitoring”.

19 **226 At the end of subsection 138(1)**

20 Insert:

21 Note: A person may request access to the Record under the *Freedom of*  
22 *Information Act 1982*.

23 **227 Subsection 138(2)**

24 Omit “all”, substitute “certain”.

25 **228 Subsection 138(3)**

26 Omit “, other than confidential commercial information, in relation to  
27 each licence”, substitute “in relation to each GMO licence”.

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1 **229 Paragraph 138(3)(c)**

2 Repeal the paragraph, substitute:

- 3 (c) the dealings with GMOs authorised by the licence and the  
4 GMOs to which those dealings relate;

5 **230 At the end of 138(3)(d)**

6 Add “imposed under paragraph 61(c) or (d)”.

7 **231 After subsection 138(3)**

8 Insert:

9 (3AA) The Record must contain the following information in relation to  
10 each GMO permit issued under section 72AD:

- 11 (a) the name of the permit holder;  
12 (b) the persons covered by the permit;  
13 (c) the permit dealings authorised by the permit;  
14 (d) the date on which the permit was issued, and its expiry date  
15 (if any).

16 **232 Subsection 138(3A)**

17 Omit “, other than confidential commercial information,”.

18 **233 Subsection 138(4)**

19 Repeal the subsection, substitute:

20 (4) The Record must contain the following information in relation to  
21 each notifiable dealing that is notified to the Regulator:

- 22 (a) the name of the person who notified the notifiable dealing;  
23 (b) any particulars of the notifiable dealing prescribed by the  
24 regulations.

25 **234 Subsection 138(8)**

26 After “subsection (3),”, insert “(3AA),”.

27 **235 Subsection 138(9)**

28 Repeal the subsection.

1 **236 Section 139**

2 Repeal the section.

3 **237 Division 7 of Part 9**

4 Repeal the Division, substitute:

5 **Division 7—Appointment of authorised inspectors and**  
6 **identity cards**

7 **140 Appointment of authorised inspectors**

- 8 (1) The Regulator may, in writing, appoint an APS employee who  
9 holds or performs the duties of an APS Level 6 position, or an  
10 equivalent or higher position, as an authorised inspector.
- 11 (2) The Regulator must not appoint a person as an authorised inspector  
12 unless the Regulator is satisfied that the person has the knowledge  
13 or experience necessary to properly exercise the powers of an  
14 authorised inspector.
- 15 (3) In exercising powers or performing functions as an authorised  
16 inspector, an authorised inspector must comply with any directions  
17 of the Regulator.
- 18 (4) If a direction is given under subsection (3) in writing, the direction  
19 is not a legislative instrument.

20 **141 Identity card**

- 21 (1) The Regulator must issue an identity card to an authorised  
22 inspector.
- 23 (2) The identity card:  
24 (a) must be in the form prescribed by the regulations; and  
25 (b) contain a photograph that is no more than 5 years old of the  
26 authorised inspector.
- 27 (3) A person commits an offence if:  
28 (a) the person has been issued with an identity card; and  
29 (b) the person ceases to be an authorised inspector; and

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1 (c) the person does not return the identity card to the Regulator  
2 within 10 business days after ceasing to be an authorised  
3 inspector.

4 Penalty: 1 penalty unit.

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

6 Note: For strict liability, see section 6.1 of the *Criminal Code*.

7 (5) Subsection (3) does not apply if the identity card was lost or  
8 destroyed.

9 Note: A defendant bears an evidential burden in relation to the matter in this  
10 subsection: see subsection 13.3(3) of the *Criminal Code*.

11 (6) An authorised inspector must carry the identity card of the  
12 authorised inspector at all times when exercising powers or  
13 performing functions as an authorised inspector.

## 14 Division 8—Issuing officers

### 15 142 Powers conferred personally and protection and immunity

16 (1) A power conferred on an issuing officer by Part 10 or 10A is  
17 conferred on the issuing officer:

18 (a) in a personal capacity; and

19 (b) not as a court or a member of a court.

20 Note: For the definition of *issuing officer*, see subsection 10(1).

21 (2) The issuing officer need not accept the power conferred.

22 (3) An issuing officer exercising a power conferred by Part 10 or 10A  
23 has the same protection and immunity as if the issuing officer were  
24 exercising the power:

25 (a) as the court of which the issuing officer is a member; or

26 (b) as a member of the court of which the issuing officer is a  
27 member.

1 **Division 9—Persons assisting authorised inspectors**

2 **143 Persons assisting authorised inspectors**

- 3 (1) An authorised inspector may be assisted by other persons in  
4 exercising powers or performing functions or duties under Part 10,  
5 10A, 10B or 10C if:  
6 (a) the person is a person who, in the authorised inspector’s  
7 opinion, has the skills, qualifications or experience necessary  
8 to assist the authorised inspector to exercise that power or  
9 perform that function; and  
10 (b) that assistance is necessary and reasonable.  
11 A person giving such assistance is a *person assisting* the  
12 authorised inspector.
- 13 (2) A person assisting the authorised inspector may enter premises if it  
14 is necessary for the authorised inspector to enter those premises for  
15 the purposes of exercising powers under Part 10, 10A, 10B or 10C.
- 16 (3) For the purposes of assisting the authorised inspector, the person  
17 assisting may exercise the powers, or perform functions or duties,  
18 of the authorised inspector under those Parts, but only in  
19 accordance with directions given by the authorised inspector.
- 20 (4) A power exercised, or a function or duty performed, by the person  
21 assisting in accordance with subsections (2) or (3) is taken for all  
22 purposes to have been exercised or performed by the authorised  
23 inspector.
- 24 (5) If a direction is given under subsection (3) in writing, the direction  
25 is not a legislative instrument.

26 **238 Parts 10 and 11**

27 Repeal the Parts, substitute:

28 **Part 10—Monitoring**

29 **Division 1—Outline and operation of this Part**

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1 **145 Simplified outline**

2 The following is a simplified outline of this Part:

3 This Part provides for the following:

- 4 (a) monitoring whether provisions of this Act or a  
5 legislative instrument made under this Act have been, or  
6 are being, complied with;  
7 (b) monitoring whether information given in compliance, or  
8 purported compliance, with a provision of this Act or a  
9 legislative instrument made under this Act is correct.

10 An authorised inspector may, in certain circumstances, enter  
11 premises for the purpose of monitoring.

12 An authorised inspector who enters premises may exercise  
13 monitoring powers. The authorised inspector may be assisted by  
14 other persons if that assistance is necessary and reasonable.

15 **145A Provisions and information subject to monitoring**

16 (1) A provision is *subject to monitoring* under this Part if it is:

- 17 (a) a provision of this Act; or  
18 (b) a provision of a legislative instrument made under this Act;  
19 or  
20 (c) an offence against the *Crimes Act 1914* or the *Criminal Code*  
21 that relates to this Act.

22 (2) Information given in compliance, or purported compliance, with a  
23 provision of this Act or a legislative instrument made under this  
24 Act is *subject to monitoring* under this Part.

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## 1 Division 2—Powers of authorised inspectors

### 2 Subdivision A—Monitoring powers

#### 3 146 Entering premises by consent or under a warrant etc.

4 (1) An authorised inspector may enter any premises and exercise the  
5 monitoring powers for one or more of the following purposes:

6 (a) determining whether a provision subject to monitoring under  
7 this Part has been, or is being, complied with;

8 (b) determining whether information subject to monitoring under  
9 this Part is correct.

10 Note: The *monitoring powers* are set out in sections 146A, 146B, 146C,  
11 146CA and 146D.

12 (2) However, an authorised inspector is not authorised to enter the  
13 premises unless:

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

15 (b) the entry is made under a monitoring warrant; or

16 (c) all of the following apply:

17 (i) the entry is at a reasonable time;

18 (ii) the premises is a facility that is certified under  
19 Division 2 of Part 7;

20 (iii) the occupier of the premises is the holder of the  
21 certification; or

22 (d) the circumstance covered by subsection (3) applies.

23 Note: If entry to the premises is with the occupier's consent, the authorised  
24 inspector must leave the premises if the consent ceases to have effect  
25 (see section 147).

26 (3) A circumstance is covered by this subsection if all of the following  
27 apply:

28 (a) the entry is at a reasonable time;

29 (b) the occupier of the premises is a person dealing with, or who  
30 has dealt with, a GMO at the premises;

31 (c) the dealing with the GMO is, or was:

32 (i) authorised by a GMO licence, and a condition under  
33 paragraph 61(b), (c) or (d) applies or applied to the  
34 person; or

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- 1 (ii) authorised by a GMO permit, and a condition under  
2 paragraph 72AE(1)(b) applies or applied to the person;  
3 or  
4 (iii) specified in an emergency dealing determination, and a  
5 condition of the determination applies or applied to the  
6 person.

### 7 **146A General monitoring powers**

8 The following are the *monitoring powers* that an authorised  
9 inspector may exercise in relation to premises under section 146:

- 10 (a) the power to search the premises and any thing on the  
11 premises;  
12 (b) the power to examine or observe any activity conducted on  
13 the premises;  
14 (c) the power to inspect, examine, take measurements of or  
15 conduct tests on any thing on the premises;  
16 (d) the power to sample any thing on the premises;  
17 (e) the power to inspect, examine, take measurements of,  
18 conduct tests on or analyse such samples;  
19 (f) the power to make any still or moving image or any  
20 recording of the premises or any thing on the premises;  
21 (g) the power to inspect any document on the premises;  
22 (h) the power to take extracts from, or make copies of, any such  
23 document;  
24 (i) the power to take onto the premises such equipment and  
25 materials required for the purpose of exercising powers in  
26 relation to the premises;  
27 (j) if the occupier of the premises has consented to the entry or  
28 the entry is made under a monitoring warrant—the power to  
29 remove samples from the premises, and inspect, examine,  
30 take measurements of or conduct tests on such samples.

31 Note: *Thing* is defined in subsection 10(1).

### 32 **146B Operating and using things on premises**

- 33 (1) The *monitoring powers* include the power to operate or use a thing  
34 on the premises.



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- 1 (2) Without limiting subsection (1), the powers under that subsection  
2 include the power to:  
3 (a) operate equipment on the premises; and  
4 (b) use a data storage device that can be used with, or is  
5 associated with, the equipment.
- 6 Note 1: *Equipment* includes electronic equipment (see subsection 10(1)).  
7 Note 2: For the definition of *data storage device*, see subsection 10(1).
- 8 (3) The *monitoring powers* include the powers mentioned in  
9 subsection (5) if relevant data is found in the exercise of the power  
10 under subsection (2).
- 11 (4) *Relevant data* means information (whether or not held on the  
12 premises) that is relevant to determining:  
13 (a) whether a provision that is subject to monitoring under this  
14 Part has been, or is being, complied with; or  
15 (b) whether information subject to monitoring under this Part is  
16 correct.
- 17 (5) If relevant data is found, the powers are as follows:  
18 (a) the power to operate equipment on the premises to put the  
19 relevant data in documentary form and remove the  
20 documents so produced from the premises;  
21 (b) the power to operate equipment on the premises to transfer  
22 the relevant data to a data storage device that:  
23 (i) is brought to the premises for the exercise of the power;  
24 or  
25 (ii) is on the premises and the use of which for that purpose  
26 has been agreed in writing by the occupier of the  
27 premises;  
28 and remove the data storage device from the premises;  
29 (c) the power to operate equipment on the premises to transfer  
30 the relevant data to a data storage device that is not on the  
31 premises.
- 32 Note: For the purposes of paragraph (c), an example is using a computer on  
33 the premises to transfer relevant data to a file service such as a cloud  
34 file server.
- 35 (6) An authorised inspector may operate or use a thing that was on the  
36 premises as mentioned in subsection (1), (2) or (5) only if the
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1 authorised inspector believes on reasonable grounds that the  
2 operation or use of the thing can be carried out without damage to  
3 the thing.

4 Note: For compensation for damage to things, see section 192B.

### 5 **146C Securing things to obtain expert assistance—entry with** 6 **consent or under monitoring warrant**

7 (1) This section applies if an authorised inspector enters premises:  
8 (a) with the consent of the occupier of the premises; or  
9 (b) under a monitoring warrant.

10 (2) The *monitoring powers* include the power to secure any thing, or a  
11 sample of a thing, that is on the premises if the authorised inspector  
12 suspects on reasonable grounds that:

- 13 (a) expert assistance is required to operate or use the thing or  
14 sample or to exercise other monitoring powers in relation to  
15 the thing or sample; and  
16 (b) the thing or sample may be destroyed, altered or otherwise  
17 interfered with, if the authorised inspector does not take  
18 action under this subsection.

19 The thing or sample may be secured by locking it up, placing a  
20 guard or any other means.

21 (3) Without limiting subsection (2), the powers under that subsection  
22 include the power to secure equipment that is on the premises if the  
23 authorised inspector suspects on reasonable grounds that:

- 24 (a) relevant data may be accessible by operating the equipment;  
25 and  
26 (b) the relevant data may be destroyed, altered or otherwise  
27 interfered with, if the authorised inspector does not take  
28 action under that subsection.

29 (4) The authorised inspector must give notice to the occupier of the  
30 premises, or another person who apparently represents the  
31 occupier, of:

- 32 (a) the authorised inspector's intention to secure the thing or  
33 sample under subsection (2) or (3); and  
34 (b) the fact that the thing or sample may be secured for up to 24  
35 hours.
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- 1 (5) The thing or sample may be secured under subsection (2) or (3)  
2 until the earlier of the following happens:  
3 (a) the 24 hour period ends;  
4 (b) the expert has assisted in operating, using or exercising other  
5 monitoring powers in relation to the thing or sample.
- 6 Note: For compensation for damage to a thing, see section 192B.
- 7 (6) The authorised inspector may apply to an issuing officer for an  
8 extension of the 24 hour period if the authorised inspector believes  
9 on reasonable grounds that the thing or sample needs to be secured  
10 for longer than that period.
- 11 (7) Before making the application, the authorised inspector must give  
12 notice to the occupier of the premises, or another person who  
13 apparently represents the occupier, of the authorised inspector's  
14 intention to apply for an extension. The occupier or other person is  
15 entitled to be heard in relation to that application.
- 16 (8) The 24 hour period may be extended more than once.
- 17 Note: For the process by which an issuing officer may extend the period, see  
18 section 150.

## 19 **146CA Securing things to obtain expert assistance—entry without** 20 **consent and not under monitoring warrant**

- 21 (1) This section applies if an authorised inspector enters premises in  
22 the circumstances covered by paragraph 146(2)(c) or  
23 subsection 146(3).
- 24 (2) The *monitoring powers* include the power to secure any thing, or a  
25 sample of a thing, that is on the premises if the authorised inspector  
26 suspects on reasonable grounds that:  
27 (a) expert assistance is required to operate or use the thing or  
28 sample or to exercise other monitoring powers in relation to  
29 the thing or sample; and  
30 (b) the thing or sample may be destroyed, altered or otherwise  
31 interfered with, if the authorised inspector does not take  
32 action under this subsection.
- 33 The thing or sample may be secured by locking it up, placing a  
34 guard or any other means.

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- 1 (3) Without limiting subsection (2), the powers under that subsection  
2 include the power to secure equipment that is on the premises if the  
3 authorised inspector suspects on reasonable grounds that:  
4 (a) relevant data may be accessible by operating the equipment;  
5 and  
6 (b) the relevant data may be destroyed, altered or otherwise  
7 interfered with, if the authorised inspector does not take  
8 action under that subsection.
- 9 (4) The authorised inspector must give notice to the occupier of the  
10 premises, or another person who apparently represents the  
11 occupier, of:  
12 (a) the authorised inspector's intention to secure the thing or  
13 sample of the thing under subsection (2) or (3); and  
14 (b) the fact that the thing or sample may be secured for up to 24  
15 hours and may be removed from the premises.
- 16 (5) The thing or sample of the thing may be secured under  
17 subsection (2) or (3) until the earlier of the following happens:  
18 (a) the 24 hour period ends;  
19 (b) a warrant is obtained to either:  
20 (i) continue to secure the thing or sample on the premises  
21 for a particular period; or  
22 (ii) remove the thing or sample from the premises for a  
23 particular period;  
24 for the purposes of obtaining expert assistance to operate, use  
25 or exercise other monitoring powers in relation to the thing or  
26 sample.
- 27 Note: For compensation for damage to a thing, see section 192B.

