

## Genetically Modified Organisms Control Act 2004 (No. 45 of 2004)

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## **Genetically Modified Organisms Control Act 2004**

**An Act to provide for the whole or any part of Tasmania to be declared to be a genetically modified organisms free area for the purpose of preserving the identity of non-genetically modified crops and animals for marketing purposes, to provide for persons to be allowed to deal with genetically modified organisms under permits, to consequentially amend the Gene Technology Act 2001 and for related purposes**

**[Royal Assent 16 November 2004]**

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

### **PART 1 - Preliminary**

#### **1. Short title**

This Act may be cited as the *Genetically Modified Organisms Control Act 2004*.

#### **2. Commencement**

This Act commences on the day on which this Act receives the Royal Assent.

### 3. Interpretation

(1) In this Act, unless the contrary intention appears –

**"affected person"** means a person who is not a permit holder but –

(a) is specified in any site management plan which is included in, or attached to, the permit or the conditions to which the permit is subject; and

(b) deals with the GMO in respect of which the permit is issued, under the authority of that permit;

**"approved quarantine place"** means a place declared to be an approved quarantine place under section 28D;

**"authorised officer"** means a person appointed as an authorised officer under section 6(2);

**"deal with"**, in relation to a GMO, or thing that contains or may contain a GMO, means –

(a) conduct experiments with the GMO or thing; or

(b) make, develop, produce or manufacture the GMO or thing; or

(c) breed the GMO or thing; or

(d) propagate the GMO or thing; or

(e) use the GMO or thing in the course of manufacture of another thing that is not the GMO or thing; or

(f) grow, raise or culture the GMO or thing; or

(g) sow, maintain, prepare for harvest or harvest the GMO or thing; or

(h) import the GMO or thing into the State; or

(i) possess, have control or charge of, supply, use, transport or dispose of the GMO or thing; or

(j) be responsible for the occurrence or existence of the GMO or thing in a place;

**"destruction order"** means an order for the destruction of a GMO made under section 26;

**"examination"** includes any assessment, inspection, analysis or test;

**"exempt person"** means –

(a) a person of a class specified in an exemption from the operation of section 7(1) given under section 19(2); or

(b) a person who is the subject of an exemption from the operation of section 7(1) given under section 19(4);

**"exemption"** means an exemption from the operation of section 7(1) given under section 19(2) or (4);

**"genetically modified organism"** has the same meaning as in the *Gene Technology Act 2001*;

**"GMO"** means genetically modified organism;

**"GMO-free area"** means, while an order under section 5 is in force, the whole or the part of Tasmania declared by the Minister in the order to be an area that is free of GMOs;

**"GMO licence"** means –

(a) a GMO licence within the meaning of section 10(1) of the *Gene Technology Act 2000* of the Commonwealth; or

(b) a GMO licence within the meaning of the *Gene Technology Act 2001*;

**"permit"** means a permit granted under section 9;

**"permit holder"** means the person to whom a permit is granted under section 9;

**"plant"** includes –

(a) a crop; and

(b) the seed, flower, fruit, nut, leaf, bulb, corn, tuber, stem or other part of a plant, whether living or dead, and whether or not attached to the plant;

**"premises"** includes –

(a) a building; and

(b) a place (including an area of land); and

(c) a vehicle; and

(d) a facility; and

(e) a part of premises;

**"public notice"** means a notice published in any one or more of the following manners:

(a) in the *Gazette*;

(b) in a newspaper or magazine circulating generally in Tasmania;

(c) on the internet;

**"Secretary"** means the Secretary of the Department;

**"vehicle"** includes vessel and aircraft.

(2) For the purposes of paragraph (j) of the definition of "deal with" in subsection (1), a person is responsible for the occurrence or existence of a GMO in a place if the person introduced the GMO into that place.

#### **4. Act binds Crown**

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

#### **5. Declaration of GMO-free area**

(1) The Minister, by order, may declare the whole or any part of Tasmania to be an area that is free of GMOs if he or she considers that to do so would aid in preserving the identity of non-genetically modified crops and animals for marketing purposes.

(2) An order under subsection (1) is a statutory rule for the purposes of the *Rules Publication Act 1953*.

#### **6. Appointment of authorised officers**

(1) In this section –

**"Departmental officer"** means a person appointed subject to and in accordance with the *State Service Act 2000* for the purposes of the Department.

(2) The Secretary may appoint a Departmental officer to be an authorised officer.

#### **6A. Delegation by Secretary**

The Secretary may delegate any of his or her functions or powers under this Act other than this power of delegation.

### **PART 2 - Dealing with GMO in GMO-free Area Prohibited**

#### **7. Dealing with GMO in GMO-free area prohibited**

(1) A person must not knowingly deal with a GMO in a GMO-free area unless –

(a) that person is authorised to so deal with the GMO by –

(i) both a permit and a GMO licence; or

(ii) a permit if that dealing with the GMO would not be an offence under section 32(1) of the *Gene Technology Act 2000* of the Commonwealth; or

(b) that dealing is an exempt dealing within the meaning of section 32 of the *Gene Technology Act 2000* of the Commonwealth.

Penalty:

Fine not exceeding 2 000 penalty units.

(2) For the purposes of subsection (1), a person knowingly deals with a GMO if that person –

(a) knows that he or she is dealing with a GMO; or

(b) has reasonable grounds for suspecting that he or she is dealing with a GMO.

(3) It is a defence in proceedings for an offence under subsection (1) if the defendant establishes that he or she –

(a) took all reasonable steps to ensure that he or she did not deal with the GMO; or

(b) was an exempt person in relation to the GMO at the time he or she dealt with it.

## **PART 3 - Permits**

### *Division 1 - Obtaining permit and its form and effect*

#### **8. Application for permit**

(1) A person may apply to the Secretary for a permit to deal with a GMO in a GMO-free area.

(2) An application is to –

(a) be in a form approved by the Secretary; and

(b) be accompanied by any prescribed fee.

(3) The Secretary may require the applicant to provide any further information he or she considers relevant.

(4) An applicant is to notify the Secretary of any change which affects the information included in an application or provided under subsection (3) –

(a) before the change occurs if at all possible; or

(b) as soon as practicable after the change has occurred.

#### **9. Grant of permit**

(1) On receipt of an application under section 8, the Secretary may –

(a) grant a permit to the applicant; or

(b) refuse to grant a permit to the applicant.

(2) In determining whether or not to grant a permit, the Secretary is to consider –

(a) the location and purpose of the dealing with the GMO as proposed in the application; and

(b) the likely impact on market access for non-genetically modified crops and animals of the dealing with the GMO as proposed in the application; and

- (c) the management regime for the GMO as proposed in the application; and
- (d) any other matter the Secretary considers relevant.

