

South Australia

# Genetically Modified Crops Management Act 2004

An Act to provide for the designation of areas of the State for the purposes of preserving for marketing purposes the identity of certain food crops according to whether they are genetically modified crops or non-genetically modified crops; to provide for the segregation of genetically modified food crops and their products in appropriate cases; to provide for associated regulatory powers; to provide certain protections with respect to the spread of genetically modified plant material; and for other purposes.

---

## Contents

### Part 1—Preliminary

- 1 Short title
- 3 Interpretation
- 4 Declared thresholds

### Part 2—Preservation of identity of crops

- 5 Designation of areas
- 6 Exemptions
- 7 Related matters

### Part 3—Administration

#### Division 1—GM Crop Advisory Committee

- 8 Establishment of Advisory Committee
- 9 Membership of Advisory Committee
- 10 Terms and conditions of membership
- 11 Remuneration
- 12 Conflict of interest under Public Sector (Honesty and Accountability) Act
- 13 Validity of acts
- 14 Procedures
- 15 Expert and other assistance

#### Division 2—Inspectors and powers of inspection

- 16 Appointment of inspectors
- 17 Powers of inspectors and related matters

### Part 4—Miscellaneous

- 18 Orders for destruction of crops or material
- 19 Power of delegation
- 20 False or misleading information
- 21 Proceedings for offences

|    |   |
|----|---|
| 22 | Offences by bodies corporate  |
| 23 | Continuing offence  |
| 24 | Orders on conviction for an offence   |
| 25 | Evidentiary provision   |
| 26 | Immunity from liability   |
| 27 | Special protection from liability for the spread of genetically modified plant material |
| 28 | Regulations   |
| 29 | Review of Act   |

## Schedule 1—Transitional provisions

|   |  |
|---|--|
| 1 | Interim controls                             |
| 2 | Crops established before commencement of Act |
| 3 | Other provisions                             |

## Legislative history

---

### The Parliament of South Australia enacts as follows:

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *Genetically Modified Crops Management Act 2004*.

### 3—Interpretation

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

**Advisory Committee** means the GM Crop Advisory Committee established under Part 3 Division 1;

**cultivate**, in relation to a genetically modified food crop, includes—

- (a) to breed, germinate, propagate, grow, raise, culture, harvest or collect plants, or plant material, for, or as part of, that crop;
- (b) to spread, disseminate, deal with or dispose of any plant or plant material that has formed part of that crop;
- (c) to undertake any other activity brought within the ambit of this definition by the regulations,

but does not include—

- (d) to use a product derived from a crop as feed in prescribed circumstances; or
- (e) any other activity excluded from the ambit of this definition by the regulations;

**deal with**, in relation to a crop, GMO or other material, has a meaning that corresponds to deal with a GMO under the *Gene Technology Act 2001*;

**Department** means the department of the Minister to whom the administration of this Act has been committed;

**designated area** means an area designated by regulation under section 5;

**exemption notice** means an exemption notice under section 6;

**food crop** means a crop which, or any part or product of which, may be used—

- (a) for human consumption; or
- (b) for livestock consumption,

whether or not after processing (and including as an ingredient for human consumption or livestock consumption);

**genetically modified food crop** means a food crop that consists of or includes plants—

- (a) that are genetically modified organisms; or
- (b) that are derived or produced from genetically modified organisms; or
- (c) that have inherited from other plants particular traits that occurred in those other plants because of gene technology;

**genetically modified organism** or **GMO** means a genetically modified organism within the meaning of the *Gene Technology Act 2001*;

**gene technology** has the same meaning as in the *Gene Technology Act 2001*;

**GMO licence** has the same meaning as in the *Gene Technology Act 2001*;

**GM related material** means any material, product or thing derived from, or used in connection with, a genetically modified food crop;

**inspector** means a person appointed to be an inspector under Part 3 Division 2;

**livestock** means any animal which, or any part or product of which, may be used for human consumption, whether or not after processing (and including as an ingredient of food for human consumption);