### 28 **146D Securing evidence of a contravention**

- 29 The *monitoring powers* include the power to secure a thing, until a  
30 warrant is obtained to seize it, if:  
31 (a) the thing is found during the exercise of monitoring powers  
32 on the premises; and  
33 (b) an authorised inspector believes on reasonable grounds that:  
34 (i) a provision that is subject to monitoring under this Part  
35 has been contravened with respect to the thing; or

- 1 (ii) the thing affords evidence of the contravention of a  
2 provision that is subject to monitoring under this Part;  
3 or  
4 (iii) the thing is intended to be used for the purpose of  
5 contravening a provision that is subject to monitoring  
6 under this Part; or  
7 (iv) the thing affords evidence that information subject to  
8 monitoring under this Part is not correct; and  
9 (c) the authorised inspector believes on reasonable grounds that  
10 it is necessary to secure the thing in order to prevent it from  
11 being concealed, lost or destroyed or removed from the  
12 premises before a warrant to seize the thing is obtained.  
13 The thing may be secured by locking it up, placing a guard or any  
14 other means.

15 Note: Evidential material can be seized under an investigation warrant: see  
16 Part 10A.

## 17 **Subdivision B—Powers to ask questions and seek production of** 18 **documents**

### 19 **146E Asking questions and seeking production of documents**

- 20 (1) This section applies if an authorised inspector enters premises for  
21 the purposes of determining:  
22 (a) whether a provision subject to monitoring under this Part has  
23 been, or is being, complied with; or  
24 (b) whether information subject to monitoring under this Part is  
25 correct.
- 26 (2) If the entry is authorised under a monitoring warrant, the  
27 authorised inspector may require any person on the premises to  
28 answer any questions, and produce any document, relating to:  
29 (a) the operation of the provision; or  
30 (b) the information.
- 31 (3) If the entry is authorised under section 146 (other than under a  
32 monitoring warrant), the authorised inspector may ask the occupier  
33 or any other person on the premises to answer any questions, and  
34 produce any document, relating to:

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- 1 (a) the operation of the provision; or  
2 (b) the information.

3 Note: If an authorised inspector requests a person to answer a question or  
4 produce a document under this subsection, the person is not required  
5 to comply with the request.

- 6 (4) A person is not subject to a requirement under subsection (2) if:  
7 (a) the person does not possess the information or document  
8 required; and  
9 (b) the person has taken all reasonable steps available to the  
10 person to obtain the information or document required and  
11 has been unable to obtain it.

12 Note: See also section 192A (privilege against self-incrimination and legal  
13 professional privilege not abrogated).

- 14 (5) A person commits an offence if:  
15 (a) the person is subject to a requirement under subsection (2);  
16 and  
17 (b) the person fails to comply with the requirement.

18 Penalty: 30 penalty units.

## 19 **Division 3—Obligations and incidental powers of** 20 **authorised inspectors**

### 21 **147 Consent**

- 22 (1) Before obtaining the consent of an occupier of premises for the  
23 purposes of paragraph 146(2)(a), an authorised inspector must  
24 inform the occupier that the occupier may refuse consent.
- 25 (2) A consent has no effect unless the consent is voluntary.
- 26 (3) A consent may be expressed to be limited to entry during a  
27 particular period. If so, the consent has effect for that period unless  
28 the consent is withdrawn before the end of that period.
- 29 (4) A consent that is not limited as mentioned in subsection (3) has  
30 effect until the consent is withdrawn.

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1 (5) If an authorised inspector entered premises because of the consent  
2 of the occupier of the premises, the authorised inspector, and any  
3 person assisting the authorised inspector, must leave the premises  
4 if the consent ceases to have effect.

5 (6) If:

6 (a) an authorised inspector enters premises because of the  
7 consent of the occupier of the premises; and

8 (b) the authorised inspector has not shown the occupier the  
9 identity card of the authorised inspector before entering the  
10 premises;

11 the authorised inspector must do so on, or as soon as is reasonably  
12 practicable after, entering the premises.

## 13 **147A Announcement before entry**

14 (1) Before entering premises under this Part, an authorised inspector  
15 must:

16 (a) announce that the authorised inspector is authorised to enter  
17 the premises; and

18 (b) show the identity card of the authorised inspector to the  
19 occupier of the premises, or to another person who  
20 apparently represents the occupier, if the occupier or other  
21 person is present at the premises; and

22 (c) give any person at the premises an opportunity to allow entry  
23 to the premises.

24 (2) However, an authorised inspector is not required to comply with  
25 subsection (1) if the authorised inspector believes on reasonable  
26 grounds that immediate entry to the premises is required:

27 (a) to ensure the health or safety of a person; or

28 (b) to prevent serious damage to the environment; or

29 (c) for entry under a monitoring warrant—to ensure that the  
30 effective execution of the warrant is not frustrated.

31 (3) If:

32 (a) an authorised inspector does not comply with subsection (1)  
33 because of subsection (2); and

34 (b) the occupier of the premises, or another person who  
35 apparently represents the occupier, is present at the premises;

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1 the authorised inspector must, as soon as practicable after entering  
2 the premises, show the identity card of the authorised inspector to  
3 the occupier or other person.

### 4 **147B Use of force**

5 In exercising powers under this Part, an authorised inspector who  
6 enters premises under a monitoring warrant may use such force  
7 against things as is necessary and reasonable in the circumstances.

8 Note: Any use of force by a person assisting will be at the direction of an  
9 authorised inspector (see subsection 143(3)).

### 10 **147C Monitoring warrant—authorised inspector to be in possession**

11 An authorised inspector executing a monitoring warrant must be in  
12 possession of the warrant or a copy of the warrant.

### 13 **147D Monitoring warrant—details etc. to be given to occupier**

- 14 (1) An authorised inspector must comply with subsection (2) if:  
15 (a) a monitoring warrant is being executed in relation to  
16 premises; and  
17 (b) the occupier of the premises, or another person who  
18 apparently represents the occupier, is present at the premises.
- 19 (2) The authorised inspector must, as soon as practicable:  
20 (a) make a copy of the warrant available to the occupier or other  
21 person; and  
22 (b) inform the occupier or other person in writing of the rights  
23 and responsibilities of the occupier or other person under  
24 Division 4 of this Part.

## 25 **Division 4—Occupier’s rights and responsibilities**

### 26 **148 Right to observe execution of monitoring warrant**

- 27 (1) The occupier of premises to which a monitoring warrant relates, or  
28 another person who apparently represents the occupier, is entitled  
29 to observe the execution of the monitoring warrant if the occupier



1 or other person is present at the premises while the warrant is being  
2 executed.

3 (2) The right to observe the execution of the warrant ceases if the  
4 occupier or other person impedes that execution.

5 (3) This section does not prevent the execution of the warrant in 2 or  
6 more areas of the premises at the same time.

## 7 **148A Responsibility to provide facilities and assistance**

8 (1) Subsection (2) applies if:

- 9 (a) an authorised inspector enters premises under this Part; and  
10 (b) the entry is not authorised only because the occupier of the  
11 premises consented to the entry.

12 (2) The occupier of the premises, or another person who apparently  
13 represents the occupier, must provide the authorised inspector and  
14 any person assisting the authorised inspector with all reasonable  
15 facilities and assistance for the effective exercise of their powers.

16 (3) A person commits an offence if the person fails to comply with  
17 subsection (2).

18 Penalty: 30 penalty units.

## 19 **Division 5—Monitoring warrants**

### 20 **149 Monitoring warrants**

21 (1) An authorised inspector may apply to an issuing officer for a  
22 warrant under this section in relation to premises.

23 (2) The issuing officer may issue the warrant if the issuing officer is  
24 satisfied, by information on oath or affirmation, that it is  
25 reasonably necessary that one or more authorised inspectors should  
26 have access to the premises for the purposes of determining:

- 27 (a) whether a provision that is subject to monitoring under this  
28 Part has been, or is being, complied with; or  
29 (b) whether information subject to monitoring under this Part is  
30 correct.

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- 1 (3) However, the issuing officer must not issue the warrant unless the  
2 authorised inspector or some other person has given to the issuing  
3 officer, either orally or by affidavit, such further information (if  
4 any) as the issuing officer requires concerning the grounds on  
5 which the issue of the warrant is being sought.
- 6 (4) The warrant must:
- 7 (a) describe the premises to which the warrant relates; and
  - 8 (b) state that the warrant is issued under this section; and
  - 9 (c) state the purpose for which the warrant is issued; and
  - 10 (d) authorise one or more authorised inspectors (whether or not  
11 named in the warrant) from time to time while the warrant  
12 remains in force:
    - 13 (i) to enter the premises; and
    - 14 (ii) to exercise the powers set out in this Part in relation to  
15 the premises; and
  - 16 (e) state whether entry is authorised to be made at any time of  
17 the day or during specified hours of the day; and
  - 18 (f) specify the day (not more than 3 months after the issue of the  
19 warrant) on which the warrant ceases to be in force.

## 20 **Division 6—Extension of periods in which things secured**

### 21 **150 Extension of periods in which things secured**

- 22 (1) This section applies where an authorised inspector applies to an  
23 issuing officer under subsection 146C(6) for an extension of the  
24 period during which a thing may be secured.
- 25 (2) The issuing officer may, by order, grant an extension of the period  
26 if the issuing officer is satisfied, by information on oath or  
27 affirmation, that it is necessary to secure the thing to ensure that  
28 the thing is not destroyed, altered or otherwise interfered with.
- 29 (3) However, the issuing officer must not grant the extension unless  
30 the authorised inspector or some other person has given to the  
31 issuing officer, either orally or by affidavit, such further  
32 information (if any) as the issuing officer requires concerning the  
33 grounds on which the extension is being sought.

- 1 (4) The order extending the period must:  
2 (a) describe the thing to which the order relates; and  
3 (b) state the period for which the extension is granted; and  
4 (c) state that the order is made under this section; and  
5 (d) state that the authorised inspector is authorised to secure the  
6 thing for that period.

## 7 **Part 10A—Investigation**

### 8 **Division 1—Outline and operation of this Part**

#### 9 **151 Simplified outline**

10 The following is a simplified outline of this Part:

11 This Part provides for gathering material that relates to the  
12 contravention of offence provisions and civil penalty provisions.

13 An authorised inspector may enter premises if the authorised  
14 inspector suspects on reasonable grounds that there may be  
15 material on the premises related to the contravention of an offence  
16 provision or a civil penalty provision that is subject to investigation  
17 under this Part.

18 Entry must be with the consent of the occupier of the premises or  
19 under an investigation warrant.

20 An authorised inspector who enters premises may exercise  
21 investigation powers. The authorised inspector may be assisted by  
22 other persons if that assistance is necessary and reasonable.

#### 23 **151A Provisions subject to investigation**

- 24 A provision is *subject to investigation* under this Part if it is:  
25 (a) an offence against this Act; or  
26 (b) a civil penalty provision of this Act; or  
27 (c) an offence against the *Crimes Act 1914* or the *Criminal Code*  
28 that relates to this Act.

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1 **Division 2—Powers of authorised inspectors**

2 **Subdivision A—Investigation powers**

3 **152 Entering premises by consent or under a warrant**

4 (1) An authorised inspector may enter any premises and exercise the  
5 investigation powers if the authorised inspector suspects on  
6 reasonable grounds that there may be evidential material:

- 7 (a) on the premises; or  
8 (b) available by using or operating a thing on the premises.

9 Note: The *investigation powers* are set out in sections 152A, 152B and  
10 152C.

11 (2) However, an authorised inspector is not authorised to enter the  
12 premises unless:

- 13 (a) the occupier of the premises has consented to the entry; or  
14 (b) the entry is made under an investigation warrant.

15 Note: If entry to the premises is with the occupier's consent, the authorised  
16 inspector must leave the premises if the consent ceases to have effect  
17 (see section 153).

18 **152A General investigation powers**

19 The following are the *investigation powers* that an authorised  
20 inspector may exercise in relation to premises under section 152:

- 21 (a) if entry to the premises is with the occupier's consent—the  
22 power to search the premises and any thing on the premises  
23 for the evidential material the authorised inspector suspects  
24 on reasonable grounds may be on the premises;  
25 (b) if entry to the premises is under an investigation warrant:  
26 (i) the power to search the premises and any thing on the  
27 premises for the kind of evidential material specified in  
28 the warrant; and  
29 (ii) the power to seize evidential material of that kind if the  
30 authorised inspector finds it on the premises;  
31 (c) the power to inspect, examine, take measurements of or  
32 conduct tests on evidential material referred to in  
33 paragraph (a) or (b);
-

- 1 (d) the power to sample evidential material referred to in
- 2 paragraph (a) or (b);
- 3 (e) the power to remove, test and analyse such samples;
- 4 (f) the power to make any still or moving image or any
- 5 recording of the premises or evidential material referred to in
- 6 paragraph (a) or (b);
- 7 (g) the power to take onto the premises such equipment and
- 8 materials as the authorised inspector requires for the purpose
- 9 of exercising powers in relation to the premises.

## 10 **152B Operating and using things on premises**

- 11 (1) The *investigation powers* include the power to operate or use a
- 12 thing on the premises.
- 13 (2) Without limiting subsection (1), the powers under that subsection
- 14 include the power to:
- 15 (a) operate equipment on the premises; and
- 16 (b) use a data storage device that can be used with, or is
- 17 associated with, the equipment.

18 Note 1: *Equipment* includes electronic equipment (see subsection 10(1)).

19 Note 2: For the definition of *data storage device*, see subsection 10(1).

- 20 (3) The *investigation powers* include the following powers in relation
- 21 to evidential material found in the exercise of the power under
- 22 subsection (1):
- 23 (a) if entry to the premises is under an investigation warrant—
- 24 the power to seize the evidential material referred to in that
- 25 subsection (including any thing in which the evidential
- 26 material is held);
- 27 (b) the power to operate equipment on the premises to put the
- 28 evidential material in documentary form and remove the
- 29 documents so produced from the premises;
- 30 (c) the power to operate equipment on the premises to transfer a
- 31 copy of the evidential material to a data storage device that:
- 32 (i) is brought to the premises for the exercise of the power;
- 33 or

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- 1 (ii) is on the premises and the use of which for that purpose  
2 has been agreed in writing by the occupier of the  
3 premises;  
4 and remove the data storage device from the premises;  
5 (d) the power to operate equipment on the premises to transfer  
6 the evidential material to a data storage device that is not on  
7 the premises.

- 8 (4) An authorised inspector may operate or use a thing as mentioned in  
9 subsection (1), (2) or (3) only if the authorised inspector believes  
10 on reasonable grounds that the operation or use of the thing can be  
11 carried out without damage to the thing.

12 Note: For compensation for damage to things, see section 192B.

- 13 (5) Subsection (4):

- 14 (a) does not apply in relation to anything taken onto the premises  
15 by the authorised inspector; and  
16 (b) does not prevent an authorised inspector from testing a  
17 sample even if the testing would destroy or damage the  
18 sample.

- 19 (6) An authorised inspector may seize evidential material as mentioned  
20 in paragraph (3)(a) only if:

- 21 (a) it is not practicable to put the evidential material in  
22 documentary form as mentioned in paragraph (3)(b) or to  
23 transfer the evidential material as mentioned in  
24 paragraph (3)(c); or  
25 (b) possession of the thing by the occupier could constitute an  
26 offence.