(3) The Secretary may grant a permit to a person who has not applied for one under section 8 if –

(a) the Minister has declared an area to be a GMO-free area under section 5 or has notified the Secretary that he or she intends to make such a declaration; and

(b) there is a GMO in that area; and

(c) the Secretary is satisfied that the person to whom the permit is to be issued is responsible for introducing the GMO to that area or has otherwise had dealings with the GMO.

## **10. Issue of permit or notice of refusal**

(1) On granting a permit and on receipt of payment of any prescribed permit fee, the Secretary is to issue a permit to the person to whom it is granted.

(2) On refusing to grant a permit, the Secretary is to notify the applicant for the permit, in writing, of that refusal.

## **11. Term of permit**

(1) A permit is in force for the period determined by the Secretary and specified in the permit.

(2) A permit comes into force on the day it is issued or on a later day determined by the Secretary and specified in the permit.

(3) A permit ceases to be in force when any of the following occurs:

(a) the period for which the permit is in force ends;

(b) the permit is surrendered under section 18;

(c) the permit is cancelled under section 28A.

## **12. Permit subject to conditions**

(1) A permit is subject to any conditions determined by the Secretary and specified in the permit.

(2) Without limiting the conditions to which a permit may be subject, those conditions may include –

(a) a condition requiring, or relating to, the removal of a GMO from a GMO-free area; and

**(b)** a condition requiring the permit holder or an affected person, or both, to comply with a site management plan.

**(3)** The Secretary may determine the conditions to which a permit is subject when determining to grant the permit under section 9 or at any time after the permit has been issued.

**(4)** If the Secretary imposes conditions after the permit has been issued, those conditions take effect on the day the permit holder receives written notice of the conditions or on a later day specified in that notice.

**(4A)** If the Secretary imposes conditions after the permit has been issued, the Secretary is to notify each affected person of those conditions.

**(5)** The permit holder and an affected person must comply with the conditions to which the permit is subject.

Penalty:

Fine not exceeding 2 000 penalty units.

### **13. Form of permit**

**(1)** A permit is to –

**(a)** be in a form approved by the Secretary; and

**(b)** specify the premises or the area in which the dealing with the GMO authorised by the permit may occur; and

**(c)** specify any conditions to which the permit is subject; and

**(d)** if the conditions to which the permit is subject require the permit holder or an affected person, or both, to comply with a site management plan, have attached to it that site management plan.

**(2)** Conditions to which a permit is subject may be specified in the permit by –

**(a)** specifying those conditions in or on the permit; or

**(b)** attaching those conditions to the permit; or

**(c)** providing to the permit holder and each affected person a written notice containing those conditions.

**(3)** If the conditions to which the permit is subject require the permit holder or an affected person, or both, to comply with a site management plan, the site management plan may be attached to the permit by –

**(a)** attaching it to the permit; or

(b) attaching it to those conditions; or

(c) providing to the permit holder and each affected person a written notice containing the site management plan.

#### **14. Authority of permit**

(1) A permit authorises the permit holder and each affected person to deal with a GMO as specified in, and in accordance with, the permit.

(2) Nothing in subsection (1) authorises a permit holder or affected person to deal with a GMO in contravention of section 7.

#### **15. Permit not transferable**

A permit is not transferable to any other person.

#### **16. Amendment of permit, conditions or site management plan**

(1) The Secretary, on the application of the permit holder or an affected person or at his or her own discretion, may amend one or more of the following:

(a) a permit;

(b) the conditions to which a permit is subject;

(c) a site management plan referred to in the conditions to which a permit is subject.

(2) An application is to –

(a) be in a form approved by the Secretary; and

(b) be accompanied by any prescribed fee.

(3) The Secretary may require the applicant to provide any further information he or she considers relevant.

(4) An applicant is to notify the Secretary of any change which affects the information included in an application or provided under subsection (3) –

(a) before the change occurs if at all possible; or

(b) as soon as practicable after the change has occurred.

(5) If the Secretary amends a permit, the conditions to which a permit is subject or a site management plan referred to in such conditions, the Secretary is to –

(a) notify the permit holder of that amendment; and

**(b)** in the case of an amendment of a permit, either endorse that amendment on the permit and the copy of the permit held by each affected person or provide the permit holder and each affected person with a replacement permit or copy of the replacement permit; and

**(c)** in the case of an amendment of the conditions to which a permit is subject –

**(i)** endorse that amendment on the permit and the copy of the permit held by each affected person or provide the permit holder and each affected person with a replacement permit or a copy of the replacement permit; or

**(ii)** endorse that amendment on the conditions to which the permit is subject and the copy of those conditions held by each affected person or provide the permit holder and each affected person with replacement conditions or a copy of the replacement conditions; or

**(iii)** if only the site management plan is amended, endorse that amendment on the site management plan and the copy of the site management plan held by each affected person or provide the permit holder and each affected person with a replacement site management plan or a copy of the replacement site management plan.

**(6)** For the purposes of subsection (5)(b), the Secretary, in writing, may require the permit holder and each affected person to surrender to the Secretary one or more of the following documents:

**(a)** the permit or copy of the permit;

**(b)** the conditions to which the permit is subject or a copy of those conditions;

**(c)** a site management plan or a copy of a site management plan which is referred to in the conditions to which the permit is subject.

**(7)** A permit holder and an affected person must comply with a requirement made under subsection (6).

Penalty:

Fine not exceeding 10 penalty units.

**(8)** An amendment of a permit, the conditions to which a permit is subject or a site management plan referred to in such conditions takes effect on the day the permit holder receives written notice of the amendment or on a later day specified in that notice.

## **17. Renewal of permit**

**(1)** In this section –

**"expiry day"** means the day on which the term of a permit ends and the permit ceases to be in force.

**(2)** A permit holder may apply to the Secretary for the renewal of the permit not less than 3 calendar months before the expiry day.

(3) This Part applies in respect of an application for the renewal of a permit and that renewal as if the application were an application for a first permit.

(4) If –

(a) a permit holder applies for the renewal of a permit as specified in subsection (2); and

(b) the Secretary renews the permit –

the renewal takes effect on the day after the expiry day.

(5) If –

(a) a permit holder applies for the renewal of a permit as specified in subsection (2); and

(b) the Secretary has not renewed the permit by the expiry day –

the permit continues in force until the Secretary has notified the permit holder, in writing, of the renewal of the permit or until the application for renewal is withdrawn.

(6) If –

(a) a permit holder applies for the renewal of a permit as specified in subsection (2); and

(b) the Secretary refuses to renew the permit –

the Secretary is to notify the permit holder, and each affected person, of that refusal in writing, and the permit continues in force until the day specified in that notice.