**occupier**, in relation to land, includes a licensee and the holder of any right at law to use the land, but does not include a mortgagee in possession unless the mortgagee assumes active management of the land;

**owner** of land means—

- (a) if the land is unalienated from the Crown—the Crown; or
- (b) if the land is alienated from the Crown by grant in fee simple—the owner (at law or in equity) of the estate in fee simple; or
- (c) if the land is held from the Crown by lease or licence—the lessee or licensee; or
- (d) if the land is held from the Crown under an agreement to purchase—the person who has the right to purchase;

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

- (2) For the purposes of this Act, a person will be taken to cultivate a genetically modified food crop for the purposes of an experiment if (and only if)—
  - (a) the person is only undertaking the cultivation of the crop on a controlled and limited scale; and
  - (b) the purpose of the cultivation is—

- (i) to assess the crop's merit; or
  - (ii) to develop or assess practices associated with the management of the crop or the protection of the environment; and
- (c) the crop, after cultivation, is not to be harvested for sale.

#### **4—Declared thresholds**

- (1) The Minister may, by notice published in the Gazette, declare a threshold relating to the presence of GMO in crops.
- (2) If—
- (a) a declaration is made under subsection (1) in relation to the presence of a particular GMO in a particular class of crop; and
  - (b) a crop of that class that is a food crop has that GMO present but the amount or level of the GMO does not exceed the declared threshold,
- then the presence of that GMO may be disregarded for the purposes of determining whether the food crop is a genetically modified food crop for the purposes of this Act.
- (3) A declaration under subsection (1)—
- (a) may be of general or limited application; and
  - (b) may make different provision according to the circumstances to which it is expressed to apply.
- (4) The Minister may, by further notice published in the Gazette, vary or revoke a declaration under subsection (1).

## **Part 2—Preservation of identity of crops**

### **5—Designation of areas**

- (1) The Governor may, by regulation—
- (a) designate an area of the State as an area in which—
    - (i) genetically modified food crops of a specified class must not be cultivated; or
    - (ii) no genetically modified food crops may be cultivated;
  - (b) designate an area of the State as an area in which a genetically modified food crop must not be cultivated unless it is a genetically modified food crop of a specified class;
  - (c) designate an area of the State as the only part of the State in which genetically modified food crops of a specified class may be cultivated.
- (2) The Governor must not make a regulation under subsection (1) except on the recommendation of the Minister.
- (3) The Minister must not make a recommendation under subsection (2) unless—
- (a) the Minister has undertaken a public consultation process that satisfies the following requirements:

- (i) the process must provide for public notice to be given in relation to the proposal to recommend the making of a regulation under subsection (1); and
    - (ii) the process must allow interested persons to make representations in writing to the Minister over a period of at least 6 weeks specified in the notice; and
    - (iii) the process must provide for at least 1 public meeting to be held in an area to be affected by the proposal during the period specified in the notice; and
  - (b) the Minister is satisfied that the regulation should be made for marketing purposes.
- (4) If the Governor has designated an area under subsection (1)(b) or (c), the entitlement of a person to cultivate a genetically modified food crop within the area (as provided by the relevant regulation) is subject to the requirement that the cultivation must be within the ambit of a declaration of the Minister made under subsection (5) for the purposes of this subsection (and cultivation must not occur unless or until this requirement is satisfied).
- (5) For the purposes of subsection (4), the Minister may in relation to a specified class of genetically modified food crop, by notice published in the Gazette, make a declaration under this subsection if the Minister is satisfied that—
- (a) appropriate and effective systems have been developed to ensure the segregation of any genetically modified food crop of that class, or of any GM related material, from other crops, materials, products or things in order to preserve the identity of those other crops, materials, products or things; and
  - (b) persons involved in the cultivation of a genetically modified food crop of that class, or in any process associated with such a crop or with any GM related material, can reasonably be expected to comply with the systems contemplated under paragraph (a); and
  - (c) an assessment has been undertaken of the likely impact (if any) that the cultivation of crops of that class within the relevant designated area will have on relevant markets (including markets for other forms of crops, materials, products or things) and that, in the circumstances, it is reasonable for cultivation of crops of that class to proceed in that designated area.
- (6) The Minister may, by subsequent notice published in the Gazette, vary or revoke a declaration under subsection (5).
- (7) The Minister may, in a notice under subsection (6) or by subsequent notice in the Gazette, make any provision of a saving or transitional nature.
- (8) The Minister must, before making a recommendation or declaration under this section, consult with the Advisory Committee and take into account any advice provided by the Advisory Committee in relation to the matter.
- (9) As soon as practicable after publishing a notice under this section, the Minister should cause a copy of the notice to be published—
- (a) in a newspaper circulating generally throughout the State; and
  - (b) on the Department's website.