### 27 **152C Securing things to obtain expert assistance**

- 28 (1) The *investigation powers* include the power to secure any thing  
29 that is on the premises if the authorised inspector suspects on  
30 reasonable grounds that:

- 31 (a) there is evidential material on the premises or any other  
32 premises; and  
33 (b) the evidential material may be accessible by operating or  
34 using the thing or exercising other investigation powers in  
35 relation to the thing; and

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- 1 (c) expert assistance is required to operate or use the thing or to  
2 exercise the other investigation powers; and  
3 (d) the evidential material may be destroyed, altered or otherwise  
4 interfered with, if the authorised inspector does not take  
5 action under this subsection.

6 The thing may be secured by locking it up, placing a guard or any  
7 other means.

- 8 (2) The authorised inspector must give notice to the occupier of the  
9 premises, or another person who apparently represents the  
10 occupier, of:

- 11 (a) the authorised inspector's intention to secure the thing; and  
12 (b) the fact that the thing may be secured for up to 24 hours.

- 13 (3) The thing may be secured until the earlier of the following  
14 happens:

- 15 (a) the 24-hour period ends;  
16 (b) the thing has been operated or used by the expert.

17 Note: For compensation for damage caused by exercising powers, see  
18 section 192B.

- 19 (4) The authorised inspector may apply to an issuing officer for an  
20 extension of the 24-hour period, if the authorised inspector believes  
21 on reasonable grounds that the thing needs to be secured for longer  
22 than that period.

- 23 (5) Before making the application, the authorised inspector must give  
24 notice to the occupier of the premises, or another person who  
25 apparently represents the occupier, of the authorised inspector's  
26 intention to apply for an extension. The occupier or other person is  
27 entitled to be heard in relation to that application.

- 28 (6) The 24-hour period may be extended more than once.

29 Note: For the process by which an issuing officer may extend the period, see  
30 section 157.

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1 **Subdivision B—Powers to ask questions and seek production of**  
2 **documents**

3 **152D Asking questions and seeking production of documents**

4 (1) This section applies if an authorised inspector enters premises to  
5 search for evidential material.

6 (2) If the entry is authorised because the occupier of the premises  
7 consented to the entry, the authorised inspector may ask the  
8 occupier to answer any questions, and produce any document,  
9 relating to evidential material.

10 Note: It is not an offence if the person does not comply with the request.

11 (3) If the entry is authorised by an investigation warrant, the  
12 authorised inspector may require any person on the premises to  
13 answer any questions, and produce any document, relating to  
14 evidential material of the kind specified in the warrant.

15 (4) A person is not subject to a requirement under subsection (3) if:  
16 (a) the person does not possess the information or document  
17 required; and  
18 (b) the person has taken all reasonable steps available to the  
19 person to obtain the information or document required and  
20 has been unable to obtain it.

21 (5) A person commits an offence if:  
22 (a) the person is subject to a requirement under subsection (3);  
23 and  
24 (b) the person fails to comply with the requirement.

25 Penalty: 30 penalty units.



1 **Division 3—Obligations and incidental powers of**  
2 **authorised inspectors**

3 **153 Consent**

- 4 (1) Before obtaining the consent of an occupier of premises for the  
5 purposes of paragraph 152(2)(a), an authorised inspector must  
6 inform the occupier that the occupier may refuse consent.
- 7 (2) A consent has no effect unless the consent is voluntary.
- 8 (3) A consent may be expressed to be limited to entry during a  
9 particular period. If so, the consent has effect for that period unless  
10 the consent is withdrawn before the end of that period.
- 11 (4) A consent that is not limited as mentioned in subsection (3) has  
12 effect until the consent is withdrawn.
- 13 (5) If an authorised inspector entered premises because of the consent  
14 of the occupier of the premises, the authorised inspector, and any  
15 person assisting the authorised inspector, must leave the premises  
16 if the consent ceases to have effect.
- 17 (6) If:
- 18 (a) an authorised inspector enters premises because of the  
19 consent of the occupier of the premises; and
- 20 (b) the authorised inspector has not shown the occupier the  
21 identity card of the authorised inspector before entering the  
22 premises;
- 23 the authorised inspector must do so on, or as soon as is reasonably  
24 practicable after, entering the premises.

25 **153A Announcement before entry under warrant**

- 26 (1) Before entering premises under an investigation warrant, an  
27 authorised inspector must:
- 28 (a) announce that the authorised inspector is authorised to enter  
29 the premises; and
- 30 (b) show the identity card of the authorised inspector to the  
31 occupier of the premises, or to another person who

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- 1                                    apparently represents the occupier, if the occupier or other  
2                                    person is present at the premises; and  
3                                    (c) give any person at the premises an opportunity to allow entry  
4                                    to the premises.
- 5                                    (2) However, an authorised inspector is not required to comply with  
6                                    subsection (1) if the authorised inspector believes on reasonable  
7                                    grounds that immediate entry to the premises is required:  
8                                    (a) to ensure the health or safety of a person; or  
9                                    (b) to prevent serious damage to the environment; or  
10                                    (c) to ensure that the effective execution of the warrant is not  
11                                    frustrated.
- 12                                    (3) If:  
13                                    (a) an authorised inspector does not comply with subsection (1)  
14                                    because of subsection (2); and  
15                                    (b) the occupier of the premises, or another person who  
16                                    apparently represents the occupier, is present at the premises;  
17                                    the authorised inspector must, as soon as practicable after entering  
18                                    the premises, show the identity card of the authorised inspector to  
19                                    the occupier or other person.

### 20                                    **153B Authorised inspector to be in possession of warrant**

- 21                                    An authorised inspector executing an investigation warrant must be  
22                                    in possession of:  
23                                    (a) the warrant issued by the issuing officer under section 156, or  
24                                    a copy of the warrant as so issued; or  
25                                    (b) the form of warrant completed under subsection 156A(6), or  
26                                    a copy of the form as so completed.

### 27                                    **153C Details of warrant etc. to be given to occupier**

- 28                                    (1) An authorised inspector must comply with subsection (2) if:  
29                                    (a) an investigation warrant is being executed in relation to  
30                                    premises; and  
31                                    (b) the occupier of the premises, or another person who  
32                                    apparently represents the occupier, is present at the premises.

- 1 (2) The authorised inspector executing the warrant must, as soon as  
2 practicable:  
3 (a) do one of the following:  
4 (i) if the warrant was issued under section 156—make a  
5 copy of the warrant available to the occupier or other  
6 person (which need not include the signature of the  
7 issuing officer who issued it);  
8 (ii) if the warrant was signed under section 156A—make a  
9 copy of the form of warrant completed under  
10 subsection 156A(6) available to the occupier or other  
11 person; and  
12 (b) inform the occupier or other person in writing of the rights  
13 and responsibilities of the occupier or other person under  
14 Division 4.

## 15 **153D Using force in executing an investigation warrant**

16 In executing an investigation warrant:

- 17 (a) an authorised inspector may use such force against things as  
18 is necessary and reasonable in the circumstances; and  
19 (b) a person assisting the authorised inspector may use such  
20 force against things as is necessary and reasonable in the  
21 circumstances.

22 Note: Persons assisting are subject to directions by the authorised inspector  
23 (see subsection 143(3)).

## 24 **153E Completing execution after temporary cessation**

- 25 (1) This section applies if an authorised inspector, and all persons  
26 assisting, who are executing an investigation warrant in relation to  
27 premises temporarily cease its execution and leave the premises.
- 28 (2) The authorised inspector, and persons assisting, may complete the  
29 execution of the warrant if:  
30 (a) the warrant is still in force; and  
31 (b) the authorised inspector and persons assisting are absent from  
32 the premises:  
33 (i) for not more than 1 hour; or

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- 1 (ii) if there is an emergency situation, for not more than 12  
2 hours or such longer period as allowed by an issuing  
3 officer under subsection (5); or  
4 (iii) for a longer period if the occupier of the premises  
5 consents in writing.
- 6 (3) An authorised inspector, or person assisting, may apply to an  
7 issuing officer for an extension of the 12-hour period mentioned in  
8 subparagraph (2)(b)(ii) if:  
9 (a) there is an emergency situation; and  
10 (b) the authorised inspector or person assisting believes on  
11 reasonable grounds that the authorised inspector and the  
12 persons assisting will not be able to return to the premises  
13 within that period.
- 14 (4) If it is practicable to do so, before making the application, the  
15 authorised inspector or person assisting must give notice to the  
16 occupier of the premises, or another person who apparently  
17 represents the occupier, of the intention of the authorised inspector  
18 or person assisting to apply for an extension.
- 19 (5) An issuing officer may extend the period during which the  
20 authorised inspector and persons assisting may be away from the  
21 premises if:  
22 (a) an application is made under subsection (3); and  
23 (b) the issuing officer is satisfied, by information on oath or  
24 affirmation, that there are exceptional circumstances that  
25 justify the extension; and  
26 (c) the extension would not result in the period ending after the  
27 warrant ceases to be in force.

### 28 **153F Completing execution of warrant stopped by court order**

- 29 An authorised inspector, and any persons assisting, may complete  
30 the execution of a warrant that has been stopped by an order of a  
31 court if:  
32 (a) the order is later revoked or reversed on appeal; and  
33 (b) the warrant is still in force when the order is revoked or  
34 reversed.

1 **Division 4—Occupier’s rights and responsibilities**

2 **154 Right to observe execution of warrant**

- 3 (1) The occupier of premises to which an investigation warrant relates,  
4 or another person who apparently represents the occupier, is  
5 entitled to observe the execution of the investigation warrant if the  
6 occupier or other person is present at the premises while the  
7 warrant is being executed.
- 8 (2) The right to observe the execution of the warrant ceases if the  
9 occupier or other person impedes that execution.
- 10 (3) This section does not prevent the execution of the warrant in 2 or  
11 more areas of the premises at the same time.

12 **154A Responsibility to provide facilities and assistance**

- 13 (1) The occupier of premises to which an investigation warrant relates,  
14 or another person who apparently represents the occupier, must  
15 provide:  
16 (a) an authorised inspector executing the warrant; and  
17 (b) any person assisting the authorised inspector;  
18 with all reasonable facilities and assistance for the effective  
19 exercise of their powers.
- 20 (2) A person commits an offence if the person fails to comply with  
21 subsection (1).
- 22 Penalty: 30 penalty units.

23 **Division 5—General provisions relating to seizure**

24 **155 Copies of seized things to be provided**

- 25 (1) This section applies if:  
26 (a) an investigation warrant is being executed in relation to  
27 premises; and  
28 (b) an authorised inspector seizes any of the following from the  
29 premises under this Part:

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- 1 (i) a document, film, computer file or other thing that can  
2 be readily copied;
- 3 (ii) a data storage device, the information in which can be  
4 readily copied.
- 5 (2) The occupier of the premises, or another person who apparently  
6 represents the occupier and who is present when the warrant is  
7 executed, may request the authorised inspector to give a copy of  
8 the thing or the information to the occupier or other person.
- 9 (3) The authorised inspector must comply with the request as soon as  
10 practicable after the seizure.
- 11 (4) However, the authorised inspector is not required to comply with  
12 the request if possession of the thing or information by the  
13 occupier or other person could constitute an offence.

### 14 **155A Receipts for seized things**

- 15 (1) The authorised inspector must provide a receipt for a thing that is  
16 seized under this Part or section 159A.
- 17 (2) One receipt may cover 2 or more things seized.

### 18 **155B Return of seized things**

- 19 (1) The Regulator must take reasonable steps to return a thing seized  
20 under this Part or section 159A when the earliest of the following  
21 happens:
- 22 (a) the reason for the thing's seizure no longer exists;
- 23 (b) it is decided that the thing is not to be used in evidence;
- 24 (c) the period of 45 business days after the thing's seizure ends.

25 Note: For exceptions to this rule, see subsections (2) and (3).

- 26 (2) Subsection (1):
- 27 (a) is subject to any contrary order of a court; and
- 28 (b) does not apply if the thing:
- 29 (i) is forfeited or forfeitable to the Commonwealth; or
- 30 (ii) is the subject of a dispute as to ownership.

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- 1 (3) The Regulator is not required to take reasonable steps to return a  
2 thing if:  
3 (a) proceedings in respect of which the thing may afford  
4 evidence were instituted before the end of the 45 business  
5 days and those proceedings (and any appeal from those  
6 proceedings) have not been completed; or  
7 (b) the thing may continue to be retained because of an order  
8 under section 155C; or  
9 (c) to return the thing could cause a significant risk to human  
10 health and safety or the environment; or  
11 (d) as a result of the performance of a function or the exercise of  
12 a power under this Part, the thing is damaged or destroyed in  
13 a manner or to an extent that it is not possible or reasonably  
14 practicable to return it; or  
15 (e) the thing is:  
16 (i) an animal, plant or other organism; or  
17 (ii) any part or product of an animal, plant or other  
18 organism; or  
19 (f) the Commonwealth or the Regulator is otherwise authorised  
20 (by a law, or an order of a court, of the Commonwealth or of  
21 a State) to retain, destroy, dispose of or otherwise deal with  
22 the thing.

23 Note: For compensation for damage to things, see section 192B.

- 24 (4) A thing that is required to be returned under this section must be  
25 returned to the person from whom it was seized (or to the owner if  
26 that person is not entitled to possess it).

## 27 **155C Issuing officer may permit a thing to be retained**

- 28 (1) The Regulator may apply to an issuing officer for an order  
29 permitting the retention of a thing seized under this Part or section  
30 159A for a further period if proceedings in respect of which the  
31 thing may afford evidence have not commenced before the end of:  
32 (a) 45 business days after the seizure; or  
33 (b) a period previously specified in an order of an issuing officer  
34 under this section.
- 35 (2) Before making the application, the Regulator must:

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- 1 (a) take reasonable steps to discover who has an interest in the  
2 retention of the thing; and  
3 (b) if it is practicable to do so, notify each person whom the  
4 Regulator believes to have such an interest of the proposed  
5 application.
- 6 (3) Any person notified under paragraph (2)(b) is entitled to be heard  
7 in relation to the application.
- 8 (4) The issuing officer may order that the thing may continue to be  
9 retained for a period specified in the order if the issuing officer is  
10 satisfied that it is necessary for the thing to continue to be retained:  
11 (a) for the purposes of an investigation as to whether an offence  
12 provision or a civil penalty provision that is subject to  
13 investigation under this Part has been contravened; or  
14 (b) to enable evidence of a contravention mentioned in  
15 paragraph (a) to be secured for the purposes of a prosecution  
16 or an action to obtain a civil penalty order.
- 17 (5) The period specified must not exceed 3 years.

### 155D Disposal of things

- 18
- 19 (1) The Regulator may dispose of a thing seized under this Part or  
20 section 159A if:  
21 (a) the Regulator has taken reasonable steps to return the thing to  
22 a person in accordance with section 155B; and  
23 (b) either:  
24 (i) the Regulator has been unable to locate the person; or  
25 (ii) the person has refused to take possession of the thing.
- 26 (2) The Regulator may dispose of a thing seized under this Part or  
27 section 159A if the Regulator is not required to return the thing  
28 because of any of paragraphs 155B(3)(c) to (d).
- 29 (3) The Regulator may dispose of a thing under this section in such  
30 manner as the Regulator thinks appropriate.



