

TASMANIA

**GENETICALLY MODIFIED ORGANISMS
CONTROL AMENDMENT BILL 2007**

CONTENTS

1. Short title
2. Commencement
3. Principal Act
4. Section 3 amended (Interpretation)
5. Section 6A inserted
 - 6A. Delegation by Secretary
6. Section 7 substituted
 7. Dealing with GMO in GMO-free area prohibited
7. Section 11 amended (Term of permit)
8. Section 12 amended (Permit subject to conditions)
9. Section 13 amended (Form of permit)
10. Section 14 substituted
 14. Authority of permit
11. Section 16 amended (Amendment of permit, conditions or site management plan)
12. Section 17 amended (Renewal of permit)
13. Section 18 amended (Surrender of permit)
14. Part 3, Division 2 substituted
 - PART 3A – Exemptions
 19. Exempt persons
15. Section 20 amended (Inspections)

16. Section 21 amended (Access to and possession of seized document or thing)
17. Section 22 amended (Authorised officer may give directions)
18. Section 24 amended (Warrant to enter premises)
19. Section 25 amended (Fee for inspection)
20. Section 25A inserted
 - 25A. Compensation relating to inspection
21. Part 5: Heading amended
22. Section 26 amended (Order for destruction of GMO or thing containing GMO)
23. Section 27 amended (Destruction of GMO or thing containing GMO)
24. Section 28 substituted
 28. Compensation relating to destruction of GMO or thing containing GMO
25. Parts 5A and 5B inserted
 - PART 5A – Disciplinary Action
 - 28A. Disciplinary action
 - PART 5B – Importation and Quarantine of GMO
 - Division 1 – Interpretation of Part*
 - 28B. Interpretation of Part
 - Division 2 – Importation of GMO*
 - 28C. Conditions on importation of thing containing GMO
 - Division 3 – Quarantine of thing containing GMO*
 - 28D. Declaration of approved quarantine place
 - 28E. Application for approval of place as approved quarantine place
 - 28F. Operation of approved quarantine place
 - 28G. Examination and treatment of thing in approved quarantine place, &c.
 - 28H. Certificate of release
 - Division 4 – Powers of authorised officers*
 - 28I. Inspections
 - 28J. Examining baggage and goods entering State
 - 28K. Samples
 - 28L. Seizure
 - 28M. Treatment, &c., of GMO or thing containing GMO
 - 28N. Authorised officer may give directions
 - 28O. Requiring assistance of responsible person, &c.
 - 28P. Requiring information

- 28Q. General assistance and facilities
 - 28R. Authorised officer may have assistants
 - 28S. Use of force
 - 28T. Authorised officer to show identification
 - 28U. Warrant to enter premises
26. Section 29A inserted
- 29A. False or misleading statements
27. Section 30 substituted
- 30. Review of decisions

**GENETICALLY MODIFIED ORGANISMS
CONTROL AMENDMENT BILL 2007**

*(Brought in by the Minister for Primary Industries and Water,
the Honourable David Edward Llewellyn)*

A BILL FOR

**An Act to amend the *Genetically Modified Organisms
Control Act 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:

1. Short title

This Act may be cited as the *Genetically
Modified Organisms Control Amendment Act
2007*.

2. Commencement

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

Genetically Modified Organisms Control Amendment Act 2007
Act No. of

s. 3

3. Principal Act

In this Act, the *Genetically Modified Organisms Control Act 2004** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by inserting the following definitions before the definition of “authorised officer” in subsection (1):

“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;

*No. 45 of 2004

Genetically Modified Organisms Control Amendment Act 2007
Act No. of

s. 4

- (b) by omitting the definition of “deal with” from subsection (1) and substituting the following definition:

“**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,

Genetically Modified Organisms Control Amendment Act 2007
Act No. of

s. 4

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;

(c) by inserting the following definitions
after the definition of “destruction order”
in subsection (1):

“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);

(d) by omitting the definition of “premises”
from subsection (1) and substituting the
following definitions:

“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;

Genetically Modified Organisms Control Amendment Act 2007
Act No. of

s. 5

- (e) by omitting “Department.” from the definition of “Secretary” in subsection (1) and substituting “Department;”;
- (f) by inserting the following definition after the definition of “Secretary” in subsection (1):

“vehicle” includes vessel and aircraft.
- (g) by omitting from subsection (2) ‘paragraph (i) of the definition of “deal with”,’ and substituting ‘paragraph (j) of the definition of “deal with” in subsection (1),’.

