

Version No. 002
Control of Genetically Modified Crops Act
2004

Act No. 7/2004

Version incorporating amendments as at 5 April 2005

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The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purposes

The purposes of this Act are—

- (a) to provide for the making of orders that—
 - (i) designate areas of the State for the purpose of preserving the identity of GM crops or non-GM crops for marketing purposes; and
 - (ii) prohibit or restrict the cultivation of GM crops, or other dealings with GM crops or GM crop related material; and
- (b) to provide an offence for contravening those orders and certain other offences; and
- (c) to allow authorised officers—
 - (i) to monitor compliance with the Act; and
 - (ii) to apply to the Magistrates' Court for the forfeiture and destruction of GM crops or GM crop related material if an order has been contravened; and
- (d) to deal with related matters.

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Part 1—Preliminary

s. 2

2. Commencement

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

3. Definitions

In this Act—

"authorised officer" means a person appointed as an authorised officer under section 13;

"cultivate", in relation to a GM crop, includes—

- (a) to breed, germinate, propagate, grow, raise, culture, harvest or collect plants, or plant material, for that crop or as part of it; and
- (b) any other activity prescribed by the regulations for the purposes of this definition;

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

"Department" means the Department of Primary Industries;

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

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

"GM crop" means a crop that consists of or includes plants that are genetically modified organisms;

"GM crop related material" means any material, product or thing derived from or used in connection with a GM crop;

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Part 1—Preliminary

s. 3

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

"non-GM crop" means a crop that is not a
GM crop;

"non-GM crop related material" means any
material, product or thing derived from or
used in connection with a non-GM crop;

"order" means an order made under section 4;

"person" includes an unincorporated association;

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

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Part 2—Orders Designating Areas

s. 4

PART 2—ORDERS DESIGNATING AREAS

4. Minister may make orders designating areas

- (1) The Minister may make an order designating an area of the State (which may be all or part of the State) as—
- (a) an area in which GM crops, or a specified class of GM crops, must not be cultivated; or
 - (b) an area in which GM crops must not be cultivated unless they are of a specified class; or
 - (c) the only area of the State in which a specified class of GM crops may be cultivated—

for the purpose of preserving the identity of GM crops or non-GM crops for marketing purposes.

- (2) An order may also—
- (a) impose conditions on the cultivation of GM crops or the specified class of GM crops in the designated area; or
 - (b) prohibit or impose conditions on any other dealing with GM crops or the specified class of GM crops, or with GM crop related material, irrespective of where those crops were cultivated or the dealing takes place—

for the purpose of preserving the identity of GM crops or non-GM crops for marketing purposes.

- (3) The conditions may relate to one or more of the following matters—
- (a) compliance with systems to ensure the segregation of GM crops and GM crop related material from non-GM crops and non-GM crop related material (for example,

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Part 2—Orders Designating Areas

s. 5

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- restricting the use of areas adjacent to the area in which GM crops are cultivated to prevent commingling of crops);
- (b) compliance with specified crop management plans or industry guidelines;
 - (c) record-keeping, reporting and notification requirements;
 - (d) risk management and contingency planning;
 - (e) auditing requirements;
 - (f) the payment of prescribed fees relating to the administration of this Act;
 - (g) any other matter.

Note: It is an offence to contravene an order (see section 17).

5. Effect and publication of order

- (1) An order takes effect when notice of it is published in the Government Gazette or on such later date as is specified in the order.

Note: The making of an order is subject to disallowance by the Parliament (see section 9).

- (2) An order that specifies a date on which it expires ceases to have effect on that date.
- (3) As soon as practicable after making an order, the Minister must ensure that notice of the making of the order is published in—
 - (a) the Government Gazette; and
 - (b) a newspaper circulating generally throughout the State.

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Part 2—Orders Designating Areas

s. 6

6. Exemptions

- (1) The Minister may, by notice published in the Government Gazette, exempt a person or class of persons from the operation of all or part of an order for the purpose of allowing the person or class of persons—
 - (a) to cultivate a specified class of GM crop on a limited scale for the purposes of research or development; or
 - (b) to deal with GM crops or a specified class of GM crops, or with GM crop related material, in particular ways.
- (2) An exemption may be granted subject to specified conditions.
- (3) A person is exempt from the operation of an order if the person cultivates a GM crop in accordance with a GMO licence that does not authorise the intentional release of the relevant GMO into the environment.