1 **Division 6—Investigation warrants**

2 **156 Investigation warrants**

- 3 (1) An authorised inspector may apply to an issuing officer for a  
4 warrant under this section in relation to premises.
- 5 (2) The issuing officer may issue the warrant if the issuing officer is  
6 satisfied, by information on oath or affirmation, that there are  
7 reasonable grounds for suspecting that there is, or there may be  
8 within the next 72 hours, evidential material:  
9 (a) on the premises; or  
10 (b) available by using or operating a thing on the premises.
- 11 (3) However, the issuing officer must not issue the warrant unless the  
12 authorised inspector or some other person has given to the issuing  
13 officer, either orally or by affidavit, such further information (if  
14 any) as the issuing officer requires concerning the grounds on  
15 which the issue of the warrant is being sought.
- 16 (4) The warrant must:  
17 (a) state the offence provision or offence provisions, or civil  
18 penalty provision or civil penalty provisions, to which the  
19 warrant relates; and  
20 (b) describe the premises to which the warrant relates; and  
21 (c) state that the warrant is issued under this Division; and  
22 (d) specify the kinds of evidential material to be searched for  
23 under the warrant; and  
24 (e) state that evidential material of the kind specified may be  
25 seized under the warrant; and  
26 (f) state that the person executing the warrant may seize any  
27 other thing found in the course of executing the warrant if the  
28 person believes on reasonable grounds that the thing is  
29 evidential material of a kind not specified in the warrant; and  
30 (g) name one or more authorised inspectors; and  
31 (h) authorise the authorised inspectors named in the warrant:  
32 (i) to enter the premises; and

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- 1 (ii) to exercise the powers set out in this Part in relation to  
2 the premises; and  
3 (i) state whether entry is authorised to be made at any time of  
4 the day or during specified hours of the day; and  
5 (j) specify the day (not more than 1 week after the issue of the  
6 warrant) on which the warrant ceases to be in force.

### 7 **156A Investigation warrants by telephone, fax etc.**

- 8 (1) An authorised inspector may apply to an issuing officer by  
9 telephone, fax or other electronic means for a warrant under  
10 section 156 in relation to premises:  
11 (a) in an urgent case; or  
12 (b) if the delay that would occur if an application were made in  
13 person would frustrate the effective execution of the warrant.
- 14 (2) The issuing officer:  
15 (a) may require communication by voice to the extent that it is  
16 practicable in the circumstances; and  
17 (b) may make a recording of the whole or any part of any such  
18 communication by voice.
- 19 (3) Before applying for the warrant, the authorised inspector must  
20 prepare information of the kind mentioned in subsection 156(2) in  
21 relation to the premises that sets out the grounds on which the  
22 warrant is sought. If it is necessary to do so, the authorised  
23 inspector may apply for the warrant before the information is  
24 sworn or affirmed.
- 25 (4) The issuing officer may complete and sign the same warrant that  
26 would have been issued under section 156 if, after considering the  
27 terms of the information and receiving such further information (if  
28 any) that the issuing officer requires, the issuing officer is satisfied  
29 that:  
30 (a) the warrant should be issued urgently; or  
31 (b) the delay that would occur if an application were made in  
32 person would frustrate the effective execution of the warrant.

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- 1 (5) After completing and signing the warrant, the issuing officer must  
2 inform the authorised inspector, by telephone, fax or other  
3 electronic means, of:  
4 (a) the terms of the warrant; and  
5 (b) the day on which, and the time at which, the warrant was  
6 signed.
- 7 (6) The authorised inspector must then do the following:  
8 (a) complete a form of warrant in the same terms as the warrant  
9 completed and signed by the issuing officer;  
10 (b) state on the form the following:  
11 (i) the name of the issuing officer;  
12 (ii) the day on which, and the time at which, the warrant  
13 was signed;  
14 (c) send the following to the issuing officer:  
15 (i) the form of warrant completed by the authorised  
16 inspector;  
17 (ii) the information referred to in subsection (3), which  
18 must have been duly sworn or affirmed.
- 19 (7) The authorised inspector must comply with paragraph (6)(c) by the  
20 end of the day after the earlier of the following:  
21 (a) the day on which the warrant ceases to be in force;  
22 (b) the day on which the warrant is executed.
- 23 (8) The issuing officer must attach the documents provided under  
24 paragraph (6)(c) to the warrant signed by the issuing officer.

## 25 **156B Authority of warrant**

- 26 (1) A form of warrant duly completed under subsection 156A(6) is  
27 authority for the same powers as are authorised by the warrant  
28 signed by the issuing officer under subsection 156A(4).
- 29 (2) In any proceedings, a court is to assume (unless the contrary is  
30 proved) that an exercise of power was not authorised by a warrant  
31 under section 156A if:  
32 (a) it is material, in those proceedings, for the court to be  
33 satisfied that the exercise of power was authorised by that  
34 section; and

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- 1 (b) the warrant signed by the issuing officer authorising the  
2 exercise of the power is not produced in evidence.

### 3 **156C Offence relating to warrants by telephone, fax etc.**

- 4 (1) An authorised inspector must not:  
5 (a) state in a document that purports to be a form of warrant  
6 under section 156A the name of an issuing officer unless that  
7 issuing officer signed the warrant; or  
8 (b) state on a form of warrant under that section a matter that, to  
9 the authorised inspector's knowledge, departs in a material  
10 particular from the terms of the warrant signed by the issuing  
11 officer under that section; or  
12 (c) purport to execute, or present to another person, a document  
13 that purports to be a form of warrant under that section that  
14 the authorised inspector knows departs in a material  
15 particular from the terms of a warrant signed by an issuing  
16 officer under that section; or  
17 (d) purport to execute, or present to another person, a document  
18 that purports to be a form of warrant under that section where  
19 the authorised inspector knows that no warrant in the terms  
20 of the form of warrant has been completed and signed by an  
21 issuing officer; or  
22 (e) give to an issuing officer a form of warrant under that section  
23 that is not the form of warrant that the authorised inspector  
24 purported to execute.

- 25 (2) A person commits an offence if the person fails to comply with  
26 subsection (1).

27 Penalty: Imprisonment for 2 years.

## 28 **Division 7—Extension of periods in which things secured**

### 29 **157 Extension of periods in which things secured**

- 30 (1) This section applies where an authorised inspector applies to an  
31 issuing officer under subsection 152C(4) for an extension of the  
32 period during which a thing may be secured.

- 1 (2) The issuing officer may, by order, grant an extension of the period  
2 if the issuing officer is satisfied, by information on oath or  
3 affirmation, that it is necessary to secure the thing in order to  
4 prevent evidential material from being destroyed, altered or  
5 otherwise interfered with.
- 6 (3) However, the issuing officer must not grant the extension unless  
7 the authorised inspector or some other person has given to the  
8 issuing officer, either orally or by affidavit, such further  
9 information (if any) as the issuing officer requires concerning the  
10 grounds on which the extension is being sought.
- 11 (4) The order extending the period must:
- 12 (a) describe the thing to which the order relates; and  
13 (b) state the period for which the extension is granted; and  
14 (c) state that the order is made under this section; and  
15 (d) state that the authorised inspector is authorised to secure the  
16 thing for that period.

## 17 **Part 10B—Additional monitoring and investigation** 18 **powers**

### 19 **Division 1—Simplified outline**

#### 20 **158 Simplified outline**

21 The following is a simplified outline of this Part:

22 This Part provides authorised inspectors and the Regulator with  
23 additional monitoring and investigation powers.

24 Division 2 of this Part provides authorised inspectors with the  
25 power to search and seize certain goods arriving in Australia or in  
26 an external Territory by ship or aircraft.

27 Division 3 of this Part allows the Regulator to require a person to  
28 produce information, documents or things if the person is, or has  
29 been, dealing with a GMO, and the information, documents or  
30 things are relevant to the performance of the Regulator's functions.

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1 **Division 2—Power to search goods, baggage etc.**

2 **159 Power to search goods, baggage etc.**

3 (1) This section applies to any goods that are to be, are being, or have  
4 been, taken off a ship that voyages, or an aircraft that flies,  
5 between:

6 (a) a place outside Australia and a place in Australia; or

7 (b) a place outside an external Territory and a place in that  
8 Territory.

9 (2) If an authorised inspector believes, on reasonable grounds, that  
10 goods are goods to which this section applies, and that the goods  
11 may be, or may contain, evidential material, the authorised  
12 inspector may:

13 (a) examine the goods; or

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

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

17 (3) An authorised inspector may require a person who owns, is  
18 carrying or is otherwise associated with, or appears to the  
19 authorised inspector to be associated with, goods to which this  
20 section applies, to answer any questions in respect of the goods.

21 (4) A person commits an offence if:

22 (a) the person is subject to a requirement under subsection (3);  
23 and

24 (b) the person fails to comply with the requirement.

25 Penalty: 30 penalty units.

26 **159A Seizure of goods**

27 An authorised inspector may seize goods mentioned in section 159  
28 if the authorised inspector has reasonable grounds to suspect that  
29 the goods are evidential material.

30 Note: For return etc. of goods seized under this section, see Division 5 of  
31 Part 10A.

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## 1 **Division 3—Powers to require persons to produce** 2 **information and documents**

### 3 **160 Notice to produce**

4 (1) The Regulator may give a notice to a person under subsection (2) if  
5 the Regulator believes, on reasonable grounds, that the person:

6 (a) is, or has been, dealing with a GMO; and

7 (b) has information, a document or thing that is relevant to the  
8 performance of the Regulator’s functions.

9 (2) The Regulator may, by notice in writing given to the person,  
10 require the person to do either or both of the following:

11 (a) give any such information as is specified in the notice to the  
12 Regulator;

13 (b) produce any such document or thing as is specified in the  
14 notice to the Regulator.

15 (3) The notice must:

16 (a) be served on the person; and

17 (b) specify the period within which the person must comply with  
18 the notice; and

19 (c) set out the effect of subsection (6).

20 (4) The period specified under paragraph (3)(b) must be at least 10  
21 business days after the notice is served on the person.

22 (5) The person must comply with the notice within the period specified  
23 in the notice, or within such longer period as the Regulator allows.

24 Note: Section 192A (protection from self-incrimination etc.) may apply to  
25 the giving of information or the production of documents or things  
26 under this section.

27 (6) A person commits an offence if:

28 (a) the person is subject to a requirement under subsection (2);  
29 and

30 (b) the person fails to comply with the requirement:

31 (i) unless subparagraph (ii) applies—within the period  
32 specified in the notice; or

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- 1 (ii) if the Regulator has allowed the person a longer period  
2 under subsection (5)—within such longer period.

3 Penalty: Imprisonment for 6 months or 30 penalty units.

## 4 **Part 10C—Emergency powers**

5

### 6 **161 Simplified outline**

7 The following is a simplified outline of this Part:

8 This Part provides an authorised inspector with emergency powers.  
9 An authorised inspector may enter premises, search and secure  
10 things, and require a person to comply with the Act or an  
11 instrument made under this Act, in particular circumstances where  
12 the actions are necessary to avoid a significant risk to human health  
13 and safety or the environment.

### 14 **161A Powers available to authorised inspectors for dealing with** 15 **dangerous situations**

- 16 (1) This section applies if:  
17 (a) an authorised inspector has reasonable grounds for  
18 suspecting that there may be on any premises a particular  
19 thing in respect of which this Act or a legislative instrument  
20 made under this Act has not been complied with; and  
21 (b) the authorised inspector considers that it is necessary to  
22 exercise powers under this section in order to avoid a  
23 significant risk to human health and safety or the  
24 environment.

25 Note: Powers under this section may be exercised without either a warrant  
26 or the consent of an occupier.

- 27 (2) The authorised inspector may do any of the following:  
28 (a) enter the premises;  
29 (b) search the premises for the thing;



- 1 (c) secure the thing, if the authorised inspector finds it on the  
2 premises, until a warrant is obtained to seize the thing;
- 3 (d) if the authorised inspector has reasonable grounds for  
4 suspecting that a person has not complied with this Act or a  
5 legislative instrument made under this Act in respect of the  
6 thing—require the person to take such steps as the authorised  
7 inspector considers necessary for the person to comply with  
8 this Act or the instrument;
- 9 (e) take such steps, or arrange for such steps to be taken, in  
10 relation to the thing as the authorised inspector considers  
11 appropriate.
- 12 (3) The authorised inspector may exercise the powers in subsection (2)  
13 only to the extent that it is necessary for the purpose of avoiding a  
14 significant risk to human health and safety or the environment.
- 15 (4) If:
- 16 (a) the authorised inspector has reasonable grounds for  
17 suspecting that a person has not complied with this Act or a  
18 legislative instrument made under this Act in respect of the  
19 thing; and
- 20 (b) the Regulator incurs costs because of steps reasonably taken  
21 or arranged to be taken by an authorised inspector under  
22 paragraph (2)(e);
- 23 the person is liable to pay to the Commonwealth an amount equal  
24 to the costs, and the amount may be recovered by the  
25 Commonwealth as a debt due to the Commonwealth in a court of  
26 competent jurisdiction.

## 27 **Part 11—Enforcement**

### 28 **Division 1—Outline and operation of this Part**

#### 29 **162 Simplified outline**

30 The following is a simplified outline of this Part:

31 

Division 2 of this Part provides for the use of civil penalties to 32 enforce civil penalty provisions. Civil penalty orders may be
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1 sought from a court in relation to contraventions of civil penalty  
2 provisions.

3 Division 3 of this Part provides for the use of infringement notices  
4 where an authorised compliance officer reasonably believes that a  
5 provision of this Act or a legislative instrument made under this  
6 Act has been contravened. A person can be given an infringement  
7 notice in relation to a contravention of a provision that is a strict  
8 liability offence provision or a civil penalty provision, or both.

9 Division 4 of this Part provides for accepting and enforcing  
10 undertakings relating to compliance with provisions of this Act or a  
11 legislative instrument made under this Act. The undertaking may  
12 be enforced in a court of competent jurisdiction.

13 Division 5 of this Part provides for injunctions to be used to  
14 enforce provisions of this Act or a legislative instrument made  
15 under this Act. Injunctions may be used to restrain a person from  
16 contravening a provision of this Act or a legislative instrument  
17 made under this Act, or to compel compliance with such a  
18 provision.

19 Division 6 of this Part provides for the Regulator to give directions  
20 if the Regulator reasonably believes that a provision of this Act or  
21 a legislative instrument made under this Act has been contravened.  
22 The Regulator may give a direction to require compliance if it is  
23 necessary to do so in order to protect the health and safety of  
24 people, or to protect the environment or if it is in the public  
25 interest.

26 Division 6 of this Part also provides for the Regulator to give  
27 directions in the event a licence or permit is not, or will not be, in  
28 force. Division 6 also contains a forfeiture provision.

### 29 **162A Civil penalty provisions**

30 A provision of this Act is a *civil penalty provision* if:

- 31 (a) the provision sets out at its foot a pecuniary penalty, or  
32 penalties, indicated by the words “Civil penalty”; and

- 1 (b) the provision is a subsection, or a section that is not divided  
2 into subsections.

## 3 **Division 2—Civil penalty provisions**

### 4 **Subdivision A—Obtaining a civil penalty order**

#### 5 **163 Civil penalty orders**

6 (1) An authorised compliance officer may apply to a court of  
7 competent jurisdiction for an order that a person, who is alleged to  
8 have contravened a civil penalty provision, pay the Commonwealth  
9 a pecuniary penalty.

10 (2) The authorised compliance officer must make the application  
11 within 6 years of the alleged contravention.

12 (3) If the court is satisfied that the person has contravened the civil  
13 penalty provision, the court may order the person to pay to the  
14 Commonwealth such pecuniary penalty for the contravention as the  
15 court determines to be appropriate.

16 Note: Subsection (5) sets out the maximum penalty that the court may order  
17 the person to pay.

18 (4) An order under subsection (3) is a *civil penalty order*.

19 (5) The pecuniary penalty must not be more than:

20 (a) if the person is a body corporate—5 times the pecuniary  
21 penalty specified for the civil penalty provision; and

22 (b) otherwise—the pecuniary penalty specified for the civil  
23 penalty provision.

24 (6) In determining the pecuniary penalty, the court must take into  
25 account all relevant matters, including:

26 (a) the nature and extent of the contravention; and

27 (b) the nature and extent of any loss or damage suffered because  
28 of the contravention; and

29 (c) the circumstances in which the contravention took place; and

30 (d) whether the person has previously been found by a court  
31 (including a court in a foreign country) to have engaged in  
32 any similar conduct.