5. Section 6A inserted

After section 6 of the Principal Act, the following section is inserted in Part 1:

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.

6. Section 7 substituted

Section 7 of the Principal Act is repealed and the following section is substituted:

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.

Genetically Modified Organisms Control Amendment Act 2007
Act No. of

s. 7

- (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.

7. Section 11 amended (Term of permit)

Section 11(3)(c) of the Principal Act is amended by omitting “section 19.” and substituting “section 28A.”.

8. Section 12 amended (Permit subject to conditions)

Section 12 of the Principal Act is amended as follows:

- (a) by omitting subsection (2) and substituting the following subsection:
 - (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.
- (b) by inserting the following subsection after subsection (4):
 - (4A) If the Secretary imposes conditions after the permit has been issued, the Secretary is to notify each affected person of those conditions.
- (c) by inserting in subsection (5) “and an affected person” after “holder”.

9. Section 13 amended (Form of permit)

Section 13 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(c) “subject.” and substituting “subject; and”;
- (b) by inserting the following paragraph after paragraph (c) in subsection (1):
 - (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

Genetically Modified Organisms Control Amendment Act 2007
Act No. of

s. 10

attached to it that site
management plan.

- (c) by inserting in subsection (2)(c) “and each affected person” after “holder”;
- (d) by inserting the following subsection after subsection (2):
 - (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.

10. Section 14 substituted

Section 14 of the Principal Act is repealed and
the following section is substituted:

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.

11. Section 16 amended (Amendment of permit, conditions or site management plan)

Section 16 of the Principal Act is amended as follows:

- (a) by omitting subsection (1) and substituting the following subsection:
 - (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.

Genetically Modified Organisms Control Amendment Act 2007
Act No. of

s. 11

(b) by omitting subsections (5) and (6) and substituting the following subsections:

(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

Genetically Modified Organisms Control Amendment Act 2007
Act No. of

s. 11

- 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

Genetically Modified Organisms Control Amendment Act 2007
Act No. of

s. 11

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.

(c) by inserting in subsection (7) “and an affected person” after “holder”;

- (d) by omitting from subsection (8) “permit or the conditions to which the permit is subject” and substituting “permit, the conditions to which a permit is subject or a site management plan referred to in such conditions”.

12. Section 17 amended (Renewal of permit)

Section 17(6) of the Principal Act is amended by omitting “holder” second occurring and substituting “holder, and each affected person,”.

13. Section 18 amended (Surrender of permit)

Section 18(2) of the Principal Act is amended by inserting “and each affected person,” after “holder,”.

14. Part 3, Division 2 substituted

Division 2 of Part 3 of the Principal Act is repealed and the following Part is substituted:

PART 3A – EXEMPTIONS

19. Exempt persons

- (1) In this section –

“**unintended presence**”, in relation to the presence of a GMO in a plant,

Genetically Modified Organisms Control Amendment Act 2007
Act No. of

s. 14

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

Genetically Modified Organisms Control Amendment Act 2007
Act No. of

s. 14

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.

15. Section 20 amended (Inspections)

Section 20 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “or exemption” after “which a permit”;
- (b) by omitting subparagraph (i) from subsection (1)(a) and substituting the following subparagraph:
 - (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
- (c) by inserting in subsection (1)(a)(ii) “or anything that contains or may contain a GMO” after “GMO”;
- (d) by omitting from subsection (1)(e) “area.” and substituting “area; and”;

Genetically Modified Organisms Control Amendment Act 2007
Act No. of

s. 16

- (e) by inserting the following paragraph after paragraph (e) in subsection (1):
 - (f) undertake examinations, including destructive tests, in those premises or that area for the purpose of determining whether or not a GMO is present.
- (f) by inserting in subsection (2) “the affected person, the exempt person,” after “require the permit holder,”;
- (g) by omitting from subsection (2) “holder” second occurring and substituting “holder, affected person or exempt person”;
- (h) by inserting in subsection (6) “or instead of” after “addition to”.