7. Determination of threshold amounts

- (1) The Minister may, by notice published in the Government Gazette, determine a threshold amount for the presence of a GMO in crops.
- (2) The Minister may determine different threshold amounts for different GMOs.
- (3) If the amount of a GMO that is present in a crop does not exceed the threshold amount determined for that GMO, the presence of the GMO in that crop is to be disregarded for the purposes of this Act.

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Part 2—Orders Designating Areas

s. 8

8. Variation and revocation of orders

- (1) The Minister may make an order varying or revoking an order under section 4.
- (2) A variation or revocation order takes effect when notice of it is published in the Government Gazette or on such later date as is specified in it.

Note: A variation order is subject to disallowance by the Parliament (see section 9).

- (3) As soon as practicable after making a variation or revocation order, the Minister must ensure that notice of the making of the order is published in—
 - (a) the Government Gazette; and
 - (b) a newspaper circulating generally throughout the State.

9. Making and varying of orders subject to disallowance

- (1) The Minister's power to make an order under section 4 or a variation order under section 8 is subject to the order being disallowed by the Parliament.
- (2) Section 15 and Part 5 of the **Subordinate Legislation Act 1994** apply for the purposes of sub-section (1) as though—
 - (a) an order were a statutory rule (within the meaning of that Act); and
 - (b) notice of the making of the statutory rule had been published in the Government Gazette when notice of the order or variation order (as the case may be) was published in the Government Gazette.

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Part 2—Orders Designating Areas

s. 10

10. Minister may seek advice etc.

Before taking any action under this Part the Minister may—

- (a) seek advice from any person or body; or
- (b) initiate any investigations or take any other action that the Minister considers appropriate.

11. Reference to other documents

An order, or an exemption under section 6, may apply, adopt or incorporate any matter contained in any document formulated or published by a person or body whether—

- (a) with or without modification; or
- (b) as in force at a particular time or from time to time.

12. Later order prevails over earlier order

To avoid doubt, if there is an inconsistency between two or more orders, the most recent order prevails to the extent of that inconsistency.

PART 3—MONITORING AND ENFORCEMENT

13. Appointment of authorised officers

- (1) The Secretary to the Department may appoint persons who are employed under Part 3 of the **Public Administration Act 2004** to be authorised officers for the purposes of this Act.
 - (2) An appointment must be in writing and may be made subject to conditions or limitations specified in the appointment.
 - (3) The Secretary to the Department must issue an identity card to each authorised officer containing a photograph of the officer.
 - (4) An authorised officer must produce his or her identity card for inspection—
 - (a) before exercising a power under this Act; and
 - (b) at any time when exercising a power under this Act if asked to do so by the occupier of premises at which the officer is exercising the power.
- Penalty: 10 penalty units.
- (5) The Secretary to the Department may, in writing, vary or revoke an appointment of an authorised officer.

S. 13(1)
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 41).

14. Inspection powers under the Gene Technology Act 2001

- (1) The following provisions of Part 11 of the **Gene Technology Act 2001** apply for the purposes of this Act as though they were incorporated into this Act—

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Part 3—Monitoring and Enforcement

s. 14

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- (a) Divisions 3 and 4;
 - (b) Division 7, other than sections 159 and 162(2)(a) and (b);
 - (c) Division 9, other than section 169(2)(c);
 - (d) Division 10;
 - (e) Division 11, other than section 177.
- (2) Any definitions in the **Gene Technology Act 2001** of terms used in those provisions also apply for the purposes of this Act as though they were incorporated into this Act.
- (3) Those provisions and definitions apply as though—
- (a) a reference to "inspector" were instead a reference to "authorised officer"; and
 - (b) a reference to "GMO" in section 153(1)(b) of the **Gene Technology Act 2001** were instead a reference to "GM crop"; and
 - (c) a reference to "the Regulator" in section 163(2) of that Act were instead a reference to "the Crown"; and
 - (d) a reference to "the Regulator" in sections 169(3) and 171 of that Act were instead a reference to "the Secretary to the Department"; and
 - (e) the penalty in section 175 of that Act were instead a penalty of 120 penalty units; and
 - (f) any other necessary modifications were made.
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Part 3—Monitoring and Enforcement

s. 15

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- (4) In addition, sections 152 and 153 of the **Gene Technology Act 2001** apply as though the grounds on which an authorised officer may enter premises and exercise powers under those sections included for the purpose of determining whether there is a risk to a market from the presence on the premises of a GM crop, GMO or of GM crop related material.