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1 **163A Civil enforcement of penalty**

- 2 (1) A pecuniary penalty is a debt payable to the Commonwealth.
- 3 (2) The Commonwealth may enforce a civil penalty order as if it were
- 4 an order made in civil proceedings against the person to recover a
- 5 debt due by the person. The debt arising from the order is taken to
- 6 be a judgment debt.

7 **163B Conduct contravening more than one civil penalty provision**

- 8 (1) If conduct constitutes a contravention of 2 or more civil penalty
- 9 provisions, proceedings may be instituted under this Division
- 10 against a person in relation to the contravention of any one or more
- 11 of those provisions.
- 12 (2) However, the person is not liable to more than one pecuniary
- 13 penalty under this Division in relation to the same conduct.

14 **163C Multiple contraventions**

- 15 (1) A court of competent jurisdiction may make a single civil penalty
- 16 order against a person for multiple contraventions of a civil penalty
- 17 provision if proceedings for the contraventions are founded on the
- 18 same facts, or if the contraventions form, or are part of, a series of
- 19 contraventions of the same or a similar character.

20 Note: For continuing contraventions of civil penalty provisions, see

21 section 163L.

- 22 (2) However, the penalty must not exceed the sum of the maximum
- 23 penalties that could be ordered if a separate penalty were ordered
- 24 for each of the contraventions.

25 **163D Proceedings may be heard together**

26 A court of competent jurisdiction may direct that 2 or more

27 proceedings for civil penalty orders are to be heard together.

1 **163E Civil evidence and procedure rules for civil penalty orders**

2 A court of competent jurisdiction must apply the rules of evidence  
3 and procedure for civil matters when hearing proceedings for a  
4 civil penalty order.

5 **Subdivision B—Civil proceedings and criminal proceedings**

6 **163F Civil proceedings after criminal proceedings**

7 A court of competent jurisdiction may not make a civil penalty  
8 order against a person for a contravention of a civil penalty  
9 provision if the person has been convicted of an offence constituted  
10 by conduct that is the same, or substantially the same, as the  
11 conduct constituting the contravention.

12 **163G Criminal proceedings during civil proceedings**

- 13 (1) Proceedings for a civil penalty order against a person for a  
14 contravention of a civil penalty provision are stayed if:  
15 (a) criminal proceedings are commenced or have already been  
16 commenced against the person for an offence; and  
17 (b) the offence is constituted by conduct that is the same, or  
18 substantially the same, as the conduct alleged to constitute  
19 the contravention.
- 20 (2) The proceedings for the order (the *civil proceedings*) may be  
21 resumed if the person is not convicted of the offence. Otherwise:  
22 (a) the civil proceedings are dismissed; and  
23 (b) costs must not be awarded in relation to the civil  
24 proceedings.

25 **163H Criminal proceedings after civil proceedings**

26 Criminal proceedings may be commenced against a person for  
27 conduct that is the same, or substantially the same, as conduct that  
28 would constitute a contravention of a civil penalty provision  
29 regardless of whether a civil penalty order has been made against  
30 the person in relation to the contravention.

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### 163J Evidence given in civil proceedings not admissible in criminal proceedings

- (1) Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual if:
- (a) the individual previously gave the information or produced the documents in proceedings for a civil penalty order against the individual for an alleged contravention of a civil penalty provision (whether or not the order was made); and
  - (b) the conduct alleged to constitute the offence is the same, or substantially the same, as the conduct alleged to constitute the contravention.
- (2) However, subsection (1) does not apply to criminal proceedings in relation to the falsity of the evidence given by the individual in the proceedings for the civil penalty order.

### Subdivision C—Miscellaneous

#### 163K Ancillary contravention of civil penalty provisions

- (1) A person must not:
- (a) attempt to contravene a civil penalty provision; or
  - (b) aid, abet, counsel or procure a contravention of a civil penalty provision; or
  - (c) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or
  - (d) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision; or
  - (e) conspire with others to effect a contravention of a civil penalty provision.
- (2) A person who contravenes subsection (1) in relation to a civil penalty provision is taken to have contravened the provision.

Note: Section 163M (which provides that a person's state of mind does not need to be proven in relation to a civil penalty provision) does not apply to the extent that proceedings relate to the contravention of subsection (1).

1 **163L Continuing contraventions of civil penalty provisions**

2 (1) If an act or thing is required under a civil penalty provision to be  
3 done:

4 (a) within a particular period; or

5 (b) before a particular time;

6 then the obligation to do that act or thing continues until the act or  
7 thing is done (even if the period has expired or the time has  
8 passed).

9 (2) A person who contravenes a civil penalty provision that requires an  
10 act or thing to be done:

11 (a) within a particular period; or

12 (b) before a particular time;

13 commits a separate contravention of that provision in respect of  
14 each day during which the contravention occurs (including the day  
15 the relevant civil penalty order is made or any later day).

16 **163M State of mind**

17 (1) In proceedings for a civil penalty order against a person for a  
18 contravention of a civil penalty provision, it is not necessary to  
19 prove:

20 (a) the person's intention; or

21 (b) the person's knowledge; or

22 (c) the person's recklessness; or

23 (d) the person's negligence; or

24 (e) any other state of mind of the person.

25 (2) Subsection (1) does not apply to the extent that the proceedings  
26 relate to a contravention of subsection 163K(1) (which is about  
27 ancillary contravention of civil penalty provisions).

28 (3) Subsection (1) does not affect the operation of section 163N  
29 (which is about mistake of fact).

30 **163N Mistake of fact**

31 (1) A person is not liable to have a civil penalty order made against the  
32 person for a contravention of a civil penalty provision if:

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- 1 (a) at or before the time of the conduct constituting the  
2 contravention, the person:  
3 (i) considered whether or not facts existed; and  
4 (ii) was under a mistaken but reasonable belief about those  
5 facts; and  
6 (b) had those facts existed, the conduct would not have  
7 constituted a contravention of the civil penalty provision.
- 8 (2) For the purposes of subsection (1), a person may be regarded as  
9 having considered whether or not facts existed if:  
10 (a) the person had considered, on a previous occasion, whether  
11 those facts existed in the circumstances surrounding that  
12 occasion; and  
13 (b) the person honestly and reasonably believed that the  
14 circumstances surrounding the present occasion were the  
15 same, or substantially the same, as those surrounding the  
16 previous occasion.
- 17 (3) A person who wishes to rely on subsection (1) or (2) in  
18 proceedings for a civil penalty order bears an evidential burden in  
19 relation to that matter.

### 20 **163P Exceptions etc. to civil penalty provisions—burden of proof**

21 If, in proceedings for a civil penalty order against a person for a  
22 contravention of a civil penalty provision, the person wishes to rely  
23 on any exception, exemption, excuse, qualification or justification  
24 provided by the law creating the civil penalty provision, then the  
25 person bears an evidential burden in relation to that matter.

### 26 **163Q Civil penalty provisions contravened by employees, agents or 27 officers**

28 If an element of a civil penalty provision is done by an employee,  
29 agent or officer of a body corporate acting:  
30 (a) within the actual or apparent scope of the employee's,  
31 agent's, or officer's employment; or  
32 (b) within the employee's, agent's, or officer's actual or apparent  
33 authority;  
34 the element must also be attributed to the body corporate.



1 **Division 3—Infringement notices**

2 **164 Provisions subject to infringement notices**

3 The following provisions are *subject to an infringement notice*  
4 under this Division:

- 5 (a) section 32A (dealings with GMOs must be authorised);
- 6 (b) subsection 33A(1) (breach of condition by licence holder or  
7 permit holder);
- 8 (c) subsection 33A(2) (breach of condition by former licence  
9 holder or permit holder);
- 10 (d) section 33C (breach of condition by person covered by GMO  
11 licence or GMO permit);
- 12 (e) section 33E (breach of condition by person);
- 13 (f) section 33G (breach of condition by holder of certification or  
14 accreditation);
- 15 (g) section 34A (interference with dealings with GMOs);
- 16 (h) section 34C (false or misleading information or document);
- 17 (i) subsection 167(6) (failure to comply with notice).

18 **164A When an infringement notice may be given**

- 19 (1) If an authorised compliance officer believes on reasonable grounds  
20 that a person has contravened a provision subject to an  
21 infringement notice under this Division, the authorised compliance  
22 officer may give to the person an infringement notice for the  
23 alleged contravention.
- 24 (2) The infringement notice must be given within 12 months after the  
25 day on which the contravention is alleged to have taken place.
- 26 (3) A single infringement notice must relate only to a single  
27 contravention of a single provision unless subsection (4) applies.
- 28 (4) An authorised compliance officer may give a person a single  
29 infringement notice relating to multiple contraventions of a single  
30 provision if:
  - 31 (a) the provision requires the person to do a thing within a  
32 particular period or before a particular time; and

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- 1 (b) the person fails or refuses to do that thing within that period  
2 or before that time; and  
3 (c) the failure or refusal occurs on more than 1 day; and  
4 (d) each contravention is constituted by the failure or refusal on  
5 one of those days.

### 6 **164B Matters to be included in an infringement notice**

- 7 (1) An infringement notice must:  
8 (a) be identified by a unique number; and  
9 (b) state the day on which it is given; and  
10 (c) state the name of the person to whom the notice is given; and  
11 (d) state the name and contact details of the person who gave the  
12 notice, and that the person is an authorised compliance  
13 officer for the purposes of issuing the infringement notice;  
14 and  
15 (e) give brief details of the alleged contravention, or each alleged  
16 contravention, to which the notice relates, including:  
17 (i) the provision that was allegedly contravened; and  
18 (ii) the maximum penalty that a court could impose for each  
19 contravention, if the provision were contravened; and  
20 (iii) the time (if known) and day of, and the place of, each  
21 alleged contravention; and  
22 (f) state the amount that is payable under the notice; and  
23 (g) give an explanation of how payment of the amount is to be  
24 made; and  
25 (h) state that, if the person to whom the notice is given pays the  
26 amount within 20 business days after the day the notice is  
27 given, then (unless the notice is withdrawn):  
28 (i) proceedings seeking a pecuniary penalty order will not  
29 be brought in relation to the alleged contravention; and  
30 (ii) if the alleged contravention would also constitute an  
31 offence under this Act—the person is not liable to be  
32 prosecuted in a court for the alleged contravention; and  
33 (i) state that payment of the amount is not an admission of guilt  
34 or liability; and  
35 (j) state that the person may apply to the Regulator to have the  
36 period in which to pay the amount extended; and
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- 1 (k) state that the person may choose not to pay the amount and,  
2 if the person does so:
- 3 (i) if the alleged contravention is of an offence provision  
4 and would not also constitute a contravention of a civil  
5 penalty provision—the person may be prosecuted in a  
6 court for the alleged contravention; or
- 7 (ii) if the alleged contravention is of an offence provision  
8 and would also constitute a contravention of a civil  
9 penalty provision—the person may be prosecuted in a  
10 court, or proceedings seeking a pecuniary penalty order  
11 may be brought, in relation to the alleged contravention;  
12 or
- 13 (iii) if the alleged contravention is of a civil penalty  
14 provision—proceedings seeking a pecuniary penalty  
15 order may be brought in relation to the alleged  
16 contravention; and
- 17 (l) set out how the notice can be withdrawn; and
- 18 (m) state that if the notice is withdrawn:
- 19 (i) if the alleged contravention is of an offence provision  
20 and would not also constitute a contravention of a civil  
21 penalty provision—the person may be prosecuted in a  
22 court for the alleged contravention; or
- 23 (ii) if the alleged contravention is of an offence provision  
24 and would also constitute a contravention of a civil  
25 penalty provision—the person may be prosecuted in a  
26 court, or proceedings seeking a pecuniary penalty order  
27 may be brought, in relation to the alleged contravention;  
28 or
- 29 (iii) if the alleged contravention is of a civil penalty  
30 provision—proceedings seeking a pecuniary penalty  
31 order may be brought in relation to the alleged  
32 contravention; and
- 33 (n) state that the person may make written representations to the  
34 Regulator seeking the withdrawal of the notice.
- 35 (2) If the notice relates to only one alleged contravention of the  
36 provision by the person, the amount to be stated in the notice for  
37 the purposes of paragraph (1)(f) is the lesser of:

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- 1 (a) one-fifth of the maximum penalty that a court could impose  
2 on the person for that contravention; and  
3 (b) 12 penalty units where the person is an individual, or 60  
4 penalty units where the person is a body corporate.
- 5 (3) If the notice relates to more than one alleged contravention of the  
6 provision by the person, the amount to be stated in the notice for  
7 the purposes of paragraph (1)(f) is the lesser of:  
8 (a) one-fifth of the amount worked out by adding together the  
9 maximum penalty that a court could impose on the person for  
10 each alleged contravention; and  
11 (b) either:  
12 (i) if the person is an individual—the number of penalty  
13 units worked out by multiplying the number of alleged  
14 contraventions by 12; or  
15 (ii) if the person is a body corporate—the number of  
16 penalty units worked out by multiplying the number of  
17 alleged contraventions by 60.
- 18 Note: Under section 164A, a single infringement notice may only deal with  
19 multiple contraventions if they are contraventions of a single  
20 provision continuing over a period.

### 21 **164C Extension of time to pay amount**

- 22 (1) A person to whom an infringement notice has been given may  
23 apply to the Regulator for an extension of the period referred to in  
24 paragraph 164B(1)(h).
- 25 (2) If the application is made before the end of that period, the  
26 Regulator may, in writing, extend that period. The Regulator may  
27 do so before or after the end of that period.
- 28 (3) If the Regulator extends that period, a reference in this Division, or  
29 in a notice or other instrument under this Division, to the period  
30 referred to in paragraph 164B(1)(h) is taken to be a reference to  
31 that period so extended.
- 32 (4) If the Regulator does not extend that period, a reference in this  
33 Division, or in a notice or other instrument under this Division, to  
34 the period referred to in paragraph 164B(1)(h) is taken to be a  
35 reference to the period that ends on the later of the following days:

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- 1 (a) the day that is the last day of the period referred to in  
2 paragraph 164B(1)(h);  
3 (b) the day that is 5 business days after the day the person was  
4 given notice of the Regulator’s decision not to extend.
- 5 (5) The Regulator may extend the period more than once under  
6 subsection (2).

## 7 **164D Withdrawal of an infringement notice**

- 8 (1) A person to whom an infringement notice has been given may  
9 make written representations to the Regulator seeking the  
10 withdrawal of the notice.
- 11 (2) The Regulator may withdraw an infringement notice given to a  
12 person (whether or not the person has made written representations  
13 seeking the withdrawal).
- 14 (3) When deciding whether or not to withdraw an infringement notice  
15 (the *relevant infringement notice*), the Regulator:  
16 (a) must take into account any written representations seeking  
17 the withdrawal that were given by the person to the  
18 Regulator; and  
19 (b) may take into account the following:  
20 (i) whether a court has previously imposed a penalty on the  
21 person for a contravention of a provision subject to an  
22 infringement notice under this Division, or the  
23 corresponding Division of a corresponding State law;  
24 (ii) the circumstances of the alleged contravention;  
25 (iii) whether the person has paid an amount, stated in an  
26 earlier infringement notice, for a contravention of a  
27 provision subject to an infringement notice under this  
28 Division, or the corresponding Division of a  
29 corresponding State law, if the contravention is  
30 constituted by conduct that is the same, or substantially  
31 the same, as the conduct alleged to constitute the  
32 contravention in the relevant infringement notice;  
33 (iv) any other matter the Regulator considers relevant.
- 34 (4) Notice of the withdrawal of the infringement notice must be given  
35 to the person. The withdrawal notice must state:
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- 1 (a) the person's name and address; and  
2 (b) the day the infringement notice was given; and  
3 (c) the identifying number of the infringement notice; and  
4 (d) that the infringement notice is withdrawn; and  
5 (e) that:  
6 (i) if the alleged contravention is of an offence provision  
7 and would not also constitute a contravention of a civil  
8 penalty provision—the person may be prosecuted in a  
9 court for the alleged contravention; or  
10 (ii) if the alleged contravention is of an offence provision  
11 and would also constitute a contravention of a civil  
12 penalty provision—the person may be prosecuted in a  
13 court, or proceedings seeking a pecuniary penalty order  
14 may be brought, in relation to the alleged contravention;  
15 or  
16 (iii) if the alleged contravention is of a civil penalty  
17 provision—proceedings seeking a pecuniary penalty  
18 order may be brought in relation to the alleged  
19 contravention.
- 20 (5) If:  
21 (a) the Regulator withdraws the infringement notice; and  
22 (b) the person has already paid the amount stated in the notice;  
23 the Commonwealth must refund to the person an amount equal to  
24 the amount paid.