- (10) The Governor may, by regulation, designate criteria that the Advisory Committee must take into account for the purposes of giving advice to the Minister under this section.
- (11) The Governor may, by regulation (whether or not in conjunction with a regulation under subsection (1)), prescribe requirements that must be complied with if a person is involved in the cultivation of a genetically modified food crop or in any process associated with any such crop or with any GM related material.
- (12) A person is guilty of an offence if—
  - (a) the person cultivates a crop in contravention of subsection (1) or (4); or
  - (b) the person contravenes, or fails to comply with, a requirement under subsection (11).

Maximum penalty: \$200 000.

## 6—Exemptions

- (1) The Minister may, by notice published in the Gazette (an *exemption notice*), confer exemptions from the operation of section 5.
- (2) However, the Minister must not confer an exemption unless—
  - (a) the purpose of the exemption is to allow a specified person—
    - (i) to cultivate a genetically modified food crop on a limited scale under, and in accordance with, a GMO licence authorising the release of the relevant GMO into the environment for the purposes of an experiment; or
    - (ii) to cultivate a genetically modified food crop on a limited and contained basis at a specified place or places; or
    - (iii) to cultivate a genetically modified food crop on the basis that all dealings with the crop will be undertaken by the same person (or by a person or person acting on behalf of the same person) under a *closed loop system* that includes processes and procedures designed to ensure the segregation of the crop, and of any GM related material, from other crops, materials, products or things in order to preserve the identity of those other crops, materials, products or things; and
  - (b) the Minister is satisfied that it is reasonable that the exemption be granted after taking into account market requirements.
- (3) The Minister must, before granting an exemption under subsection (2)(a)(ii) or (iii), consult with the Advisory Committee and take into account any advice provided by the Advisory Committee in relation to the matter.
- (4) An exemption may be granted by the Minister on such conditions as the Minister thinks fit.
- (5) The Minister may, by further notice published in the Gazette—
  - (a) vary or revoke an exemption; or
  - (b) vary or revoke a condition of an exemption.

- (6) A person is guilty of an offence if the person contravenes, or fails to comply with, a condition of an exemption under this section.

Maximum penalty: \$200 000.

## **7—Related matters**

- (1) The Minister may, before taking any action under this Part—
- (a) seek advice or submissions from any person or body;
  - (b) take such other action or initiate such other investigations as the Minister thinks fit.
- (2) The regulations may prescribe fees or charges in relation to the assessment of applications, proposals or submissions furnished or made to the Minister with respect to the taking of any action (whether by the Governor or the Minister) under this Part.
- (3) A regulation under subsection (2) may—
- (a) prescribe differential fees or charges;
  - (b) provide for fees or charges to be determined according to prescribed factors, or according to the determination of the Minister.
- (4) The Minister may require that any application, proposal or submission made for the purposes of this Part be made in a manner and form determined by the Minister.

