

Western Australia

Genetically Modified Crops Free Areas Act 2003

As at 24 Dec 2003

No. 79 of 2003

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Genetically Modified Crops Free Areas Act 2003

No. 79 of 2003

An Act to prohibit the cultivation of certain genetically modified crops in designated areas of the State and to provide for their destruction in certain cases.

[Assented to 24 December 2003]

The Parliament of Western Australia enacts as follows:

1. Short title

This Act may be cited as the *Genetically Modified Crops Free Areas Act 2003*.

2. Commencement

This Act comes into operation on the day on which it receives the Royal Assent.

3. Interpretation

In this Act, unless the contrary intention appears —

“**authorised officer**” means an officer designated under section 11 as an authorised officer;

“**cultivate**”, in relation to a crop, includes to breed, propagate, grow, raise or culture plants, or parts of plants, for that crop;

“**Department**” means the department of the Public Service principally assisting the Minister in the administration of this Act;

“**field trial**” means the small scale cultivation of a crop that is —

- (a) for the purpose of assessing the viability and environmental risks of that crop; and
- (b) not for commercial purposes;

“**gene technology**” has the meaning given by section 10(1) of the *Gene Technology Act 2000* of the Commonwealth;

“**genetically modified crop**” means a crop that consists of or includes plants that are genetically modified organisms;

“**genetically modified organism**” means —

- (a) an organism that has been modified by gene technology; or
- (b) an organism that has inherited particular traits from an organism (the “**initial organism**”), being traits that occurred in the initial organism because of gene technology;

“GMO licence” has the meaning given by section 10(1) of the *Gene Technology Act 2000* of the Commonwealth.

4. Designation of genetically modified crops free areas

- (1) The Minister may, by order published in the *Gazette*, designate an area of the State as an area in which —
 - (a) a genetically modified crop must not be cultivated; or
 - (b) a genetically modified crop specified in the order must not be cultivated.
- (2) An order, or a combination of orders, may designate the whole of the State.
- (3) An order may be amended or revoked by further order published in the *Gazette*.
- (4) Section 42 of the *Interpretation Act 1984* applies to an order as if the order were a regulation.

5. Offence

- (1) A person commits an offence if —
 - (a) the person cultivates a genetically modified crop;
 - (b) the crop is cultivated in an area that is designated in an order under section 4;
 - (c) if the order is made under section 4(1)(b), the crop is specified in the order; and
 - (d) the person knows, or is reckless as to whether or not, the crop is a genetically modified crop.

Penalty: \$200 000.

- (2) Subsection (1) does not apply to the cultivation of a genetically modified organism under a GMO licence if —
 - (a) the licence authorises release of the genetically modified organism into the environment but only to the extent of release for the purposes of a field trial;

and

- (b) the cultivation is a field trial that complies with the licence.
- (3) Subsection (1) does not apply to the cultivation of a genetically modified organism if the cultivation does not involve the intentional release of the organism into the environment.
- (4) Subsection (1) does not apply to the cultivation of a genetically modified organism if the cultivation is covered by an exemption granted under section 6.
- (5) Proceedings for an offence against subsection (1) are to be dealt with by a court constituted by a magistrate.

6. Exemptions

- (1) The Minister may, by order published in the *Gazette*, exempt a person, or a specified class of persons, from the application of section 5(1) to a specified extent in relation to a specified area or in any other specified way.
- (2) An exemption may be granted subject to specified conditions.
- (3) The Minister may, by order published in the *Gazette*, vary the conditions to which an exemption is subject or revoke the exemption.
- (4) Section 42 of the *Interpretation Act 1984* applies to an order under subsection (1) or (3) as if the order were a regulation.
- (5) An exemption may be included in an order designating an area under section 4.

7. Breach of conditions of an exemption

- (1) A person to whom an exemption applies who contravenes a condition to which the exemption is subject commits an offence.
Penalty: \$200 000.

- (2) Proceedings for an offence under subsection (1) are to be dealt with by a court constituted by a magistrate.

8. Orders for destruction of genetically modified food

- (1) The chief executive officer may, in writing, order the destruction of a crop if the chief executive officer is satisfied that —
- (a) the crop is a genetically modified crop;
 - (b) the crop is cultivated in an area that is designated in an order under section 4 (the “**designating order**”);
 - (c) if the designating order is made under section 4(1)(b), the crop is specified in the designating order; and
 - (d) an exemption under section 6 does not apply in relation to the crop, or, if an exemption under section 6 does apply, the person to whom the exemption applies has failed to comply in a material way with the conditions to which the exemption is subject.
- (2) For the purpose of giving effect to an order under this section, an authorised officer may, by force of this subsection —
- (a) enter the land on which the crop is situated and, if necessary, enter premises upon that land;
 - (b) seize the crop; and
 - (c) destroy the crop, either on the land or elsewhere.