### 164E Effect of payment of amount

- 26 (1) If the person to whom an infringement notice for an alleged  
27 contravention of a provision is given pays the amount stated in the  
28 notice before the end of the period referred to in  
29 paragraph 164B(1)(h):  
30 (a) any liability of the person for the alleged contravention is  
31 discharged; and  
32 (b) proceedings seeking a pecuniary penalty order are not to be  
33 brought in relation to the alleged contravention; and  
34 (c) if the alleged contravention would also constitute an offence  
35 under this Act:

- 1 (i) the person is not liable to be prosecuted in a court for  
2 the alleged contravention; and  
3 (ii) the person is not regarded as having been convicted of  
4 the offence; and  
5 (d) the person is not regarded as having admitted guilt or liability  
6 for the alleged contravention.
- 7 (2) Subsection (1) does not apply if the notice has been withdrawn.

## 8 **164F Effect of this Division**

- 9 This Division does not:
- 10 (a) require an infringement notice to be given to a person for an  
11 alleged contravention of a provision subject to an  
12 infringement notice under this Division; or  
13 (b) affect the liability of a person for an alleged contravention of  
14 a provision subject to an infringement notice under this  
15 Division if:  
16 (i) the person does not comply with an infringement notice  
17 given to the person for the contravention; or  
18 (ii) an infringement notice is not given to the person for the  
19 contravention; or  
20 (iii) an infringement notice is given to the person for the  
21 contravention and is subsequently withdrawn; or  
22 (c) prevent the giving of 2 or more infringement notices to a  
23 person for an alleged contravention of a provision subject to  
24 an infringement notice under this Division; or  
25 (d) limit a court's discretion to determine the amount of a  
26 penalty to be imposed on a person who is found to have  
27 contravened a provision subject to an infringement notice  
28 under this Division.

## 29 **Division 4—Enforceable undertakings**

### 30 **165 Acceptance of undertakings**

- 31 (1) The Regulator may accept any of the following undertakings:  
32 (a) a written undertaking given by a person that the person will,  
33 in order to comply with a provision of this Act or a

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- 1 legislative instrument made under this Act, take specified  
2 action;
- 3 (b) a written undertaking given by a person that the person will,  
4 in order to comply with a provision of this Act or a  
5 legislative instrument made under this Act, refrain from  
6 taking specified action;
- 7 (c) a written undertaking given by a person that the person will  
8 take specified action directed towards ensuring that the  
9 person does not contravene a provision of this Act or a  
10 legislative instrument made under this Act, or is unlikely to  
11 contravene such a provision, in the future.
- 12 (2) The undertaking must be expressed to be an undertaking under this  
13 section.
- 14 (3) The person may withdraw or vary the undertaking at any time, but  
15 only with the written consent of the Regulator.
- 16 (4) The consent of the Regulator is not a legislative instrument.
- 17 (5) The Regulator may, by written notice given to the person, cancel  
18 the undertaking.
- 19 (6) The Regulator may publish details of an undertaking given under  
20 this section on the internet.

### 21 **165A Enforcement of undertakings**

- 22 (1) The Regulator may apply to a court of competent jurisdiction for  
23 an order under subsection (2) if:
- 24 (a) a person has given an undertaking under section 165; and  
25 (b) the undertaking has not been withdrawn or cancelled; and  
26 (c) the Regulator considers that the person has breached the  
27 undertaking.
- 28 (2) If the court is satisfied that the person has breached the  
29 undertaking, the court may make any or all of the following orders:
- 30 (a) an order directing the person to comply with the undertaking;  
31 (b) an order directing the person to pay to the Commonwealth an  
32 amount up to the amount of any financial benefit that the



- 1 person has obtained directly or indirectly and that is  
2 reasonably attributable to the breach;
- 3 (c) any order that the court considers appropriate directing the  
4 person to compensate any other person who has suffered loss  
5 or damage as a result of the breach;
- 6 (d) any other order that the court considers appropriate.

## 7 **Division 5—Injunctions**

### 8 **166 Grant of injunctions**

- 9 (1) If a person has engaged, is engaging or is proposing to engage, in  
10 conduct in contravention of a provision of this Act or a legislative  
11 instrument made under this Act, a court of competent jurisdiction  
12 may, on application by the Regulator, grant an injunction:
- 13 (a) restraining the person from engaging in the conduct; and  
14 (b) if, in the court's opinion, it is desirable to do so—requiring  
15 the person to do a thing.
- 16 (2) If:
- 17 (a) a person has refused or failed, or is refusing or failing, or is  
18 proposing to refuse or fail, to do a thing; and  
19 (b) the refusal or failure was, is or would be a contravention of a  
20 provision of this Act or a legislative instrument made under  
21 this Act;
- 22 the court may, on application by the Regulator, grant an injunction  
23 requiring the person to do that thing.

### 24 **166A Interim injunctions**

- 25 (1) Before deciding an application for an injunction under section 166,  
26 a court of competent jurisdiction may grant an interim injunction:
- 27 (a) restraining a person from engaging in conduct; or  
28 (b) requiring a person to do a thing.
- 29 (2) The court must not require an applicant for an injunction under  
30 section 166 to give an undertaking as to damages as a condition of  
31 granting an interim injunction.

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1 **166B Discharging or varying injunctions**

2 A court of competent jurisdiction may discharge or vary an  
3 injunction granted by that court under this Division.

4 **166C Certain limits on granting injunctions not to apply**

5 (1) The power of a court of competent jurisdiction under this Division  
6 to grant an injunction restraining a person from engaging in  
7 conduct may be exercised:

- 8 (a) whether or not it appears to the court that the person intends  
9 to engage again, or to continue to engage, in conduct of that  
10 kind; and  
11 (b) whether or not the person has previously engaged in conduct  
12 of that kind; and  
13 (c) whether or not there is a significant risk to human health and  
14 safety or the environment if the person engages in conduct of  
15 that kind.

16 (2) The power of a court of competent jurisdiction under this Division  
17 to grant an injunction requiring a person to do a thing may be  
18 exercised:

- 19 (a) whether or not it appears to the court that the person intends  
20 to refuse or fail again, or to continue to refuse or fail, to do  
21 that thing; and  
22 (b) whether or not the person has previously refused or failed to  
23 do that thing; and  
24 (c) whether or not there is a significant risk to human health and  
25 safety or the environment if the person refuses or fails to do  
26 that thing.

27 **166D Other powers of a court unaffected**

28 The powers conferred on a court of competent jurisdiction under  
29 this Division are in addition to, and not instead of, any other  
30 powers of the court, whether conferred by this Act or otherwise.

1 **Division 6—Other matters**

2 **167 Regulator may give directions**

- 3 (1) If the Regulator believes, on reasonable grounds, that:
- 4 (a) the holder of a GMO licence or a GMO permit is not
- 5 complying with this Act; and
- 6 (b) either of the following applies:
- 7 (i) it is necessary to exercise powers under this section in
- 8 order to protect the health and safety of people or to
- 9 protect the environment;
- 10 (ii) it is desirable in the public interest, having regard to the
- 11 matters specified in subsection (3), for the Regulator to
- 12 exercise powers under this section;

13 the Regulator may give directions to the holder, by written notice,

14 requiring the holder, within the period specified in the notice, to

15 take such steps in relation to the thing as are reasonable in the

16 circumstances for the holder to comply with this Act.

- 17 (2) If the Regulator believes on reasonable grounds that:
- 18 (a) one of the following kinds of persons is not complying with
- 19 this Act in respect of a thing:
- 20 (i) a person covered by a GMO licence;
- 21 (ii) a person covered by a GMO permit;
- 22 (iii) a person dealing with, or who has dealt with, a GMO
- 23 specified in an emergency dealing determination;
- 24 (iv) a person undertaking a notifiable dealing; and
- 25 (b) either of the following applies:
- 26 (i) it is necessary to exercise powers under this section in
- 27 order to protect the health and safety of people or to
- 28 protect the environment;
- 29 (ii) it is desirable in the public interest, having regard to the
- 30 matters specified in subsection (3), for the Regulator to
- 31 exercise powers under this section;

32 the Regulator may give directions to the person, by written notice,

33 requiring the person, within the period specified in the notice, to

34 take such steps in relation to the thing as are reasonable in the

35 circumstances for the person to comply with this Act.

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- 1 (3) For the purposes of deciding under subparagraph (1)(b)(ii) or  
2 (2)(b)(ii) whether it is desirable to exercise powers under this  
3 section to give directions to a person, the Regulator must have  
4 regard to the following:
- 5 (a) the types of:
    - 6 (i) dealings authorised by the GMO licence or GMO permit  
7 concerned; or
    - 8 (ii) dealings specified in the emergency dealing  
9 determination concerned; or
    - 10 (iii) notifiable dealings concerned;
  - 11 (b) whether the dealings are ongoing;
  - 12 (c) whether measures have been, or are being, taken to address  
13 the non-compliance with this Act that the Regulator believes  
14 is occurring (the *suspected non-compliance*);
  - 15 (d) the likelihood of the person not complying with this Act at a  
16 future time;
  - 17 (e) the severity of the suspected non-compliance;
  - 18 (f) whether, on one or more occasions, the person:
    - 19 (i) has been charged with or convicted of an offence  
20 against this Act or a corresponding State law; or
    - 21 (ii) has been ordered to pay a pecuniary penalty under this  
22 Act or a corresponding State law; or
    - 23 (iii) has been given a direction under this section or the  
24 equivalent section of a corresponding State law;
  - 25 (g) other means available to the Regulator to address the  
26 suspected non-compliance (including, but not limited to,  
27 cancelling, varying or suspending a GMO licence, the  
28 certification of a facility or the accreditation of an  
29 organisation, or by cancelling or suspending a GMO permit);
  - 30 (h) whether, in the Regulator's opinion, the suspected  
31 non-compliance was deliberate;
  - 32 (i) the desirability of deterring future non-compliance with this  
33 Act.
- 34 (4) If:
- 35 (a) a GMO licence or GMO permit is not, or will not, be in  
36 force; and

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1 (b) the Regulator believes on reasonable grounds that the licence  
2 holder, permit holder or former licence or permit holder (as  
3 the case requires) is, or will be, in possession of a GMO the  
4 subject of the licence or permit when the licence or permit is  
5 not in force;

6 the Regulator may give directions to the holder or former holder,  
7 by written notice, requiring the holder or former holder, within the  
8 period specified in the notice:

9 (c) to transport, store or do anything necessary to maintain the  
10 GMO in a manner the Regulator considers reasonable in the  
11 circumstances; and

12 (d) if the licence or permit is, or will be, cancelled or  
13 surrendered—to dispose of the GMO.

14 Note: See sections 60 (period of GMO licence) and 72AF (period of GMO  
15 permit) for when a GMO licence and GMO permit is, and is not, in  
16 force.

17 (5) A person commits an offence if:

18 (a) the person is given a notice under subsection (1), (2) or (4);  
19 and

20 (b) the person fails to comply with the notice within the period  
21 specified in the notice.

22 Penalty:

23 (a) in the case of an aggravated offence—2,000 penalty units;

24 (b) in any other case—500 penalty units.

25 (6) A person is liable to a civil penalty if:

26 (a) the person is given a notice under subsection (1), (2) or (4);  
27 and

28 (b) the person fails to comply with the notice within the period  
29 specified in the notice.

30 Civil penalty:

31 (a) in the case of an aggravated contravention—1,000 penalty  
32 units;

33 (b) in any other case—500 penalty units.

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- 1 (7) If the person does not take the steps or undertake the dealings  
2 specified in the notice within the period specified in the notice, the  
3 Regulator may arrange for those steps or dealings to be taken.
- 4 (8) If the Regulator incurs costs because of arrangements made by the  
5 Regulator under subsection (7), the person is liable to pay to the  
6 Commonwealth an amount equal to the cost, and the amount may  
7 be recovered by the Commonwealth as a debt due to the  
8 Commonwealth in a court of competent jurisdiction.
- 9 (9) Section 4K of the *Crimes Act 1914* does not apply to an offence  
10 against subsection (5).
- 11 (10) A period specified in a notice under subsection (1), (2) or (4) must  
12 be reasonable having regard to the circumstances.

### 13 **167A Forfeiture**

- 14 (1) If a court:  
15 (a) convicts a person of an offence against this Act; or  
16 (b) makes an order under section 19B of the *Crimes Act 1914* in  
17 respect of a person charged with an offence against this Act;  
18 the court may order forfeiture to the Commonwealth of any thing  
19 used or otherwise involved in the commission of the offence.
- 20 (2) A thing ordered by a court to be forfeited under this section  
21 becomes the property of the Commonwealth and may be sold or  
22 otherwise dealt with in accordance with the directions of the  
23 Regulator.
- 24 (3) Until the Regulator gives a direction, the thing must be kept in  
25 such custody as the Regulator directs.

### 26 **239 Before paragraph 178(b)**

27 Insert:

- 28 (aa) matters relating to applications;

### 29 **240 Paragraph 178(b)**

30 Omit “confidential commercial information”, substitute “confidentiality  
31 and information sharing”.

1 **241 Paragraph 178(c)**

2 After “regulations”, insert “and rules”.

3 **242 After Division 1 of Part 12**

4 Insert:

5 **Division 1A—Matters relating to applications**

6 **178A Applications to which this Division applies**

7 This Division applies in relation to an application that is made  
8 under any of the following:

- 9 (a) section 40 (application for GMO licence);
- 10 (b) section 40A (application for GMO licence—inadvertent  
11 dealings);
- 12 (c) section 70 (application for transfer of GMO licence);
- 13 (d) section 71A (application for variation of GMO licence);
- 14 (e) section 72AC (application for GMO permit);
- 15 (f) paragraph 78(2)(a) (application for determination for dealing  
16 to be included on GMO Register);
- 17 (g) section 83 (application for certification);
- 18 (h) section 87A (application for variation of certification);
- 19 (i) section 89A (application for transfer of certification);
- 20 (j) section 91 (application for accreditation);
- 21 (k) section 95A (application for variation of accreditation);
- 22 (l) section 187 (application for non-disclosure of CCI).

23 **178B Requirements for applications**

- 24 (1) An application must:
  - 25 (a) be made in the manner approved by the Regulator; and
  - 26 (b) be in the form approved by the Regulator; and
  - 27 (c) be accompanied by any documents or information specified  
28 in writing by the Regulator; and
  - 29 (d) subject to subsection (2), be accompanied by the application  
30 fee (if any):

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- 1 (i) prescribed by the regulations for the purposes of this  
2 paragraph; or  
3 (ii) worked out in accordance with a method prescribed by  
4 the regulations for the purposes of this paragraph.
- 5 (2) If an application does not comply with the requirements in  
6 subsection (1) for the application:  
7 (a) the application is taken not to have been made; and  
8 (b) the Regulator must refund the application fee (if any)  
9 accompanying the application.
- 10 (3) Without limiting subsection (1), the Regulator:  
11 (a) may approve different forms for different kinds of  
12 applications; and  
13 (b) may specify different documents or information for different  
14 kinds of applications.
- 15 (4) Without limiting subsection (1), the regulations may prescribe  
16 different application fees for:  
17 (a) different kinds of applications; and  
18 (b) different kinds of dealings with a GMO to which an  
19 application relates.
- 20 (5) This section does not apply to applications made under section 40A  
21 (application for GMO licence—inadvertent dealings).