16. Section 21 amended (Access to and possession of seized document or thing)

Section 21(1) of the Principal Act is amended by omitting “section 20” and substituting “section 20 or 22”.

17. Section 22 amended (Authorised officer may give directions)

Section 22 of the Principal Act is amended as follows:

(a) by omitting subsections (1) and (2) and substituting the following subsections:

(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

Genetically Modified Organisms Control Amendment Act 2007
Act No. of

s. 17

contravention of this Act or a condition to which the permit or exemption is subject does not, or does not continue, to occur.

- (b) by inserting in subsection (4) “or in instead of” after “addition to”;
- (c) by inserting the following subsection after subsection (4):

(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.

18. Section 24 amended (Warrant to enter premises)

Section 24(1) of the Principal Act is amended as follows:

- (a) by inserting in paragraph (a) “a GMO or anything that contains or may contain” after “with”;
- (b) by inserting in paragraph (b) “a GMO or anything that contains or may contain” after “with”.

19. Section 25 amended (Fee for inspection)

Section 25 of the Principal Act is amended as follows:

- (a) by omitting subsection (1) and substituting the following subsection:
 - (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.
- (b) by omitting from subsection (3) “holder” and substituting “holder, affected person or exempt person”;

Genetically Modified Organisms Control Amendment Act 2007
Act No. of

s. 20

- (c) by omitting from subsection (4) “holder” and substituting “holder, affected person or exempt person”.

20. Section 25A inserted

After section 25 of the Principal Act, the following section is inserted in Part 4:

25A. Compensation relating to inspection

- (1) In this section –

“farm gate value”, in relation to a plant, means the price at which the plant 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.

- (2) A permit holder, affected person, exempt person or other person may be entitled to compensation for the destruction of or damage to a plant, or to a thing containing or that the authorised officer reasonably believed may have contained a GMO, suffered as a result of an inspection under section 20 if the Minister is satisfied that the inspection established that this Act and, if applicable, the conditions to which the permit or exemption is subject have not been contravened by the permit holder,

affected person, exempt person or other person.

- (3) A permit holder, affected person, exempt person or other person is not entitled to compensation for the destruction of, or damage to, a plant or thing suffered as a result of an inspection under section 20 if the Minister is satisfied that the inspection established that this Act or a condition to which the permit or exemption is subject has been contravened by the permit holder, affected person, exempt person or other person.
- (4) A claim for compensation is to be made to the Minister in the first instance within one year after the day on which the inspection occurred.
- (5) Compensation payable under this section in relation to the destruction of, or damage to, a plant may not exceed the farm gate value of the plant.

21. Part 5: Heading amended

Part 5 of the Principal Act is amended by inserting in the heading to that Part “**OR THING CONTAINING GMO**” after “**GMO**”.

22. Section 26 amended (Order for destruction of GMO or thing containing GMO)

Section 26 of the Principal Act is amended as follows:

- (a) by inserting “or a thing that contains a GMO” after “a GMO”;
- (b) by omitting from paragraph (a) “GMO;” and substituting “GMO or thing;”;
- (c) by inserting in paragraph (b) “or thing” after “GMO”.