## **18. Surrender of permit**

(1) With the approval of the Secretary, a permit holder may surrender the permit.

(2) The Secretary is to notify the permit holder, and each affected person, in writing, of his or her approval to the surrender of the permit.

(3) The approval of the Secretary is subject to any conditions specified in the notice under subsection (2).

(4) A surrender of a permit takes effect on the day the notice under subsection (2) is received by the permit holder or a later day specified in the notice.

(5) A notice under subsection (2) may specify the day on which the surrender of the permit takes effect by reference to –

(a) a time or a date; or

(b) the fulfilling of a condition; or

(c) the happening of an event; or

(d) any other thing the Secretary considers appropriate.

## **PART 3A - Exemptions**

### *Division 2 - . . . . .*

#### **19. Exempt persons**

(1) In this section –

"**unintended presence**", in relation to the presence of a GMO in a plant, means the presence of the GMO in the plant otherwise than by –

(a) the intentional action of a person whether or not under a GMO licence or a permit; or

(b) the reckless actions of any person.

(2) By notice in the *Gazette*, the Secretary may exempt persons of a class specified in the notice from the operation of section 7(1).

(3) If under subsection (2) the Secretary exempts persons of a class from the operation of section 7(1) in relation to a GMO, a person who is intentionally or recklessly responsible for the presence of that GMO is not a member of that class.

(4) By written notice provided to a person, the Secretary may exempt a person from the operation of section 7(1) if satisfied that the person did not intentionally or recklessly cause the presence of the GMO in respect of which the exemption is given.

(5) The Secretary may exempt a person under subsection (4) on his or her own discretion or on the request of the person.

(6) Despite subsections (2) and (4), the Secretary may not give an exemption under either of those subsections if the dealing with the GMO that would be allowed by the exemption would constitute an offence under section 32(1) of the *Gene Technology Act 2000* of the Commonwealth.

(7) An exemption may be given in relation to, or consideration of, any one or more of the following matters:

(a) the unintended presence of a GMO in a plant;

(b) the dealing by agricultural contractors, agricultural contracting companies, agricultural product processors or other persons with a GMO;

(c) any other matter the Secretary considers relevant.

(8) An exemption is subject to the conditions specified in it.

(9) In the case of an exemption given under subsection (2), the exemption in respect of a person of the class specified in the exemption is also subject to any conditions specified in a written notice provided to that person.

(10) The conditions to which an exemption given under subsection (2) is subject may be different or apply differently according to such factors as are specified in the exemption.

(11) A person who is given an exemption must comply with the conditions of the exemption.

Penalty:

Fine not exceeding 2 000 penalty units.

(12) The Secretary may at any time –

(a) revoke, suspend or amend an exemption given under subsection (2), including the conditions specified in it, by notice in the *Gazette*; and

(b) revoke, suspend or amend an exemption given under subsection (4), including the conditions to which it is subject, by written notice provided to the exempt person.

(13) Despite subsection (12)(b), if the Secretary is satisfied that an exempt person has contravened this Act or is satisfied of any matter prescribed for the purpose of section 28A(2)(b), the Secretary –

(a) may not revoke, suspend or amend the exemption under subsection (12)(b); but

(b) may take disciplinary action as specified in section 28A.

(14) For the purposes of subsection (12), the amendment of an exemption may include the addition of a condition to the exemption, whether or not the exemption previously included any conditions.

## **PART 4 - Inspections**

### **20. Inspections**

(1) For the purposes of determining whether or not a person is contravening this Act or the conditions to which a permit or exemption is subject, an authorised officer may at any time –

(a) enter, remain in and inspect any premises or area, other than premises that are a residence –

(i) in or from which an authorised officer has reasonable grounds for believing that a permit holder, affected person, exempt person or other person has dealt with, or is or may be dealing with, a GMO or anything that contains or may contain a GMO; or

**(ii)** in which an authorised officer has reasonable grounds for believing that any document relating to a dealing with a GMO or anything that contains or may contain a GMO is kept; and

**(b)** examine, seize, make copies of or take extracts from any document in those premises or that area; and

**(c)** take photographs, films, video recordings, audio recordings and other recordings in those premises or that area; and

**(d)** seize any thing that appears to indicate that an offence under this Act has been or is being committed; and

**(e)** operate mechanical, electrical and electronic equipment in those premises or that area; and

**(f)** undertake examinations, including destructive tests, in those premises or that area for the purpose of determining whether or not a GMO is present.

**(2)** In any premises or area lawfully entered under subsection (1), an authorised officer may require the permit holder, the affected person, the exempt person, a person apparently in charge of the premises or area or any person apparently employed by the permit holder, affected person or exempt person or in those premises or that area to –

**(a)** provide the authorised officer with his or her name and address; and

**(b)** answer any question that the authorised officer considers relevant; and

**(c)** provide as directed a document, or a copy of a document, that is in the person's possession or control and that the authorised officer considers relevant; and

**(d)** otherwise provide information that the person has access to and that the authorised officer considers relevant; and

**(e)** provide reasonable assistance in relation to the exercise of the authorised officer's powers.

**(3)** In the exercise of his or her powers under this section, an authorised officer may be assisted by such police officers or other persons as the authorised officer considers appropriate.

**(4)** A police officer or other person assisting an authorised officer has the same powers under this section as the authorised officer has.

**(5)** A person must not, without reasonable excuse, fail or refuse to comply with a requirement made under subsection (2).

Penalty:

Fine not exceeding 10 penalty units.

(6) On convicting a person of an offence under subsection (5), in addition to or instead of imposing a penalty the court may order that person to provide the answer, other information or document in respect of which the offence was committed.

## **21. Access to and possession of seized document or thing**

(1) If an authorised officer, or a police officer or person assisting an authorised officer, has seized or otherwise taken possession of a document or other thing under section 20 or 22 –

(a) the Secretary has possession of the document or thing; and

(b) the Secretary may retain the document or thing for so long as is necessary for the purposes of this Act; and

(c) the authorised officer must provide written notice of the seizure or taking of possession as soon as is reasonably practicable to –

(i) the person from whom it was seized or taken; or

(ii) the person who would be entitled to possession of the document if it were not in the possession of the Secretary; and

(d) on the request of a person who would be entitled to possession of the document if it were not in the possession of the Secretary, the Secretary must provide that person with a copy of the document certified by the Secretary to be a true copy.

(2) A copy of a document certified by the Secretary to be a true copy is to be received in all courts and elsewhere as if it were the original document.