15. Forfeiture of GM crops and GM crop related material

- (1) If the Magistrates' Court is satisfied, on an application by an authorised officer, that the cultivation of a GM crop or a dealing with a GM crop or GM crop related material is an offence against this Act, the Court may order that the GM crop or GM crop related material is forfeited to the Crown and is to be destroyed or disposed of as provided in the order.
- (2) The Magistrates' Court may—
- (a) give any directions; or
 - (b) authorise the Minister to give any appropriate directions—
- that are necessary to give effect to the order.
- (3) Without limiting the way in which evidence may be given on an application under this section, the Magistrates' Court may inspect any place, process or thing.
- (4) An order under this section may be executed before the end of the period for appealing against the decision to make the order if a sample of the thing to be destroyed or disposed of is kept until—
- (a) the end of that period; or
 - (b) if an appeal is lodged within that period, the determination of the appeal.
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16. Appeals concerning forfeiture

- (1) Despite anything in any other Act, a person (including the Crown) affected by an order under section 15 may appeal against the decision to make the order as if—
 - (a) the order were a sentence imposed on conviction for the offence to which the order relates and against which an appeal may be brought; and
 - (b) the sentence were not fixed by law.
- (2) The court to which an appeal under sub-section (1) is made may confirm, vary or revoke the order.
- (3) Despite anything in any other Act, a person (including the Crown) affected by a refusal or failure to make an order under section 15 may appeal in accordance with the Rules of Court of the Magistrates' Court against that refusal or failure.
- (4) An appeal under sub-section (3) is to be conducted as a re-hearing and the court hearing and determining the appeal may exercise any powers that the Magistrates' Court could have exercised in relation to the original application.
- (5) If an appeal under sub-section (1) is made by the Crown, proceedings on the appeal are to be instituted and conducted in the name of the Crown by the Director of Public Prosecutions.
- (6) An appeal under this section may be heard with any other appeal against a conviction or sentence for the offence to which the appeal relates.
- (7) A person's right of appeal under this section is in addition to any other right of appeal the person may have.

PART 4—OFFENCES

17. Offence to contravene an order

- (1) A person is guilty of an offence if the person—
- (a) cultivates a GM crop in contravention of an order or otherwise contravenes an order; and
 - (b) does so knowing that, or reckless as to whether, the crop or crop related material to which the contravention relates is a GM crop or GM crop related material.
- (2) A person who is guilty of an offence against sub-section (1) is liable to a fine not exceeding—
- (a) 240 penalty units in the case of a natural person; or
 - (b) 1200 penalty units in the case of a body corporate.

18. Offence by gene technology provider

- (1) A person (the "**gene technology provider**") is guilty of an offence if the gene technology provider—
- (a) makes, develops, produces or manufactures a GMO; and
 - (b) sells or gives the GMO to another person; and
 - (c) knows or reasonably ought to have known or has reasonable cause to believe that the other person intends—
 - (i) to use the GMO to cultivate a GM crop in contravention of an order; or
 - (ii) to sell or give the GMO to a third person for use by that third person to cultivate a GM crop in contravention of an order.

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s. 19

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- (2) A gene technology provider who is guilty of an offence against sub-section (1) is liable to a fine not exceeding—
- (a) 240 penalty units in the case of a natural person; or
 - (b) 1200 penalty units in the case of a body corporate.

19. Offence to give false or misleading information

- (1) A person must not give information in complying or purportedly complying with this Act that the person knows to be false or misleading in a material particular.

Penalty: 60 penalty units in the case of a natural person;

300 penalty units in the case of a body corporate.

- (2) A person must not produce a document in complying or purportedly complying with this Act that the person knows to be false or misleading in a material particular without—

(a) indicating the respect in which it is false or misleading; and

(b) if practicable, providing correct information.

Penalty: 60 penalty units in the case of a natural person;

300 penalty units in the case of a body corporate.

20. Offence to interfere with or impersonate authorised officers

- (1) A person must not, without reasonable excuse, hinder or obstruct an authorised officer who is exercising a power under this Act.