## **Part 3—Administration**

### **Division 1—GM Crop Advisory Committee**

#### **8—Establishment of Advisory Committee**

- (1) The *GM Crop Advisory Committee* is established.
- (2) The Advisory Committee has the functions assigned to the Advisory Committee by this Act or the Minister.

#### **9—Membership of Advisory Committee**

- (1) The Advisory Committee consists of between 9 and 11 members appointed by the Minister of whom—
- (a) at least 1 must have appropriate knowledge of, and experience in dealing with, issues surrounding the provision of seeds and propagating material within the primary production sector; and
  - (b) at least 1 must have appropriate knowledge of, and experience in, the production of crops generally; and
  - (c) at least 1 must have a particular interest in the production of crops that are GM-free; and
  - (d) at least 1 must have appropriate knowledge of, and experience in, the handling, transportation, storage and delivery of crops and associated products; and
  - (e) at least 1 must have appropriate knowledge of, and experience in, the marketing of crops and associated products; and

- (f) 1 must be a person who is engaged in the administration of this Act; and
  - (g) 1 must be a person who is directly involved in exporting, wholesaling or retailing food or food products.
- (1a) The Minister will appoint a member of the Advisory Committee to be the presiding member of the committee.
- (2) At least 2 members of the Advisory Committee must be women and at least 2 members must be men.

### **10—Terms and conditions of membership**

- (1) A member of the Advisory Committee will be appointed on conditions determined by the Minister for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.
- (2) The Minister may appoint a suitable person to be the deputy of a member of the Advisory Committee and the deputy may act as a member of the Advisory Committee during any period of absence of the member.
- (3) The Minister may remove a member of the Advisory Committee from office—
- (a) for breach of, or non-compliance with, a condition of appointment; or
  - (b) for misconduct; or
  - (c) for failure or incapacity to carry out official duties satisfactorily.
- (4) The office of a member of the Advisory Committee becomes vacant if the member—
- (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice to the Minister; or
  - (d) is removed from office under subsection (3).

### **11—Remuneration**

A member of the Advisory Committee is entitled to remuneration, allowances and expenses determined by the Minister.

### **12—Conflict of interest under Public Sector (Honesty and Accountability) Act**

A member of the Advisory Committee will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector (Honesty and Accountability) Act 1995* by reason only of the fact that the member has an interest in a matter that is shared in common with the public or persons engaged in or associated with the industry in which the member works generally, or a substantial section of the public or such persons.

### **13—Validity of acts**

An act or proceeding of the Advisory Committee is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

## **14—Procedures**

- (1) A quorum of the Advisory Committee consists of 6 members.
- (2) If the presiding member of the Advisory Committee is absent from a meeting of the Advisory Committee, a member chosen by the members present at the meeting will preside.
- (3) A decision carried by a majority of the votes cast by the members present at a meeting of the Advisory Committee is a decision of the Advisory Committee.
- (4) Each member present at a meeting of the Advisory Committee has 1 vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.
- (5) A conference by telephone or other electronic means between the members of the Advisory Committee will, for the purposes of this section, be taken to be a meeting of the Advisory Committee at which the participating members are present if—
  - (a) notice of the conference is given to all members in the manner determined by the Advisory Committee for the purpose; and
  - (b) each participating member is capable of communicating with every other participating member during the conference.
- (6) A proposed resolution of the Advisory Committee becomes a valid decision of the Advisory Committee despite the fact that it is not voted on at a meeting of the Advisory Committee if—
  - (a) notice of the proposed resolution is given to all members of the Advisory Committee in accordance with procedures determined by the Advisory Committee; and
  - (b) a majority of the members express concurrence in the proposed resolution by letter, telegram, telex, facsimile transmission or other written communication setting out the terms of the resolution.
- (7) The Advisory Committee must have accurate minutes kept of its meetings.
- (8) Subject to this Act, the Advisory Committee may determine its own procedures.