## **22. Authorised officer may give directions**

(1) As a result of or during an inspection under section 20, an authorised officer may give written directions to any one or more of the following persons:

(a) a permit holder;

(b) an affected person;

(c) an exempt person;

(d) a person apparently employed by the permit holder, affected person or exempt person;

(e) a person who is apparently in charge of the premises or area inspected or being inspected;

(f) a person apparently employed in those premises or that area.

(2) Without limiting the directions that may be given under subsection (1), those directions may include directions requiring the person to whom they are given to take any actions or measures to ensure that a contravention of this Act or a condition to which the permit or exemption is subject does not, or does not continue, to occur.

(3) A person given a direction under subsection (1) must comply with the direction.

Penalty:

Fine not exceeding 1 000 penalty units.

(4) On convicting a person of an offence under subsection (3), in addition to or in instead of imposing a penalty the court may order that person to comply with the direction in respect of which the offence was committed.

(5) If –

(a) an authorised officer has given a direction under subsection (1) in respect of a GMO, a thing containing a GMO or a thing that the officer reasonably believes may contain a GMO; and

(b) that officer or another authorised officer reasonably believes that the person to whom the direction was given is not complying with it –

that officer or other authorised officer may take any measures, including the seizure and retention of the thing, that he or she considers appropriate.

### **23. Authorised officer to show identification**

If, during an inspection under section 20, a person to whom section 20(2) applies requests that the authorised officer produce identification –

(a) the officer must produce his or her identification as an authorised officer to that person; and

(b) the officer may not take any action or further action under this Act in relation to the inspection until he or she has so produced that identification.

### **24. Warrant to enter premises**

(1) If a person refuses to allow an authorised officer to enter, remain in and inspect premises or an area that the authorised officer on reasonable grounds believes, or if an authorised officer on reasonable grounds believes that a residence –

(a) are or is being used for the purposes of a dealing with a GMO or anything that contains or may contain a GMO; or

(b) may contain any documents relating to a dealing with a GMO or anything that contains or may contain a GMO –

the authorised officer may apply to a justice for a warrant.

(2) On receipt of an application under subsection (1), a justice may issue a warrant if satisfied, by information on oath –

(a) that a person has refused to allow an authorised officer to enter, remain in and inspect the premises or area; or

(b) that the authorised officer has reasonable grounds for the belief referred to in that subsection in relation to the residence.

(3) A warrant authorises an authorised officer and such police officers and other assistants as the authorised officer considers appropriate, using such force as is reasonable –

(a) to enter, remain in and inspect the premises, area or residence specified in the warrant; and

(b) to perform and exercise any functions and powers in those premises or that area or residence that the authorised officer, police officers and assistants may perform and exercise in, or in respect of, any premises or area lawfully entered under section 20.

(4) An application for a warrant –

(a) may be in a written form approved and provided by the Secretary; or

(b) if the justice is satisfied that the circumstances are urgent or that the delay resulting from a written application would frustrate the effective execution of the warrant, may be made by telephone, telex, facsimile, e-mail or other electronic means.

(5) Section 15 of the Search Warrants Act 1997 applies, with necessary modifications and adaptations, in respect of an application under this section and a warrant issued as a result of such an application.

(6) A person must not refuse to allow an authorised officer or any police officer or other person assisting the authorised officer to enter, remain in and inspect any premises, area or residence when authorised by a warrant under this section.

Penalty:

Fine not exceeding 10 penalty units.

## **25. Fee for inspection**

(1) By written notice provided to a permit holder, affected person or exempt person, the Secretary may require the permit holder, affected person or exempt person to pay a fee, determined by the Secretary, in respect of an inspection under section 20.

(2) A fee under subsection (1) must not exceed the reasonable costs of the inspection.

(3) The permit holder, affected person or exempt person must pay any fee he or she is required to pay under subsection (1).

(4) If the whole or any part of any fee the permit holder, affected person or exempt person is required to pay under subsection (1) is due and unpaid, that amount may be recovered in a court of competent jurisdiction as a debt due to the Crown.

## **25A. Compensation relating to inspection**

(1) A permit holder, affected person, exempt person or other person responsible for –

(a) a GMO; or

(b) a thing containing a GMO; or

(c) a thing that the authorised officer reasonably believed may have been or contained a GMO –

that has been destroyed or damaged as the result of an inspection under section 20 is not entitled to any compensation in relation to the destruction or damage if the destruction or damage was a consequence of the permit holder, affected person, exempt person or other person committing an offence under this Act or contravening the conditions to which a relevant permit or relevant exemption is subject.

(2) A permit holder, affected person, exempt person or other person responsible for –

(a) a GMO; or

(b) a thing containing a GMO; or

(c) a thing that the authorised officer reasonably believed may have been or contained a GMO –

that has been destroyed or damaged as the result of an inspection under section 20 is entitled to compensation in relation to the destruction or damage if the destruction or damage occurred for a reason other than that the permit holder, affected person, exempt person or other person committed an offence under this Act or contravened the conditions to which a relevant permit or relevant exemption is subject.

(3) A claim for compensation is to be –

(a) in a form approved by the Secretary; and

(b) accompanied by such evidence as the Secretary requires of the loss or damage suffered as the result of the destruction or damage; and

(c) made within one year after the destruction of, or damage to, the GMO, thing containing a GMO or thing that the authorised officer reasonably believed may have been or contained a GMO.

(4) Subject to subsection (6), the amount of compensation payable is the amount agreed between the Secretary and the permit holder, affected person, exempt person or other person responsible for the GMO, thing containing a GMO or thing that the authorised officer reasonably believed may have been or contained a GMO.

(5) If the permit holder, affected person, exempt person or other person and the Secretary cannot agree to the amount of compensation payable, the amount is to be determined, subject

to subsection (6), in the same manner as a disputed claim for compensation under the Land Acquisition Act 1993.

(6) Compensation payable under this section in relation to the destruction of, or damage to, a crop may not exceed the farm gate value of the crop.

(7) In subsection (6) –

"**farm gate value**", in relation to a crop, means the price at which the crop could reasonably be expected to have been sold by its primary producer if not destroyed or damaged as a result of an inspection under section 20.

(8) Compensation is payable out of money provided by Parliament for the purpose.

## **PART 5 - Destruction of GMO or thing containing GMO**

### **26. Order for destruction of GMO or thing containing GMO**

The Secretary, in writing, may order the destruction of a GMO or a thing that contains a GMO if he or she is satisfied that –

(a) an offence under this Act has been or is being committed in relation to the GMO or thing; or

(b) for any other reason the GMO or thing should be destroyed.

### **27. Destruction of GMO or thing containing GMO**

(1) . . . . .