23. Section 27 amended (Destruction of GMO or thing containing GMO)

Section 27 of the Principal Act is amended as follows:

- (a) by omitting subsection (1);
- (b) by inserting in subsection (2)(a) “or thing containing a GMO” after “GMO”;
- (c) by omitting from subsection (2)(b) “holder or a responsible person to destroy the GMO” and substituting “holder, affected person, exempt person or person apparently in charge of the GMO or thing containing a GMO to destroy the GMO or thing”;

Genetically Modified Organisms Control Amendment Act 2007
Act No. of

s. 23

- (d) by omitting from subsection (2)(c) “GMO;” and substituting “GMO or thing containing a GMO;”;
- (e) by omitting from subsection (2)(d) “GMO,” and substituting “GMO or thing containing a GMO;”;
- (f) by inserting in subsection (3) “or thing containing a GMO” after “a GMO”;
- (g) by omitting from subsection (3) “holder or the responsible person.” and substituting “holder, affected person, exempt person or person apparently in charge of the GMO or thing.”;
- (h) by omitting from subsection (6) “holder or a responsible person” and substituting “holder, affected person, exempt person or person apparently in charge of any GMO or thing containing a GMO”;
- (i) by inserting in subsection (6) “or thing” after “destroying the GMO”;
- (j) by inserting in subsection (6) “or thing” after “destroys the GMO”;
- (k) by omitting from subsection (6) “GMO.” and substituting “GMO or thing.”;
- (l) by omitting from subsection (7) “holder or the responsible person.” and substituting “holder, affected person, exempt person or person apparently in

Genetically Modified Organisms Control Amendment Act 2007
Act No. of

s. 24

charge of the GMO or thing containing a GMO.”;

- (m) by omitting from subsection (8) “holder or the responsible person” and substituting “holder, affected person, exempt person or person apparently in charge of the GMO or thing containing a GMO”;
- (n) by omitting from subsection (9) “holder or the responsible person” and substituting “holder, affected person, exempt person or person apparently in charge of the GMO or thing containing a GMO”.

24. Section 28 substituted

Section 28 of the Principal Act is repealed and the following section is substituted:

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

- (1) In this section –

“farm gate value”, in relation to a plant, means the price at which the plant could reasonably be expected to have been sold by its primary producer if not destroyed under a destruction order.

- (2) A permit holder, affected person, exempt person or other person may be entitled to

compensation for the destruction of a GMO or a thing containing a GMO under a destruction order 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.

- (3) A permit holder, affected person, exempt person or other person is not entitled to any compensation for the destruction of a GMO or a thing containing a GMO under a destruction order if the destruction was a consequence of the permit holder, affected person, exempt person or other person committing an offence under this Act.
- (4) A claim for compensation is to be made to the Minister in the first instance within one year after the day on which the inspection occurred.
- (5) Compensation payable under this section in relation to the destruction of a plant may not exceed the farm gate value of the plant.

25. Parts 5A and 5B inserted

After section 28 of the Principal Act, the following Parts are inserted:

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.

Genetically Modified Organisms Control Amendment Act 2007
Act No. of

s. 25

- (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

Genetically Modified Organisms Control Amendment Act 2007
Act No. of

s. 25

- (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

Genetically Modified Organisms Control Amendment Act 2007
Act No. of

s. 25

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

Genetically Modified Organisms Control Amendment Act 2007
Act No. of

s. 25

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

Genetically Modified Organisms Control Amendment Act 2007
Act No. of

s. 25

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

Genetically Modified Organisms Control Amendment Act 2007
Act No. of

s. 25

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

Genetically Modified Organisms Control Amendment Act 2007
Act No. of

s. 25

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 –

Genetically Modified Organisms Control Amendment Act 2007
Act No. of

s. 25

(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

Genetically Modified Organisms Control Amendment Act 2007
Act No. of

s. 25

- (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

Genetically Modified Organisms Control Amendment Act 2007
Act No. of

s. 25

- (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,

Genetically Modified Organisms Control Amendment Act 2007
Act No. of

s. 25

- 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.

26. Section 29A inserted

After section 29 of the Principal Act, the following section is inserted in Part 6:

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

Genetically Modified Organisms Control Amendment Act 2007
Act No. of

s. 27

(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.

27. Section 30 substituted

Section 30 of the Principal Act is repealed and the following section is substituted:

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;

Genetically Modified Organisms Control Amendment Act 2007
Act No. of

s. 27

- (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.