## **15—Expert and other assistance**

The Advisory Committee may, in connection with the performance of its functions—

- (a) engage experts or consultants;
- (b) seek advice or submissions from any person or body;
- (c) undertake inquiries or initiate investigations;
- (d) inform itself of any matter in any other manner, as it thinks fit.

## **Division 2—Inspectors and powers of inspection**

### **16—Appointment of inspectors**

- (1) The Minister may appoint persons to be inspectors for the purposes of this Act.
- (2) An appointment may be made subject to conditions or limitations specified in the instrument of appointment.

- (3) An inspector must be issued with an identity card containing a recent photograph of the inspector.
- (4) An inspector must carry his or her identity card at all times when exercising or performing powers or functions as an inspector.
- (5) The Minister may vary or revoke an appointment at any time.

### **17—Powers of inspectors and related matters**

- (1) This Act is to be read as if Part 11 Divisions 3 to 5 (inclusive) and 7 to 11 (inclusive) of the *Gene Technology Act 2001* were incorporated into this Act, subject to any modifications, additions or exclusions prescribed by regulation, together with any definitions contained in the *Gene Technology Act 2001* of terms used in those provisions.
- (2) Without limiting subsection (1), the grounds on which an inspector may enter any premises will be taken to include to determine whether there is an actual or potential risk to a market from the presence of a crop, GMO or GM related material on the premises.

## **Part 4—Miscellaneous**

### **18—Orders for destruction of crops or material**

- (1) The Minister may, by instrument in writing—
  - (a) order the destruction of a crop if the Minister is satisfied that the crop has been cultivated or dealt with in contravention of this Act;
  - (b) order the destruction of any GM related material if the Minister is satisfied that the material has been produced, used or dealt with in contravention of this Act, or is associated with any crop that has been cultivated or dealt with in contravention of this Act.
- (2) For the purpose of giving effect to an order under this section, an inspector may, by force of this section—
  - (a) enter the land on which any crop or GM related material is situated and, if necessary, enter premises on the land; and
  - (b) seize any crop or GM related material; and
  - (c) destroy any crop or GM related material, either on the land or elsewhere.
- (3) However, before an inspector takes action to seize or destroy a crop or GM related material under subsection (2), the inspector must ensure that an owner or occupier of the land has been given a reasonable opportunity to take action to remove or destroy the crop or GM related material in response to the particular order.
- (4) The reasonable costs and expenses incurred by an inspector or the Department in taking action under this section may be recovered by the Minister as a debt from the person who has acted in contravention of this Act.
- (5) If—
  - (a) a person suffers loss or damage as a result of the exercise of powers under this section in relation to a crop or any GM related material; and

- (b) proceedings for an offence against this Act involving the relevant crop or material have not been commenced within 12 months after the exercise of powers under this section, or such proceedings are commenced within that time but those proceedings are subsequently discontinued or the defendant is acquitted,

then the person who has suffered the loss or damage is entitled to reasonable compensation (payable by the Crown) for that loss or damage.

- (6) An amount payable under subsection (5) (if any) may be recovered by the person as a debt from the Crown in a court of competent jurisdiction.

### **19—Power of delegation**

- (1) The Minister may delegate to a body or person (including a person for the time being holding or acting in a specified office or position) a function or power of the Minister under this Act.
- (2) A delegation under this section—
  - (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the ability of the Minister to act in any matter; and
  - (d) is revocable at will.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

### **20—False or misleading information**

A person who furnishes information to the Minister or the Advisory Committee for the purposes of this Act that is false or misleading in a material particular is guilty of an offence.

Maximum penalty: \$10 000.