(2) For the purposes of giving effect to a destruction order, an authorised officer may –

(a) enter and remain in the premises or area in which he or she reasonably believes the GMO or thing containing a GMO is situated; and

(b) require a permit holder, affected person, exempt person or person apparently in charge of the GMO or thing containing a GMO to destroy the GMO or thing in accordance with the notice provided under subsection (3); and

(c) seize the GMO or thing containing a GMO; and

(d) destroy the GMO or thing containing a GMO, either in those premises or that area or elsewhere.

(3) A requirement to destroy a GMO or thing containing a GMO under subsection (2)(b) is to be made by written notice, attached to a copy of the destruction order, provided to the permit holder, affected person, exempt person or person apparently in charge of the GMO or thing.

(4) When exercising powers under this section, an authorised officer may –

(a) be assisted by such police officers and other persons as the authorised officer considers appropriate; and

(b) use such force as the authorised officer considers necessary.

(5) A police officer or other person assisting an authorised officer has the same powers under this section as the authorised officer has.

(6) The Secretary may require a permit holder, affected person, exempt person or person apparently in charge of any GMO or thing containing a GMO to meet the whole or any part of the reasonable costs incurred in destroying the GMO or thing if an authorised officer destroys the GMO or thing under this section on the authority of a destruction order made because the Secretary is satisfied that an offence under this Act has been or is being committed in relation to the GMO or thing.

(7) A requirement under subsection (6) is to be made by written notice provided to the permit holder, affected person, exempt person or person apparently in charge of the GMO or thing containing a GMO.

(8) The permit holder, affected person, exempt person or person apparently in charge of the GMO or thing containing a GMO must meet any costs he or she is required to meet under subsection (6).

(9) If the whole or any part of any costs the permit holder, affected person, exempt person or person apparently in charge of the GMO or thing containing a GMO is required to meet under subsection (6) is due and unpaid, that amount may be recovered in a court of competent jurisdiction as a debt due to the Crown.

## **28. Compensation relating to destruction of GMO or thing containing GMO**

(1) A permit holder, affected person, exempt person or other person responsible for –

(a) a GMO; or

(b) a thing containing a GMO –

that has been destroyed under section 27 is not entitled to any compensation in relation to the destruction if the destruction was a consequence of the permit holder, affected person, exempt person or other person committing an offence under this Act or contravening the conditions to which a relevant permit or relevant exemption is subject.

(2) A permit holder, affected person, exempt person or other person responsible for –

(a) a GMO; or

(b) a thing containing a GMO –

that has been destroyed under section 27 is entitled to compensation in relation to the destruction if the destruction was for a reason other than that the permit holder, affected

person, exempt person or other person committed an offence under this Act or contravened the conditions to which a relevant permit or relevant exemption is subject.

(3) A claim for compensation is to be –

(a) in a form approved by the Secretary; and

(b) accompanied by such evidence as the Secretary requires of the loss or damage suffered as the result of the destruction; and

(c) made within one year after the destruction of the GMO or thing containing a GMO.

(4) Subject to subsection (5A), the amount of compensation payable is the amount agreed between the Secretary and the permit holder, affected person, exempt person or other person responsible for the GMO or thing containing a GMO.

(5) If the permit holder, affected person, exempt person or other person and Secretary cannot agree to the amount of compensation payable, the amount is to be determined, subject to subsection (5A), in the same manner as a disputed claim for compensation under the Land Acquisition Act 1993.

(5A) Compensation payable under this section in relation to the destruction of a crop may not exceed the farm gate value of the crop.

(5B) In subsection (5A) –

"**farm gate value**", in relation to a crop, means the price at which the crop could reasonably be expected to have been sold by its primary producer if not destroyed under section 27.

(6) Compensation is payable out of money provided by Parliament for the purpose.

## **PART 5A - Disciplinary Action**

### **28A. Disciplinary action**

(1) In this section –

"**disciplinary action**" means any one or more of the following:

(a) the issuing of a letter of censure;

(b) the imposition of a fine not exceeding 20 penalty units;

(c) the amendment of a permit or exemption;

(d) the suspension of a permit or exemption;

(e) the cancellation or revocation of a permit or exemption.

(2) Subject to this section, the Secretary may take disciplinary action if satisfied –

- (a) that a permit holder, affected person or exempt person has contravened this Act; or
- (b) of any other prescribed matter.

(3) The Secretary may not take disciplinary action, other than the issue of a letter of censure, without first allowing the permit holder, affected person or exempt person an opportunity to make submissions in relation to the matter and considering any submissions so made.

(4) A letter of censure may direct the permit holder, affected person or exempt person to take the action specified in the letter for the purposes of rectifying any matter giving rise to the letter of censure and may direct that the action be taken within a period specified in the letter.

(5) A permit holder, affected person or exempt person must comply with a direction given in a letter of censure within the period specified in the letter of censure.

(6) On determining whether or not to take disciplinary action under this section, the Secretary must notify the permit holder, affected person or exempt person in writing as to whether or not disciplinary action is being taken and, if so, what disciplinary action is being taken.

(7) The cancellation, revocation, suspension or amendment of a permit or exemption, or the amendment of the conditions to which a permit or exemption is subject, takes effect on the day the permit holder or exempt person receives the notice given under subsection (6) or on a later day specified in that notice.

(8) The Secretary may at any time terminate or reduce a period of suspension.

(9) The Secretary is to notify, in writing, each affected person –

(a) of the cancellation, suspension or amendment of a permit in the taking of disciplinary action against the permit holder; and

(b) of the termination or reduction of the period of the suspension of a permit which was imposed in taking disciplinary action against the permit holder.

(10) A fine imposed under this section may be recovered as a debt due to the Crown.

## **PART 5B - Importation and Quarantine of GMO**

### *Division 1 - Interpretation of Part*

#### **28B. Interpretation of Part**

In this Part –

"**responsible person**", in relation to a GMO or thing containing or that may contain a GMO, includes, if appropriate –

- (a) a permit holder; and
- (b) an affected person; and
- (c) an exempt person; and
- (d) the person in whose baggage or goods the GMO or thing is found when examined under section 28J; and
- (e) the person apparently in possession or in charge of the GMO or thing; and
- (f) the person apparently in possession or in charge of the GMO or thing before it is seized or removed to, or placed in, an approved quarantine place; and
- (g) the person who would take possession or charge of the thing were it released from the custody of the Secretary after being so seized or from the approved quarantine place; and
- (h) the person who would take possession or charge of the GMO or thing on its importation into the State.

### *Division 2 - Importation of GMO*

#### **28C. Conditions on importation of thing containing GMO**

(1) The Secretary, by public notice, may impose any conditions on the importation into the State of a thing, or a thing of a class, which the Secretary reasonably believes may contain a GMO if the Secretary considers it necessary to do so to prevent a GMO being introduced into a GMO-free area.