### 178C Withdrawal of application

- 23 (1) At any time before the Regulator decides an application, the  
24 applicant may, in writing, withdraw the application.
- 25 Note: The Regulator may wholly or partly refund the application fee (if any)  
26 accompanying the application (see subsection 131(2)).
- 27 (2) If the applicant withdraws the application in accordance with  
28 subsection (1), the Regulator must not make a decision in relation  
29 to the application.



1 **178D Regulator may require applicant to give further information**

- 2 (1) The Regulator may, by notice in writing, require an applicant to  
3 give the Regulator such further information in relation to the  
4 application as the Regulator requires.
- 5 (2) The notice must specify the period within which the information is  
6 to be provided.
- 7 (3) The period specified must:  
8 (a) begin on the day after the notice is given to the applicant; and  
9 (b) end:  
10 (i) in the case of an application for a GMO licence under  
11 section 40 that is not an inadvertent dealings  
12 application—at least 20 business days after that day; or  
13 (ii) otherwise—at least 10 business days after that day.
- 14 (4) If the applicant does not provide the required information within  
15 the period specified in the notice, the application is taken to be  
16 withdrawn.
- 17 (5) If an application is taken to be withdrawn under subsection (4), the  
18 Regulator must not make a decision in relation to the application.

19 **178E Deadlines for making reviewable decisions**

- 20 If the Regulator is required to make a decision in relation to an  
21 application to which this Division applies within the consideration  
22 period for the application, but does not make a decision within that  
23 period:  
24 (a) the Regulator is taken to have made a reviewable decision to  
25 refuse the application at the end of that period; and  
26 (b) the applicant may seek internal review of the reviewable  
27 decision under section 181.

28 **178F Consideration period**

- 29 (1) The *consideration period* for an application referred to in column 1  
30 of an item of the following table is:

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- 1 (a) the period (the *initial period*), set out in column 2 of the item,  
2 starting on the day after the Regulator receives the  
3 application; or  
4 (b) if the initial period is extended on one or more occasions  
5 under this section—at the end of the initial period so  
6 extended; or  
7 (c) if another period, starting on the day after the Regulator  
8 receives the application, is prescribed by the regulations for  
9 the purposes of the item—that other period; or  
10 (d) if the period under paragraph (c) is extended on one or more  
11 occasions under this section—at the end of that period so  
12 extended.
- 13 Note: If another period is prescribed by the regulations under  
14 paragraph (1)(c), it may be shorter or longer than the initial period.
- 15 (2) Regulations made for the purposes of paragraph (1)(c) may be  
16 expressed to apply to:  
17 (a) all applications covered by an item; or  
18 (b) a specified class of applications covered by an item.
- 19 (3) The Regulator may, with the applicant’s written agreement, and  
20 before the end of the initial period or the period prescribed by the  
21 regulations (including the period as previously extended), extend  
22 the period by a specified number of business days.
- 23 (4) If the Regulator extends the period, the Regulator must notify the  
24 applicant of the extension in writing.  
25

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### Initial period for applications

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Item	Column 1 Application	Column 2 Initial period
1	Application for a GMO licence under section 40 that is not an inadvertent dealings application, if the Regulator consulted the public about the RARMP for the application under Division 4 of Part 5	200 business days
2	Application for a GMO licence	150 business days

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## Initial period for applications

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<b>Item</b>	<b>Column 1 Application</b>	<b>Column 2 Initial period</b>
	under section 40 that is not an inadvertent dealings application, if the Regulator did not consult the public about the RARMP for the application under Division 4 of Part 5	
3	Application for a GMO licence under section 40 that is an inadvertent dealings application, or an inadvertent dealings application under section 40A.	90 business days
4	Application to transfer a GMO licence under section 70	90 business days
5	Application to vary a GMO licence under section 71A	90 business days
6	Application for a GMO permit under section 72AC	30 business days
7	Application for a determination for a GMO dealing to be included on the GMO Register under paragraph 78(2)(a)	200 business days
8	Application for certification under section 83	90 business days
9	Application for variation of certification under section 87A	90 business days
10	Application for transfer of certification under section 89A	90 business days
11	Application for accreditation under section 91	90 business days
12	Application for variation of an accreditation under section 95A	90 business days
13	Application for non-disclosure of CCI under section 187	40 business days

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1 (5) If a circumstance mentioned in column 1 of an item in the  
2 following table applies in relation to an application, then for the

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1 purposes of calculating the consideration period for the application,  
2 exclude the period beginning on the day mentioned in column 2 of  
3 the item and ending on the day mentioned in column 3 of the item.  
4

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### Calculating excluded periods

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Item	Column 1	Column 2	Column 3
	If this circumstance applies:	exclude the period beginning on:	and ending on:
1	the applicant is given a notice under section 178D requiring the applicant to provide further information in relation to the application	the day after the notice is given to the applicant	the day after the applicant provides the further information to the Regulator.
2	a person is given a notice under section 186 of a proposed public disclosure of CCI	the day after the notice is given to the person	if: (a) the person does not make an application under section 187—the day the period specified in the notice under section 186 expires; or (b) the Regulator makes a decision under subparagraph 187A(1)(b)(ii)—the day the decision is made; or (c) the Regulator makes a decision under paragraph 187A(1)(a) or subparagraph 187A(1)(b)(i)—the day any review rights under Division 2 of this Part in relation to the decision have been exhausted or

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## Calculating excluded periods

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Item	Column 1	Column 2	Column 3
	<b>If this circumstance applies:</b>	<b>exclude the period beginning on:</b>	<b>and ending on:</b>
			have expired.
3	a circumstance prescribed by the regulations	a day prescribed by the regulations	a day prescribed by the regulations.

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1 (6) For the purposes of calculating the total number of days to be  
2 excluded from a consideration period for an application under  
3 subsection (5), if a day in a period to be excluded under an item in  
4 the table in that subsection overlaps with a day in another period  
5 calculated for the same or a different item, that day must only be  
6 counted once.

7 **243 Section 179 (table item 1A, column headed “Decision”)**

8 Omit “a licence”, substitute “a GMO licence”.

9 **244 Section 179 (table item 1A, column headed “Eligible  
10 person in relation to decision”)**

11 After “the applicant”, add “for the licence”.

12 **245 Section 179 (after table item 1A)**

13 Insert:

1B	To issue a GMO licence	section 55	the applicant for the licence
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14 **246 Section 179 (table items 1, 2, 3, 3A and 4, column headed  
15 “Decision”)**

16 Omit “a licence”, substitute “a GMO licence”.

17 **247 Section 179 (table item 4A)**

18 Repeal the table item, substitute:

4A	To vary a GMO licence	section 71A	the licence holder
4B	To refuse to vary a GMO licence	section 71A	the licence holder
4C	To issue a GMO permit	section 72AD	the applicant for the

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			permit
4D	To refuse to issue a GMO permit	section 72AD	the applicant for the permit
4E	To suspend or cancel a GMO permit	section 72AG	the permit holder

1 **248 Section 179 (cell at table item 5, column headed**  
2 **“Decision”)**

3 Repeal the cell, substitute:  
4 To refuse to certify a  
5 facility to a particular  
6 containment level

7 **249 Section 179 (cell at table item 6, column headed**  
8 **“Decision”)**

9 Omit “specify”, substitute “impose”.

10 **250 Section 179 (after table item 7)**

11 Insert:

7AAA	To vary a certification	section 87A	the holder of the certification
7AA	To refuse to vary a certification	section 87A	the holder of the certification

12 **251 Section 179 (after table item 8)**

13 Insert:

8A	To refuse to suspend a certification	section 88	the holder of the certification
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14 **252 Section 179 (cell at table item 10, column headed**  
15 **“Decision”)**

16 Omit “specify”, substitute “impose”.

17 **253 Section 179 (after table item 11)**

18 Insert:

11A	To vary an accreditation	section 95A	the holder of the accreditation
11B	To refuse to vary an	section 95A	the holder of the

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accreditation

accreditation

1 **254 Section 179 (table items 13 and 14)**

2 Repeal the items, substitute:

13	To give directions if a GMO licence or GMO permit is not, or will not be, in force	subsection 167(4)	the licence holder, permit holder or former licence or permit holder (as the case requires)
14	To decide information subject to a publication requirement is not CCI	paragraph 187A(1)(a)	the applicant for the non-disclosure of CCI
15	To publicly disclose CCI	subparagraph 187A(1)(b)(i)	the applicant for the non-disclosure of CCI

3 **255 Subsection 181(2)**

4 Omit “30 days after the day on which the decision first came to the  
5 notice of the applicant”, substitute “20 business days after the day the  
6 notice of the decision is given to the eligible person”.

7 **256 At the end of section 181**

8 Add:

9 (5) If the Regulator does not review the reviewable decision within a  
10 period of 60 business days beginning on the day the application is  
11 received, the Regulator is taken to have affirmed the decision.

12 **257 Section 182**

13 Repeal the section.

14 **258 Division 3 of Part 12**

15 Repeal the Division, substitute:

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1 **Division 3—Confidentiality and information sharing**

2 **Subdivision A—Regulator information subject to a publication**  
3 **requirement**

4 **184 Regulator information subject to a publication requirement**

5 (1) Regulator information is *subject to a publication requirement* if  
6 the Regulator is required, or proposes, to publicly disclose the  
7 information in the course of exercising the Regulator’s powers or  
8 functions under this Act or a legislative instrument made under this  
9 Act.

10 Example: The Regulator may be required, or may decide, to publicly disclose  
11 Regulator information in a RARMP under section 49.

12 (2) To avoid doubt, Regulator information may be subject to a  
13 publication requirement regardless of whether the information was  
14 subject to a publication requirement at any time in the past.

15 (3) Despite subsection (1), the rules may specify Regulator  
16 information, or a class of Regulator information, that is not subject  
17 to a publication requirement.

18 **185 Threshold consideration regarding public disclosure of CCI**

19 (1) If Regulator information is subject to a publication requirement,  
20 the Regulator must, before publicly disclosing the information,  
21 consider whether a person might reasonably wish to make an  
22 application under section 187 (person may apply for non-disclosure  
23 of CCI).

24 (2) In considering the matter in subsection (1), the Regulator must  
25 have regard to the following:

26 (a) the nature of the information;

27 (b) whether the information was provided to the Regulator:

28 (i) in connection with an application made to the Regulator  
29 under this Act; or

30 (ii) in compliance or purported compliance with this Act;



- 1 (c) whether the person who provided the information to the
- 2 Regulator, or any other person, has asserted that the
- 3 information is CCI;
- 4 (d) the extent to which the information is well known;
- 5 (e) whether a person is known to be associated with the matters
- 6 dealt with in the information;
- 7 (f) the availability of the information from publicly accessible
- 8 sources;
- 9 (g) any other matter that the Regulator considers relevant.

## 10 **186 Notice of proposed public disclosure**

- 11 (1) If the Regulator considers that a person might reasonably wish to
- 12 make an application under section 187 (person may apply for
- 13 non-disclosure of CCI), the Regulator must give the person written
- 14 notice of the following:
  - 15 (a) that the Regulator proposes to publicly disclose the
  - 16 information and the form in which the Regulator proposes to
  - 17 disclose it;
  - 18 (b) if the Regulator proposes to publicly disclose the information
  - 19 under a provision of this Act or a legislative instrument made
  - 20 under this Act—the provision;
  - 21 (c) that the person may, within the period specified in the notice,
  - 22 make an application under section 187;
  - 23 (d) that if no application is made within that period, the
  - 24 Regulator must or may (as the case requires) publicly
  - 25 disclose the information.
- 26 (2) The period in paragraph (1)(c) must not end earlier than
- 27 10 business days after the day the notice is given.

## 28 **187 Person may apply for non-disclosure of CCI**

- 29 A person may apply to the Regulator:
- 30 (a) to claim that Regulator information the subject of a notice
  - 31 under section 186 is CCI (including CCI relating to the
  - 32 location of field trial sites); and
  - 33 (b) for the information not to be publicly disclosed as proposed.
- 34 Note: Division 1A of Part 12 sets out requirements for applications.

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### 187A Decision on application for non-disclosure of CCI

- 1
- 2 (1) If a person makes an application under section 187, the Regulator  
3 must, within the consideration period for the application, decide:  
4 (a) the information is not CCI; or  
5 (b) the information is CCI; and  
6 (i) to publicly disclose the CCI as proposed; or  
7 (ii) not to publicly disclose the CCI as proposed.

8 Note 1: See section 178F for the consideration period for the application.

9 Note 2: A decision that the information is not CCI, and a decision to publicly  
10 disclose CCI as proposed, are reviewable decisions (see section 179),  
11 and the Regulator must give the applicant written notice of the  
12 decision (see section 180).

- 13 (2) In making a decision under subsection (1), the Regulator must take  
14 into account any information provided in the application for  
15 non-disclosure.

- 16 (3) The Regulator must decide not to publicly disclose the CCI as  
17 proposed if:  
18 (a) the CCI relates to a location at which a field trial involving a  
19 GMO is occurring, or is proposed to occur; and  
20 (b) the Regulator is satisfied that the disclosure of the CCI would  
21 be likely to cause significant damage to:  
22 (i) the health and safety of people; or  
23 (ii) the environment; or  
24 (iii) property.

- 25 (4) If the CCI does not relate to a location at which a field trial  
26 involving a GMO is occurring, or is proposed to occur, the  
27 Regulator may decide to publicly disclose the CCI as proposed  
28 only if the Regulator is satisfied that the public interest in the  
29 disclosure outweighs any prejudice that the disclosure would cause  
30 to the person.

- 31 (5) If the Regulator decides not to publicly disclose CCI, the Regulator  
32 must, within 14 days after making the decision, give the applicant  
33 written notice of the decision.

1 **187B Publication of Regulator information subject to a publication**  
2 **requirement**

3 (1) The Regulator may publicly disclose Regulator information subject  
4 to a publication requirement if:

5 (a) the Regulator considered, under section 185, that no one  
6 might reasonably wish to make an application under section  
7 187; or

8 (b) the Regulator considered, under section 185, that a person  
9 might reasonably wish to make an application under section  
10 187 and:

11 (i) the Regulator has given a notice to the person under  
12 subsection 186; and

13 (ii) subsection (2) applies in relation to the information.

14 (2) This subsection applies if:

15 (a) no application in relation to the information has been made  
16 under subsection 187(1) within the period specified in the  
17 notice given under section 186; or

18 (b) an application was made under subsection 187(1) but  
19 withdrawn before the Regulator made a decision in relation  
20 to the application; or

21 (c) the Regulator made a decision under section 187A:

22 (i) that the information is not CCI; or

23 (ii) that the information is CCI and to publicly disclose the  
24 CCI; and

25 any review rights under Division 2 of this Part in relation to  
26 the decision have been exhausted or have expired.

27 **Subdivision B—Use and disclosure of Regulator information**

28 **187C Use and disclosure of Regulator information—entrusted**  
29 **persons**

30 An entrusted person may use or disclose Regulator information  
31 only if the use or disclosure is permitted under this Division.

32 Note: Section 122.4 of the *Criminal Code* creates an offence in relation to  
33 the disclosure of information by Commonwealth officers etc.