### **21—Proceedings for offences**

- (1) Proceedings for an offence against this Act may only be commenced by—
  - (a) the Minister; or
  - (b) the Chief Executive of the Department; or
  - (c) an inspector; or
  - (d) a person acting with the authorisation in writing of the Minister.
- (2) An apparently genuine document purporting to be under the hand of the Minister and to authorise the commencement of proceedings under this Act must be accepted in legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

## **22—Offences by bodies corporate**

- (1) If a body corporate is guilty of an offence against this Act (other than an offence against section 20 or an offence against the regulations), each member of the governing body, and the manager, of the body corporate are guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless the member or the manager (as the case may be) proves that he or she could not by the exercise of due diligence have prevented the commission of the offence.
- (2) A person may be prosecuted and convicted of an offence under this section whether or not the body corporate has been prosecuted or convicted of the offence committed by the body corporate.
- (3) The regulations may make provision in relation to the criminal liability of a member of the governing body, or the manager, of a body corporate that is guilty of an offence against the regulations.

## **23—Continuing offence**

- (1) A person convicted of an offence against a provision of this Act in respect of a continuing act or omission—
  - (a) is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than one-tenth of the maximum penalty prescribed for that offence; and
  - (b) is, if the act or omission continues after the conviction, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than one-tenth of the maximum penalty prescribed for the offence.
- (2) If an offence consists of an omission to do something that is required to be done, the omission will be taken to continue for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.

## **24—Orders on conviction for an offence**

- (1) If a person is convicted of an offence against this Act, the court by which the conviction is recorded may, in addition to any penalty that it may impose, do one or more of the following:
  - (a) order the person to take specified action to make good any contravention or default on which the conviction is based in a manner, and within a period, specified by the court (including an order that the person destroy any crop that has been found to have been cultivated in contravention of this Act, or that the person deal with or destroy any GM related material);
  - (b) order the person to pay to the Crown an amount determined by the court to be equal to a fair assessment of any financial benefit that the person, or an associate of the person, has gained, or can reasonably be expected to gain, as a result of the commission of the offence;

- (c) order the person to pay to any person who has suffered loss or damage as a result of any contravention or default on which the conviction is based, or who has incurred costs or expenses as a result of any such contravention or default, compensation for the loss or damage or an amount for or towards those costs or expenses.
- (2) For the purposes of subsection (1)(b), a person is an *associate* of another if—
- (a) they are married or domestic partners; or
  - (b) one is the parent, child, brother or sister of the other; or
  - (c) they are in partnership; or
  - (d) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust; or
  - (e) one is a body corporate or other entity (whether inside or outside Australia) and the other is a director or member of the governing body of the body corporate or other entity; or
  - (f) one is a body corporate or other entity (whether inside or outside Australia) and the other is a person who has a legal or equitable interest in 5 per cent or more of the share capital of the body corporate or other entity; or
  - (g) they are related bodies corporate within the meaning of the *Corporations Act 2001* of the Commonwealth; or
  - (h) a relationship of a prescribed kind exists between them; or
  - (i) a chain of relationships can be traced between them under any one or more of the above paragraphs.
- (3) For the purposes of subsection (2)(d), a *beneficiary* of a trust includes an object of a discretionary trust.
- (4) In this section—

*domestic partner* means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not.

## 25—Evidentiary provision

In any proceedings, a certificate executed by the Minister certifying as to a matter relating to—

- (a) a delegation, authority or appointment under this Act; or
- (b) any requirement to consult with the Advisory Committee under this Act; or
- (c) the details of any analysis carried out on a sample of a crop or other material, constitutes proof, in the absence of proof to the contrary, of the matter so certified.

## 26—Immunity from liability

- (3) No liability attaches to the Crown (or to the Minister) by virtue of the fact—
- (a) that the Governor has made a regulation under Part 2; or
  - (b) that the Minister has made a recommendation, declaration or determination, or granted an exemption, under Part 2.