(2) If a person imports into the State a thing, or a thing of a class, in respect of which the Secretary has imposed conditions under subsection (1), the person must comply with those conditions.

Penalty:

Fine not exceeding 200 penalty units.

### *Division 3 - Quarantine of thing containing GMO*

#### **28D. Declaration of approved quarantine place**

(1) The Secretary, at his or her own discretion or on granting an application under section 28E, may declare a place to be an approved quarantine place.

(2) The Secretary may only declare a place to be an approved quarantine place if satisfied that the place is suitable to be used for the purposes of examining and quarantining things that contain or may contain a GMO.

(3) A declaration –

- (a) is to identify the place which is declared to be an approved quarantine place; and
- (b) is to specify the period during which the declaration is in force; and
- (c) is to specify the purposes for which the approved quarantine place may be used; and
- (d) may specify any conditions and restrictions on the use of the approved quarantine place that the Secretary considers appropriate; and
- (e) may provide for any other matter relating to the operation of the approved quarantine place that the Secretary considers appropriate.

(4) The Secretary may amend or revoke a declaration of an approved quarantine place.

#### **28E. Application for approval of place as approved quarantine place**

(1) A person may apply to the Secretary for a place to be declared an approved quarantine place.

(2) An application is to –

- (a) be in a form approved by the Secretary; and
- (b) specify the place to which the application relates; and
- (c) specify the purposes for which the place will be used if the application is granted; and
- (d) be accompanied by any prescribed fee.

(3) The Secretary may require the applicant to provide any further information the Secretary considers relevant.

(4) On receipt of an application, the Secretary may –

- (a) grant the application; or
- (b) refuse to grant the application.

(5) On determining an application, the Secretary is to notify the applicant, in writing, of that determination.

#### **28F. Operation of approved quarantine place**

Unless authorised by an authorised officer or a declaration of approved quarantine place, a person must not –

- (a) enter or leave an approved quarantine place; or
- (b) take anything into or out of an approved quarantine place.

Penalty:

Fine not exceeding 100 penalty units.

### **28G. Examination and treatment of thing in approved quarantine place, &c.**

(1) An authorised officer may examine a thing removed to or placed in an approved quarantine place to determine whether or not it contains a GMO.

(2) If an authorised officer reasonably believes that a thing removed to or placed in an approved quarantine place contains a GMO, the authorised officer is to arrange for it to be treated or destroyed, or for other measures to be taken, as he or she considers appropriate.

(3) An authorised officer may require the responsible person for a thing being examined or treated, or in respect of which other measures are being taken, in an approved quarantine place to provide any assistance the authorised officer requires.

(4) A responsible person for a thing must comply with a requirement made by an authorised officer under subsection (3).

Penalty:

Fine not exceeding 100 penalty units.

(5) An authorised officer may only arrange for, or require, the destruction of a thing that has a value greater than \$500 or, if another value is prescribed, that prescribed value with the written consent of the Secretary.

### **28H. Certificate of release**

An authorised officer may issue a certificate authorising the release of a thing removed to or placed in an approved quarantine place from the approved quarantine place if satisfied that –

(a) the thing –

(i) does not contain a GMO; or

(ii) has been treated, or otherwise has had measures taken in respect of it, so as not to pose a threat to a GMO-free area; and

(b) all applicable fees and charges relating to the examination and treatment of, or the taking of measures in respect of, the thing have been paid.

## ***Division 4 - Powers of authorised officers***

### **28I. Inspections**

If an authorised officer reasonably suspects that a GMO or a thing containing or that may contain a GMO may have been, or is likely to be, imported into the State in contravention of this Act, the authorised officer may at any reasonable time –

(a) enter, remain in and inspect any premises or area, other than premises that are a residence, in which the authorised officer reasonably suspects that –

(i) the GMO or thing containing, or that may contain, a GMO may be; or

(ii) any document relating to the importation into the State of the GMO or thing containing, or that may contain, a GMO may be kept; and

(b) stop any vehicle; and

(c) search any premises or area lawfully entered, and break open and search any cupboard, package or other container in the premises or area, for the presence of the GMO or thing containing, or that may contain, a GMO; and

(d) dismantle any thing if the authorised officer considers it necessary to do so for the purpose of determining whether or not a GMO or thing containing, or that may contain, a GMO is present; and

(e) search any person in or on any premises or area lawfully entered if the authorised officer reasonably believes the GMO or thing containing, or that may contain, a GMO is on the person; and

(f) examine, seize, make copies of or take extracts from any document in or on any premises or area lawfully entered; and

(g) take photographs, films, video recordings, audio recordings and other recordings in any premises or area lawfully entered; and

(h) operate mechanical, electrical and electronic equipment in any premises or area lawfully entered; and

(i) undertake examinations, including destructive tests, in any premises or area lawfully entered for the purpose of determining whether or not the GMO or thing containing, or that may contain, a GMO is present; and

(j) in any premises or area lawfully entered, exercise any other power an authorised officer may exercise under this Part.

## **28J. Examining baggage and goods entering State**

(1) An authorised officer may examine and search baggage and other goods entering the State if the officer reasonably believes that –

(a) a GMO or thing containing, or that may contain, a GMO has been or may have been imported into the State in contravention of this Part; or

(b) it is necessary to do so to prevent a GMO being introduced to a GMO-free area.

(2) For the purposes of an examination, an authorised officer may –

(a) require a person entering the State to submit his or her baggage or goods for examination; and

(b) open the baggage or goods; and

(c) open any package or other container in the baggage or goods; and

(d) dismantle any thing if the authorised officer considers it necessary to do so for the purpose of determining whether or not a GMO or thing containing, or that may contain, a GMO is present; and

(e) examine, seize, make copies of or take extracts from any document in, on or accompanying the baggage or goods; and

(f) take photographs, films, video recordings, audio recordings and other recordings in relation to the examination; and

(g) operate mechanical, electrical and electronic equipment in relation to the examination or which comprises or is in, on or accompanying the baggage or goods; and

(h) undertake examinations, including destructive tests, for the purpose of determining whether or not a GMO or thing containing, or that may contain, a GMO is present in or on the baggage or goods; and

(i) exercise any other power an authorised officer may exercise under this Part.

(3) If on conducting an examination the authorised officer discovers a thing he or she reasonably believes is a GMO or a thing he or she reasonably believes contains or may contain a GMO, the authorised officer may do any one or more of the following:

(a) remove the thing to, or place the thing in, an approved quarantine place;

(b) require the person to remove the thing to, or place the thing in, an approved quarantine place;

(c) exercise any other power an authorised officer may exercise under this Part.