9. Compensation

- (1) A person who suffers loss or damage as a result of the exercise of the powers in respect of the destruction of a crop under section 8(2) may, within one year of the exercise of those powers, apply to the chief executive officer for compensation for that loss or damage.
- (2) No compensation is payable unless the chief executive officer is of the opinion that, in the circumstances of the case, it is just to pay compensation.

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- (3) No compensation is payable if the person who suffered the loss or damage is being or has been prosecuted for an offence against section 5(1) unless the person is acquitted of the offence.
- (4) The amount of compensation payable is to be determined by agreement between the person applying for compensation and the chief executive officer or, in the absence of agreement, by a Local Court on the application of the person applying for compensation or of the chief executive officer.

10. Orders a court may make on conviction

- (1) If a court convicts a person of an offence against section 5 or 7 and the genetically modified crop has been destroyed under an order of the chief executive officer under section 8(1), the court may, in addition to any other penalty imposed, order that the person pay to the Minister the costs of destroying the crop.
- (2) If —
 - (a) a court convicts a person of an offence against section 5 or 7;
 - (b) it is proved on the balance of probabilities that the cultivation of the genetically modified crop by the convicted person resulted in another crop being a genetically modified crop;
 - (c) that other crop is destroyed under an order of the chief executive officer under section 8(1); and
 - (d) compensation is paid to another person under section 9 because of the destruction of that other crop,

the court may, in addition to any other penalty imposed, order the convicted person pay to the Minister an amount equal to the amount of compensation paid.

- (3) If a court convicts a person of an offence against section 5 or 7, the court may, in addition to any other penalty imposed, order the convicted person to pay to any other person who has suffered loss or damage or incurred costs or expenses as a result

of the commission of the offence compensation for the loss or damage, or an amount for or towards the costs or expenses.

11. Authorised officers

The Minister may, in writing, designate an officer of the Department as an authorised officer for the purposes of this Act.

12. General power to enter places

For the purposes of investigating whether this Act has been contravened, an authorised officer may enter and inspect any place if the consent of the owner or occupier has been obtained.

13. Entry under warrant

- (1) In the circumstances described in subsection (2), a justice may by warrant authorise an authorised officer, together with such other persons as are named or described in the warrant (including police officers), to enter and inspect any place using such force as is necessary.
- (2) A warrant may be granted under subsection (1) where a justice is satisfied that the entry is reasonably required by an authorised officer for the purposes of investigating whether this Act has been contravened, but —
 - (a) entry has been refused or is opposed or prevented; or
 - (b) entry cannot be obtained.
- (3) A warrant granted under subsection (1) —
 - (a) is to be in the prescribed form;
 - (b) is to specify the purpose for which the place may be entered; and
 - (c) continues to have effect until the purpose for which it was granted has been satisfied.

14. General powers upon entering places

Upon entry to a place under section 12 or under a warrant under section 13, an authorised officer may —

- (a) inspect, count, examine or mark for identification any plant in the place;
- (b) require a person to produce any document that is or may be relevant to the investigation;
- (c) inspect any document produced, make copies of it or take extracts from it, and remove it for as long as is reasonably necessary to make copies or extracts;
- (d) take or remove for analysis or examination samples of or from, or specimens of, any plant in the place.

15. Assistants and equipment

Entry by an authorised officer under section 8(2), 12 or 13 may be made with such assistants and equipment as are considered necessary for the purpose for which entry is required.

16. Purpose of entry to be given on request

An authorised officer who enters or who has entered a place is to give particulars of the power by virtue of which the authorised officer claims a right of entry, on being requested to do so.

17. Protection from liability for wrongdoing

- (1) An authorised officer is not liable for anything that the officer has, in good faith, done in the performance or purported performance of a function under this Act.
- (2) Despite subsection (1), the State is not relieved of any liability that it might have for an authorised officer having done anything as described in that subsection.

- (3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

18. Regulations

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

19. Review of Act

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiration of 5 years from its commencement.
- (2) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared (and in any event not more than 12 months after the expiration of the 5 year period referred to in subsection (1)), cause it to be laid before each House of Parliament.

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