## 27—Special protection from liability for the spread of genetically modified plant material

- (1) In this section—
- (a) *genetically modified plant material* means—
    - (a) a plant or propagating material that is a GMO, or that is derived or produced from a GMO; or
    - (b) a GMO that is capable of modifying a plant or propagating material;
  - (b) *propagating material* means seed or other material from which a plant can be propagated.
- (2) If—
- (a) genetically modified plant material is present on any land; and
  - (b) the existence of the material on the land is attributable to the spread, dissemination or persistence of the material; and
  - (c) the original introduction of such material to the land was not knowingly undertaken by or on behalf of any person who is, or who has been, an owner or occupier of the land,
- then no action may be brought in a South Australian court or under South Australian law against a person who is an owner or occupier of the land on account of the fact—
- (d) that the material is present on the land; or
  - (e) that the person has dealt with the material.
- (3) Subsection (2) does not apply if the relevant court is satisfied—
- (a) that a person who is an owner or occupier of the relevant land has deliberately dealt with a crop knowing that genetically modified plant material was present in order to gain a commercial benefit; and
  - (b) that, in the interests of justice, another person's rights with respect to that material should be recognised or protected.
- (4) This section extends to any case where genetically modified plant material was present on land before the commencement of this Act.

## 28—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
- (a) prescribe requirements with respect to the analysis, examination or assessment of any crops, GMOs or GM related material;
  - (b) require the keeping of records and other information in connection with any activity associated with crops, GMOs or GM related material;
  - (c) require the provision of any report, statement, document or other information in connection with the administration or operation of this Act;

- (d) prohibit, restrict or regulate any dealing with any crop, GMOs or GM related material;
  - (e) prescribe requirements with respect to the preservation of the source, nature or identity of any material;
  - (f) require the giving of notice of the occurrence of any prescribed class of event, or the giving of notice in prescribed circumstances;
  - (g) prescribe any procedure associated with any process under this Act (including by making provision as to what constitutes the giving of public notice for the purposes of this Act);
  - (h) fix fees or charges to be paid in relation to any matter associated with the administration or operation of this Act;
  - (i) provide for evidence in proceedings for an offence against the regulations;
  - (j) prescribe fines, not exceeding \$10 000, for a contravention of, or failure to comply with, a regulation.
- (3) Regulations under this Act—
- (a) may be of general or limited application; and
  - (b) may make different provision according to the matters or circumstances to which they are expressed to apply; and
  - (c) may provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or any other person or body prescribed by the regulations; and
  - (d) may apply or incorporate, wholly or partially and with or without modification, a code, standard or policy (as in force at the date of the particular regulations, or as in force from time to time) prepared or published by the Minister or any other person or body prescribed by the regulations.

## **29—Review of Act**

- (1) The Minister must, within 4 years after the commencement of this Act, cause a review of this Act to be undertaken.
- (2) The outcome of the review must be incorporated into a report and the Minister must ensure that a copy of the report is laid before each House of Parliament.

## **Schedule 1—Transitional provisions**

### **1—Interim controls**

- (1) Subsections (3) and (8) of section 5 do not apply with respect to a regulation that comes into operation on the day on which that section comes into operation.
- (2) A regulation under section 5 that comes into operation in the manner contemplated by subclause (1) will, unless it has already expired or been revoked, expire on the fourth anniversary of the commencement of this Act.
- (3) Subsection (3) of section 6 does not apply with respect to an exemption that comes into operation on the day on which that section comes into operation.

## **2—Crops established before commencement of Act**

- (1) A regulation, declaration or determination under this Act may apply to or in relation to a crop or any GM related material planted or in existence before the commencement of this Act.
- (2) However, a regulation within the ambit of subclause (1) cannot impose a criminal liability on a person with respect to an act or omission occurring before the making of the regulation (but this subclause does not operate with respect to a continuing act or omission after the making of the regulation).

## **3—Other provisions**

- (1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act.
- (2) A provision of a regulation under subclause (1) may, if the regulation so provides, take effect from the commencement of this Act or from a later day.
- (3) To the extent to which a provision takes effect under subclause (2) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
  - (a) decreasing the person's rights; or
  - (b) imposing liabilities on the person.