(4) A person must comply with a requirement made under subsection (3).

Penalty:

Fine not exceeding 50 penalty units.

(5) On convicting a person of an offence under subsection (4), in addition to or instead of imposing a penalty the court may order the person to comply with the requirement.

## **28K. Samples**

When performing or exercising any functions or powers under this Part, an authorised officer may –

(a) take samples from, or specimens of, a thing that the authorised officer reasonably suspects is a GMO or may contain a GMO; and

(b) submit a sample or specimen taken under paragraph (a) for examination at a laboratory approved by the Secretary.

## **28L. Seizure**

(1) When performing or exercising any functions or powers under this Part, an authorised officer may seize –

(a) a GMO or thing that the authorised officer reasonably believes contains or may contain a GMO that has been imported into the State in contravention of this Part; or

(b) a GMO or thing in respect of which that or another authorised officer has given a direction to a person under this Part if that authorised officer reasonably believes that the person has not complied with the direction; or

(c) a document or thing that appears to indicate that an offence under this Part has been or is being committed.

(2) If an authorised officer, or a police officer or person assisting an authorised officer, has seized or otherwise taken possession of a document, GMO or other thing under this Part –

(a) the Secretary has possession of the document, GMO or thing while the Secretary retains it; and

(b) the Secretary may retain the document, GMO or thing for so long as is necessary for the purposes of this Act; and

(c) the authorised officer must provide written notice of the seizure or taking of possession as soon as is reasonably practicable to –

(i) the person from whom the document, GMO or thing was seized or taken; or

(ii) the person who would be entitled to possession of it if it were not in the possession of the Secretary; and

(d) on the request of a person who would be entitled to possession of the document if it were not in the possession of the Secretary, the Secretary must provide that person with a copy of the document certified by the Secretary to be a true copy; and

(e) the Secretary may release the document, GMO or thing, subject to any conditions the Secretary considers appropriate, to the person entitled to possession of it.

(3) Without the written permission of the Secretary, a person must not interfere with or remove from the possession of the Secretary a document, GMO or other thing seized by an authorised officer, police officer or person assisting an authorised officer under this Part.

Penalty:

Fine not exceeding 100 penalty units.

(4) A copy of a document certified by the Secretary to be a true copy is to be received in all courts and elsewhere as if it were the original document.

### **28M. Treatment, &c., of GMO or thing containing GMO**

(1) If an authorised officer, when performing or exercising any functions or powers under this Part, reasonably believes that –

(a) a GMO has been imported into the State in contravention of this Part; or

(b) a thing contains or may contain a GMO and has been imported into the State in contravention of this Part –

the authorised officer may arrange for the GMO or thing to be treated or destroyed, or for other measures to be taken, as he or she considers appropriate.

(2) Without limiting subsection (1), the authorised officer may arrange for measures to be taken in respect of the GMO or thing by arranging for one or more of the following:

(a) the isolation of the GMO or thing;

(b) the tagging or marking of the GMO or thing for the purposes of identification;

(c) the return of the GMO or thing to the place from where it came.

(3) An authorised officer may only arrange for the destruction of a thing that has a value greater than \$500 or, if another value is prescribed, that prescribed value with the written consent of the Secretary.

### **28N. Authorised officer may give directions**

(1) When performing or exercising, or as a result of the performance or exercise of, any functions or powers under this Part in relation to a GMO or thing containing, or that may contain, a GMO, an authorised officer may give written directions to one or more of the following persons:

(a) the responsible person for the GMO or thing;

(b) a person who is apparently in charge of the premises or area inspected;

(c) a person apparently employed by the responsible person for the GMO or thing or in the premises or area inspected;

(d) the operator of, or a person who is apparently in charge of or employed in, an approved quarantine place.

(2) Without limiting the directions that may be given under subsection (1), those directions may include directions directing the person to whom they are given to take any actions or measures to ensure that –

(a) a contravention of this Part; or

(b) a contravention of a condition or restriction to which the importation into the State of a GMO or thing, or a permit or exemption, is subject –

does not occur or does not continue to occur.

(3) A person given a direction under subsection (1) must comply with the direction.

Penalty:

Fine not exceeding 50 penalty units.

(4) On convicting a person of an offence under subsection (3), in addition to or in instead of imposing a penalty the court may order the person to comply with the direction in respect of which the offence was committed.

#### **28O. Requiring assistance of responsible person, &c.**

(1) If an authorised officer when performing or exercising any functions or powers under this Part becomes aware of a thing that he or she reasonably believes is, contains or may contain a GMO, the authorised officer may require a person to whom the authorised officer may give directions under section 28N(1) to do one or more of the following:

(a) provide any assistance the authorised officer requires in relation to the removal of the thing to, or the placement of the thing in, an approved quarantine place;

(b) remove the thing to, or place the thing in, the approved quarantine place specified in the requirement in accordance with any conditions specified in the requirement.

(2) A person must comply with a requirement made under subsection (1).

Penalty:

Fine not exceeding 100 penalty units.

#### **28P. Requiring information**

(1) When performing or exercising any functions or powers under this Part, an authorised officer may require a person to whom the authorised officer may give directions under section 28N(1) to –

(a) provide the authorised officer with his or her name and address; and

(b) answer any question that the authorised officer considers relevant; and

(c) provide as directed a document, or a copy of a document, that is in the person's possession or control and that the authorised officer considers relevant; and

(d) otherwise provide information that the person has access to and that the authorised officer considers relevant.

(2) A person must comply with a requirement made under subsection (1) unless the person has a reasonable excuse for not doing so.

Penalty:

Fine not exceeding 50 penalty units.

(3) On convicting a person of an offence under subsection (2), in addition to or instead of imposing a penalty the court may order the person to provide the answer, other information or document in respect of which the offence was committed.

### **28Q. General assistance and facilities**

(1) If an authorised officer considers it necessary for the performance or exercise of any functions or powers under this Part, the authorised officer may require any person –

(a) to give reasonable assistance to the authorised officer; and

(b) to provide for the use of the authorised officer any facilities that –

(i) the authorised officer considers necessary for the safe, effective and efficient performance or exercise of those functions or powers; and

(ii) are reasonable to be provided by the person; and

(iii) are in the possession or control of the person.

(2) A person must comply with a requirement made under subsection (1).

Penalty:

Fine not exceeding 50 penalty units.

### **28R. Authorised officer may have assistants**

(1) When performing or exercising any functions or powers under this Part, an authorised officer may be assisted by such police officers or other persons as the authorised officer considers appropriate.

(2) A police officer or other person assisting an authorised officer has the same powers under this Part as the authorised officer has.