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1 **187D Permitted uses and disclosures of Regulator information that**  
2 **is not CCI—entrusted persons**

- 3 (1) An entrusted person may use or disclose Regulator information  
4 that is not CCI if:
- 5 (a) the use or disclosure is made for the purposes of performing  
6 a duty or function, or exercising a power, under or in relation  
7 to this Act or a legislative instrument made under this Act;  
8 and
- 9 (b) the use or disclosure is not contrary to Australia's obligations  
10 under international law, including obligations under any  
11 agreement between Australia and another country or other  
12 countries; and
- 13 (c) in relation to use—where:
- 14 (i) the entrusted person uses the information for the  
15 purpose of granting a GMO licence to an applicant who  
16 is not the person from whom the information was  
17 obtained; and
- 18 (ii) the information relates to the affairs of another person  
19 (the *other person*); and
- 20 (iii) the entrusted person would be otherwise unable to grant  
21 the licence due to insufficient information from the  
22 applicant;
- 23 the other person (or person duly authorised on their behalf)  
24 has consented to that use of the information for that purpose;  
25 and
- 26 (d) in relation to disclosure—the disclosure is not a disclosure of  
27 personal information (within the meaning of the *Privacy Act*  
28 *1988*).
- 29 (2) An entrusted person may use or disclose Regulator information  
30 that is not CCI if the use or disclosure is required or authorised by  
31 or under:
- 32 (a) a Commonwealth law (including this Act); or  
33 (b) a law of a State.
- 34 (3) An entrusted person may use or disclose Regulator information  
35 that is not CCI if the information is an individual's personal  
36 information (within the meaning of the *Privacy Act 1988*) and the  
37 individual has consented to the use or disclosure.
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- 1 (4) An entrusted person may disclose Regulator information that is not  
2 CCI to a Commonwealth agency, a Commonwealth authority, a  
3 State agency or the Gene Technology Technical Advisory  
4 Committee if:  
5 (a) the disclosure is made for the purposes of enabling the  
6 authority, agency or Committee to perform a duty or  
7 function, or exercise a power, under or in relation to this Act  
8 or a legislative instrument made under this Act; and  
9 (b) the disclosure is not contrary to Australia's obligations under  
10 international law, including obligations under any agreement  
11 between Australia and another country or other countries.
- 12 (5) An entrusted person may disclose Regulator information that is not  
13 CCI to a Commonwealth agency, a Commonwealth authority, a  
14 State agency or an entity prescribed by the regulations if:  
15 (a) the disclosure is made for the purposes of enabling or  
16 assisting the authority, agency or entity to perform its duties  
17 or functions, or exercise its powers; and  
18 (b) the disclosure is not contrary to Australia's obligations under  
19 international law, including obligations under any agreement  
20 between Australia and another country or other countries.
- 21 (6) An entrusted person may disclose Regulator information that is not  
22 CCI if:  
23 (a) the entrusted person believes, on reasonable grounds, that the  
24 disclosure is necessary to prevent or lessen a significant risk  
25 to human health and safety or to the environment; and  
26 (b) the disclosure is for the purposes of preventing or lessening  
27 that risk.
- 28 (7) An entrusted person may disclose Regulator information that is not  
29 CCI if the disclosure is for and in accordance with an order of a  
30 court, tribunal, authority or person who has the power to require  
31 the answering of questions or the production of documents.
- 32 (8) An entrusted person may disclose Regulator information that is not  
33 CCI to the Minister, or a person employed under section 13 or 20  
34 of the *Members of Parliament (Staff) Act 1984* as a member of staff  
35 of the Minister, if the disclosure relates to the Minister's functions  
36 or powers under or in relation to this Act or a legislative instrument  
37 made under this Act.
-

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1 **187E Permitted uses and disclosures of Regulator information that**  
2 **is CCI—entrusted persons**

3 (1) An entrusted person may use Regulator information that is CCI if:

- 4 (a) the use is for the purposes of performing a duty or function,  
5 or exercising a power, under or in relation to this Act or a  
6 legislative instrument made under this Act; and  
7 (b) the use is not contrary to Australia’s obligations under  
8 international law, including obligations under any agreement  
9 between Australia and another country or other countries;  
10 and

11 (c) where:

- 12 (i) the entrusted person uses the information for the  
13 purpose of granting a GMO licence to an applicant who  
14 is not the person from whom the information was  
15 obtained; and  
16 (ii) the information includes the intellectual property of  
17 another person (the *other person*); and  
18 (iii) the entrusted person would be otherwise unable to grant  
19 the licence due to insufficient information from the  
20 applicant;  
21 the other person (or person duly authorised on their behalf)  
22 has consented to that use of the information for that purpose.

23 (2) An entrusted person may use or disclose Regulator information  
24 that is CCI if the use or disclosure is required or authorised by or  
25 under:

- 26 (a) a Commonwealth law (including this Act); or  
27 (b) a law of a State.

28 Note: See Subdivision A of this Division in relation to when the Regulator  
29 may publicly disclose information subject to a publication  
30 requirement.

31 (3) An entrusted person may disclose Regulator information that is  
32 CCI if:

- 33 (a) the disclosure is for the purposes of performing a duty or  
34 function, or exercising a power, under or in relation to this  
35 Act or a legislative instrument made under this Act; and  
36 (b) both of the following apply:
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- 1 (i) the information is the intellectual property of a person;  
2 (ii) the person (or person duly authorised on their behalf)  
3 has consented to the disclosure.
- 4 (4) An entrusted person may disclose Regulator information that is  
5 CCI to a Commonwealth agency, a Commonwealth authority, a  
6 State agency or the Gene Technology Advisory Committee if:  
7 (a) the disclosure is made for the purposes of enabling the  
8 authority, agency or Committee to perform a duty or  
9 function, or exercise a power, under or in relation to this Act,  
10 or a legislative instrument made under this Act; and  
11 (b) the disclosure is not contrary to Australia's obligations under  
12 international law, including obligations under any agreement  
13 between Australia and another country or other countries.
- 14 (5) An entrusted person may disclose Regulator information that is  
15 CCI to a Commonwealth agency, a Commonwealth authority, a  
16 State agency or an entity prescribed by the regulations if:  
17 (a) the disclosure is made for the purposes of enabling or  
18 assisting the authority, agency or entity to perform its duties  
19 or functions, or exercise its powers; and  
20 (b) the disclosure is not contrary to Australia's obligations under  
21 international law, including obligations under any agreement  
22 between Australia and another country or other countries.
- 23 (6) An entrusted person may disclose Regulator information that is  
24 CCI if the disclosure is for and in accordance with an order of a  
25 court, tribunal, authority or person who has the power to require  
26 the answering of questions or the production of documents.
- 27 (7) An entrusted person may disclose Regulator information that is  
28 CCI to the Minister, or a person employed under section 13 or 20  
29 of the *Members of Parliament (Staff) Act 1984* as a member of staff  
30 of the Minister, if the disclosure relates to the Minister's functions  
31 or powers under or in relation to this Act or a legislative instrument  
32 made under this Act.

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1 **187F Use and disclosure of Regulator information—Gene**  
2 **Technology Technical Advisory Committee**

3 A person who is, or was, a member of the Gene Technology  
4 Technical Advisory Committee may use or disclose Regulator  
5 information provided to the member by, or on behalf of, the  
6 Regulator only if the use or disclosure:

- 7 (a) is required or authorised by or under:  
8 (i) a Commonwealth law (including this Act); or  
9 (ii) a law of a State; or  
10 (b) is for and in accordance with an order of a court, tribunal,  
11 authority or person who has the power to require the  
12 answering of questions or the production of documents.

13 Note: Section 122.4 of the *Criminal Code* creates an offence in relation to  
14 the disclosure of information by Commonwealth officers etc.

15 **259 Subsection 188(1)**

16 Omit “or the regulations” (wherever occurring).

17 **260 Paragraphs 188(2)(a) and (b)**

18 Omit “or the regulations”.

19 **261 Subsection 188(3)**

20 Omit “or the regulations”.

21 **262 Paragraphs 188(4)(a) and (b)**

22 Omit “or the regulations”.

23 **263 Subsection 189(2)**

24 After “public purpose by”, insert “or under”.

25 **264 Subsection 189(4)**

26 Omit “or the regulations” (wherever occurring).

27 **265 Division 5 of Part 12**

28 Repeal the Division. Substitute:

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1 **Division 5—Application, savings and transitional**  
2 **provisions**

3 **[Placeholder for new Division 5]**

4 **266 Sections 192 and 192A**

5 Repeal the sections, substitute:

6 **192 Protection of persons who give information**

7 A person is not liable to civil proceedings as a result of the person  
8 giving the Regulator information:

- 9 (a) under section 72AQ or 72AR; or  
10 (b) as required by any condition to which any of the following is  
11 subject:  
12 (i) an emergency dealing determination;  
13 (ii) the certification of a facility;  
14 (iii) the accreditation of an organisation;  
15 (c) under section 75D; or  
16 (d) as required by any condition specified in the rules made for  
17 the purposes of section 75A or in the GMO Register under  
18 paragraph 77(b).

19 **192A Privilege against self-incrimination and legal professional**  
20 **privilege not abrogated**

- 21 (1) Nothing in Part 10, 10A, 10B or 10C affects the right of a person to  
22 refuse to answer a question, give information, or produce a  
23 document, on the ground that the answer to the question, the  
24 information, or the production of the document, might tend to  
25 incriminate the person or make the person liable to a penalty.
- 26 (2) Nothing in Part 10, 10A, 10B or 10C affects the right of a person to  
27 refuse to answer a question, give information, or produce a  
28 document, on the ground that:  
29 (a) the answer to the question or the information would be  
30 privileged from being given on the ground of legal  
31 professional privilege; or

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- 1 (b) the document would be privileged from being produced on  
2 the ground of legal professional privilege.

### 3 **192B Compensation for damage caused by exercising powers**

- 4 (1) This section applies if:  
5 (a) as a result of operating or using a thing in exercising powers  
6 or performing functions under this Act, damage is caused to a  
7 thing; and  
8 (b) the damage occurs because:  
9 (i) insufficient care was taken in selecting the person who  
10 was to operate or use the thing; or  
11 (ii) insufficient care was taken by the person who operated  
12 or used the thing.
- 13 (2) The Commonwealth must pay the owner of the thing such  
14 reasonable compensation for the damage as the Commonwealth  
15 and the owner agree on.
- 16 (3) However, if the owner and the Commonwealth fail to agree, the  
17 owner may institute proceedings in a court of competent  
18 jurisdiction for such reasonable amount of compensation as the  
19 court determines.
- 20 (4) In determining the amount of compensation payable, regard is to  
21 be had to whether the occupier of the premises, or the occupier's  
22 employees or agents, if they were available at the time, provided  
23 any appropriate warning or guidance on the operation of the  
24 equipment.
- 25 (5) A payment under this section is to be made out of money  
26 appropriated by the Parliament.

### 27 **192C Compensation for acquisition of property**

- 28 (1) If the operation of this Act would result in an acquisition of  
29 property (within the meaning of paragraph 51(xxxi) of the  
30 Constitution) from a person otherwise than on just terms (within  
31 the meaning of that paragraph), the Commonwealth is liable to pay  
32 a reasonable amount of compensation to the person.

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- 1 (2) If the Commonwealth and the person do not agree on the amount  
2 of the compensation, the person may institute proceedings in a  
3 court of competent jurisdiction for the recovery from the  
4 Commonwealth of such reasonable amount of compensation as the  
5 court determines.

## 6 **192D Immunity from civil proceedings**

7 A person is not liable to civil proceedings in relation to an act  
8 done, or omitted to be done:

- 9 (a) in good faith in the performance or purported performance of  
10 a function, or the exercise or purported exercise of a power,  
11 conferred on the person by this Act or the regulations; or  
12 (b) in good faith:  
13 (i) in providing or purporting to provide assistance to the  
14 Regulator; and  
15 (ii) as the result of a request, direction or other requirement  
16 made of the person by the Regulator in the performance  
17 or purported performance of a function, or the exercise  
18 or purported exercise of a power, conferred on the  
19 Regulator by this Act or the regulations.

## 20 **267 Subsection 193(2)**

21 Omit “codes of practice or guidelines”, substitute “technical and  
22 procedural guidance”.

## 23 **268 At the end of section 193**

24 Add:

- 25 (3) Despite subsection 14(2) of the *Legislation Act 2003*, the  
26 regulations may make provision in relation to a matter by applying,  
27 adopting or incorporating, with or without modification, any matter  
28 contained in an instrument or other writing as in force or existing  
29 from time to time.

## 30 **269 After section 193**

31 Insert:

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### 193A Rules—general

- 1
- 2 (1) The Regulator may, by legislative instrument, make rules not  
3 inconsistent with this Act, the regulations or a policy principle in  
4 force under section 21, prescribing matters:
- 5 (a) required or permitted by this Act or the regulations to be  
6 prescribed by the rules; or
- 7 (b) necessary or convenient to be prescribed for carrying out or  
8 giving effect to this Act.
- 9 (2) To avoid doubt, the rules may not do the following:
- 10 (a) create an offence or civil penalty;
- 11 (b) provide powers of:
- 12 (i) arrest or detention; or
- 13 (ii) entry, search or seizure;
- 14 (c) impose a tax;
- 15 (d) set an amount to be appropriated from the Consolidated  
16 Revenue Fund under an appropriation in this Act;
- 17 (e) directly amend the text of this Act.
- 18 (3) Rules made under subsection (1) must not commence earlier than  
19 one month after the day on which the rules are registered on the  
20 Federal Register of Legislation.
- 21 (4) Subsection (3) does not apply to either of the following:
- 22 (a) emergency rules made by the Regulator as permitted by  
23 subsection 193C(1);
- 24 (b) rules that correct an error or make a minor or technical  
25 change to rules previously made under this section.
- 26 (5) Despite subsection 14(2) of the *Legislation Act 2003*, rules made  
27 under subsection (1) may make provision in relation to a matter by  
28 applying, adopting or incorporating, with or without modification,  
29 any matter contained in an instrument or other writing as in force  
30 or existing from time to time.
- 31 (6) Section 42 (disallowance) of the *Legislation Act 2003* does not  
32 apply to rules made under subsection (1).

## 193B Rules—consultation requirements

- 1
- 2 (1) Before making rules under section 193A, the Regulator must:
- 3 (a) seek, and take into account, the advice (if any) of:
- 4 (i) the States; and
- 5 (ii) the Gene Technology Technical Advisory Committee;
- 6 and
- 7 (b) publish on the internet a notice:
- 8 (i) setting out the proposed rules; and
- 9 (ii) inviting persons to make submissions to the Regulator
- 10 about the proposed rules within the period specified in
- 11 the notice, which must not end earlier than 20 business
- 12 days after the notice is published; and
- 13 (c) take into account any submissions received within that
- 14 period.
- 15 (2) Subsection (1) does not apply to rules:
- 16 (a) made for the purposes of section 27A, 90 or 98; or
- 17 (b) that correct an error or make a minor or technical change to
- 18 rules previously made under section 193A.
- 19 Note: Section 193C sets out other circumstances in which consultation is not
- 20 required.
- 21 (3) A failure to comply with subsection (1) does not affect the validity
- 22 or enforceability of the rules.
- 23 (4) This section does not limit section 17 of the *Legislation Act 2003*
- 24 (rule-makers should consult before making legislative instrument).

## 193C Rules—consultation not required in certain circumstances

- 25
- 26 (1) The Regulator may make rules (*emergency rules*) under
- 27 section 193A without consulting as required by subsection 193B(1)
- 28 if the Regulator considers that it is necessary to do so in order to
- 29 avoid a significant risk to human health and safety or to the
- 30 environment.
- 31 (2) If the Regulator makes emergency rules as permitted by
- 32 subsection (1) of this section, the emergency rules are repealed on
- 33 the earlier of the following:
-

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- 1 (a) the day specified in the emergency rules or rules as the day  
2 the emergency rules are repealed;
- 3 (b) the first day after the end of the period of 6 months starting  
4 on the day the emergency rules commence.
- 5 (3) This section does not limit section 17 of the *Legislation Act 2003*  
6 (rule-makers should consult before making legislative instrument).

### 270 Section 194

- 7  
8 Repeal the section.

1 **Schedule 2—Consequential amendments**  
2

3 *Freedom of Information Act 1982*

4 **1 Schedule 3**

5 Omit:

6 *Gene Technology Act 2000*, subsections 187(1) and (2)

7 *Research Involving Human Embryos Act 2002*

8 **2 Section 47**

9 Repeal the section.