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act and amendments

New entries appear in bold.

| Year        | No       | Title   | Assent           | Commencement  |
|-------------|----------|---|------------------|---|
| 2004        | 8        | <i>Genetically Modified Crops Management Act 2004</i>   | 8.4.2004         | 29.4.2004 ( <i>Gazette</i> 22.4.2004 p1086)                             |
| 2006        | 34       | <i>Genetically Modified Crops Management (Extension of Review Period and Controls) Amendment Act 2006</i> | 14.12.2006       | 1.1.2007: s 2   |
| 2006        | 43       | <i>Statutes Amendment (Domestic Partners) Act 2006</i>  | 14.12.2006       | Pt 40 (s 115)—1.6.2007 ( <i>Gazette</i> 26.4.2007 p1352)                |
| 2009        | 84       | <i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>                               | 10.12.2009       | Pt 69 (ss 165 & 166)—1.2.2010 ( <i>Gazette</i> 28.1.2010 p320)          |
| 2013        | 16       | <i>Statutes Amendment (Directors' Liability) Act 2013</i>   | 23.5.2013        | Pt 23 (s 47)—17.6.2013 ( <i>Gazette</i> 6.6.2013 p2498)                 |
| <b>2015</b> | <b>8</b> | <b><i>Statutes Amendment (Boards and Committees—Abolition and Reform) Act 2015</i></b>                    | <b>18.6.2015</b> | <b>Pt 17 (ss 88 &amp; 89)—1.7.2015 (<i>Gazette</i> 25.6.2015 p3076)</b> |

### Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

| Provision | How varied   | Commencement    |
|-----------|--|-----------------|
| Pt 1      |  |                 |
| s 2       | <i>omitted under Legislation Revision and Publication Act 2002</i> | <i>1.1.2007</i> |
| Pt 3      |  |                 |
| s 9       |  |                 |
| s 9(1)    | <b>substituted by 8/2015 s 88</b>                                  | <b>1.7.2015</b> |
| s 9(1a)   | <b>inserted by 8/2015 s 88</b>                                     | <b>1.7.2015</b> |
| s 10      |  |                 |

|                    |                                |                 |
|--------------------|--------------------------------|-----------------|
| <b>s 10(1)—(3)</b> | <b>amended by 8/2015 s 89</b>  | <b>1.7.2015</b> |
| s 12               | substituted by 84/2009 s 165   | 1.2.2010        |
| Pt 4               |                                |                 |
| s 22               |                                |                 |
| s 22(1)            | substituted by 16/2013 s 47(1) | 17.6.2013       |
| s 22(3)            | inserted by 16/2013 s 47(2)    | 17.6.2013       |
| s 24               |                                |                 |
| s 24(2)            | amended by 43/2006 s 115(1)    | 1.6.2007        |
| s 24(4)            | inserted by 43/2006 s 115(2)   | 1.6.2007        |
| s 26               |                                |                 |
| s 26(1) and (2)    | deleted by 84/2009 s 166(1)    | 1.2.2010        |
| s 26(3)            | amended by 84/2009 s 166(2)    | 1.2.2010        |
| s 29               |                                |                 |
| s 29(1)            | amended by 34/2006 s 4         | 1.1.2007        |
| Sch 1              |                                |                 |
| cl 1               |                                |                 |
| cl 1(2)            | amended by 34/2006 s 5         | 1.1.2007        |

## **Transitional etc provisions associated with Act or amendments**

### ***Genetically Modified Crops Management Regulations (Postponement of Expiry) Act 2017***

#### **2—Postponement of expiry of regulations**

- (1) Part 3A of the *Subordinate Legislation Act 1978* does not apply to the *Genetically Modified Crops Management Regulations 2008*.
- (2) The *Genetically Modified Crops Management Regulations 2008* will expire on 1 September 2025.

#### **Historical versions**

1.1.2007  
1.6.2007  
1.2.2010  
17.6.2013