### **28S. Use of force**

When performing or exercising any functions or powers under this Part, an authorised officer may use any reasonable force necessary in the circumstances.

#### **28T. Authorised officer to show identification**

If, when an authorised officer proposes to perform or exercise, or performs or exercises, any functions or powers under this Part, a person to whom the authorised officer may give directions under section 28N(1) requests that the officer produce identification –

(a) the officer must produce his or her identification as an authorised officer to that person; and

(b) the officer may not perform or exercise, or continue to perform or exercise, any functions or powers under this Act until he or she has so produced that identification.

#### **28U. Warrant to enter premises**

(1) An authorised officer may apply to a magistrate for a warrant if –

(a) a person refuses to allow an authorised officer to enter, remain in and inspect premises or an area and the authorised officer on reasonable grounds believes that the premises or area contains or may contain a GMO or thing in respect of which an offence under this Part is being or has been committed or a document relating to the importation into the State of such a GMO or thing; or

(b) the authorised officer on reasonable grounds believes that a residence contains or may contain a GMO or thing in respect of which an offence under this Part is being or has been committed or a document relating to the importation into the State of such a GMO or thing.

(2) On receipt of an application under subsection (1), a magistrate may issue a warrant if satisfied, by information on oath –

(a) that a person has refused to allow an authorised officer to enter, remain in and inspect the premises or area; or

(b) that the authorised officer has reasonable grounds for the belief referred to in that subsection in relation to the residence.

(3) A warrant authorises an authorised officer and such police officers and other assistants as the authorised officer considers appropriate, using such force as is reasonable –

(a) to enter, remain in and inspect the premises, area or residence specified in the warrant; and

(b) to perform and exercise any functions and powers in the premises, area or residence that the authorised officer, police officers and assistants may perform and exercise in, or in respect of, any premises, area or residence lawfully entered under this Part.

(4) An application for a warrant –

(a) may be in a written form approved and provided by the Secretary; or

**(b)** if the justice is satisfied that the circumstances are urgent or that the delay resulting from a written application would frustrate the effective execution of the warrant, may be made by telephone, telex, facsimile, email or other electronic means.

**(5)** Section 15 of the Search Warrants Act 1997 applies, with necessary modifications and adaptations, in respect of an application under this section and a warrant issued as a result of such an application.

**(6)** A person must not refuse to allow an authorised officer or any police officer or other person assisting the authorised officer to enter, remain in and inspect any premises, area or residence when authorised by a warrant under this section.

Penalty:

Fine not exceeding 10 penalty units.

## **PART 6 - Offences**

### **29. Offences in relation to inspections, &c.**

A person must not, without reasonable excuse –

**(a)** resist, impede, obstruct or assault –

**(i)** an authorised officer who is performing or exercising any function or power under this Act; or

**(ii)** a person assisting that authorised officer; or

**(b)** use threatening, abusive or insulting language to such an authorised officer or assistant; or

**(c)** prevent or attempt to prevent a person from answering questions, giving information or providing documents to such an officer or assistant; or

**(d)** impersonate an authorised officer.

Penalty:

Fine not exceeding 10 penalty units.

### **29A. False or misleading statements**

A person must not, in giving any information under this Act –

**(a)** make a statement knowing it to be false or misleading; or

**(b)** omit any matter from a statement knowing that without that matter the statement is false or misleading; or

(c) provide a document that the person knows to be false or misleading without informing the person to whom the document is provided of that knowledge.

Penalty:

Fine not exceeding 30 penalty units.

## **PART 7 - Review of Decisions**

### **30. Review of decisions**

(1) In this section –

"**personal exemption**" means an exemption granted under section 19(4).

(2) A person aggrieved by any of the following decisions of the Secretary may apply to the Magistrates Court (Administrative Appeals Division) for a review of that decision:

- (a) the refusal to grant a permit or personal exemption;
- (b) the refusal to renew a permit;
- (c) the imposition of a condition to which a permit or personal exemption is subject;
- (d) the amendment of a permit or personal exemption, including the amendment of any conditions to which the permit or personal exemption is subject;
- (e) the cancellation or suspension of a permit or personal exemption;
- (f) a prescribed decision.

## **PART 8 - Miscellaneous**

### **31. Offence by body corporate**

(1) If a body corporate commits an offence against this Act, each person concerned in the management of the body corporate is taken to have also committed the offence and may be convicted of the offence unless the person shows that –

- (a) the act or omission constituting the offence took place without the person's knowledge or consent; or
- (b) the person used all due diligence to prevent that act or omission by the body corporate.

(2) A person referred to in subsection (1) may be convicted of an offence against this Act whether or not the body corporate is charged with, or convicted of, the offence.

### **32. Continuing offence**

If an offence against this Act is a continuing offence, a person who commits the offence is liable, in addition to the penalty otherwise prescribed, to a further penalty not exceeding one-fifth of the maximum penalty otherwise prescribed for each day during which the offence continues.

### **33. Evidence**

(1) In this section –

"**specified**" means specified in a certificate referred to in subsection (2).

(2) In any legal proceedings, a document purporting to be a certificate signed by the Secretary and relating to one or more of the following matters is evidence of the facts stated in the certificate:

- (a) the appointment of an authorised officer under this Act;
- (b) whether or not a specified person was a permit holder at the specified time;
- (c) whether or not a specified condition was a condition to which a specified permit was subject at the specified time;
- (d) whether or not a destruction order was in force at a specified time and the specified details of a destruction order;
- (e) the amount of costs incurred in the taking of specified action under this Act;
- (f) whether or not a thing was a GMO at the specified time.

### **34. Regulations**

(1) The Governor may make regulations for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the regulations may provide for the waiver of fees.

(3) Regulations may be made so as to apply differently according to such factors as are specified in the regulations.

(4) The regulations may provide that a contravention of any of the regulations is an offence.

(5) The regulations may authorise any matter to be from time to time determined, applied or regulated by the Secretary.

(6) Regulations made under this section may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any enactment amending this Act.

(7) A provision referred to in subsection (6) may, if the regulations so provide, take effect from the commencement of this Act, or the enactment amending this Act, or from a later day.

### **35. Administration of Act**

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

(a) the administration of this Act is assigned to the Minister for Primary Industries and Water; and

(b) the department responsible to that Minister in relation to the administration of this Act is the Department of Primary Industries, Water and Environment.

### **36. Expiry**

This Act expires 5 years after it commences, inclusive of the day on which it commences.

### **37.**

See Schedule 1.

## **SCHEDULE 1**

*The amendments effected by Section 37 and this Schedule have been incorporated into the authorised version of the Gene Technology Act 2001.*