Penalty: 60 penalty units in the case of a natural person;
300 penalty units in the case of a body corporate.

- (2) A person who is not an authorised officer must not, in any way, hold himself or herself out to be an authorised officer.

Penalty: 60 penalty units.

21. Offences by bodies corporate

- (1) An officer (within the meaning of the Corporations Act) of a body corporate that is guilty of an offence against this Act is also—

- (a) guilty of the offence; and
(b) liable to the penalty for the offence that applies to a natural person—

if the officer knowingly authorised or allowed the contravention.

- (2) An officer of a body corporate may be guilty of an offence against sub-section (1) whether or not the body corporate has been found guilty of, or convicted for, the offence.

- (3) If it is necessary to establish in any proceedings for an offence against this Act the state of mind of a body corporate concerning particular conduct it is sufficient to show that—

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Part 4—Offences

s. 22

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- (a) the conduct was engaged in by an officer (within the meaning of the Corporations Act) or agent of the body corporate within the scope of his or her actual or apparent authority; and
 - (b) the officer or agent had that state of mind.
- (4) Nothing in this section affects any liability imposed on a body corporate for an offence committed by the body corporate against this Act.

22. Offences by unincorporated associations

If—

- (a) this Act provides that a person is guilty of an offence; and
- (b) the person is an unincorporated association—

that reference to the person is to be read as a reference to each member of the association's committee of management.

23. Attempts to commit offences

- (1) A person who attempts to commit an offence against this Act (the "**main offence**") is—
 - (a) guilty of the offence of attempting to commit the main offence; and
 - (b) liable to a penalty not exceeding 60% of the maximum penalty that would apply if the person committed the main offence.
- (2) Sections 321N and 321Q of the **Crimes Act 1958** apply to and in respect of an offence against sub-section (1) to the same extent as they apply to and in respect of offences against section 321M of that Act.

24. Defence of due diligence

In proceedings for an offence under this Act, it is a defence if the person charged with the offence proves that the person took reasonable precautions and exercised due diligence to prevent the commission of the offence.

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Part 5—Other Matters

s. 25

PART 5—OTHER MATTERS

S. 25
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 41).

25. Delegation by the Minister

The Minister may, in writing, delegate all or any of his or her functions or powers under this Act to a person employed under Part 3 of the **Public Administration Act 2004**, other than—

- (a) the power to make an order under section 4; and
- (b) the power to grant an exemption under section 6; and
- (c) the power to vary or revoke an order under section 8; and
- (d) this power of delegation.

26. Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter or thing—
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary to be prescribed to give effect to this Act.
- (2) Without limiting sub-section (1), the regulations may—
 - (a) prescribe procedures for making a request to the Minister that he or she make an order under section 4 or grant an exemption under section 6; and
 - (b) fix fees or charges to be paid in relation to any matter associated with the administration or operation of this Act.

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Part 5—Other Matters

s. 27

27. Act binds the Crown

This Act binds the Crown—

- (a) in right of the State of Victoria; and
- (b) to the extent that the legislative power of the Parliament permits, in all its other capacities.

28. Schedule

The order set out in the Schedule is, for the purposes of this Act, taken to be an order made under section 4 except that—

- (a) despite section 5(1), the order takes effect on the day on which this Act commences; and
 - (b) section 5(3) (dealing with publication) does not apply to the order; and
 - (c) section 9 (dealing with disallowance) does not apply to the making of the order but applies to any variation of the order under section 8.
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SCHEDULE

**ORDER PROHIBITING THE CULTIVATION OF CERTAIN
GENETICALLY MODIFIED CANOLA CROPS IN VICTORIA**

1. Objective

The objective of this Order is to designate the State of Victoria as an area in which the cultivation of certain genetically modified (GM) canola crops is prohibited.

2. Authorising provisions

This Order is made under sections 4 and 28 of the **Control of Genetically Modified Crops Act 2004**.

3. Expiry

This Order expires on 29 February 2008.

4. Definitions

In this Order—

"Gene Technology Regulator" means the Gene Technology Regulator appointed under section 118 of the Gene Technology Act 2000 of the Commonwealth.

5. Designation of Victoria as an area where the cultivation of certain GM canola crops is prohibited

The State of Victoria is designated as an area in which GM crops of the following classes must not be cultivated—

- (a) GM crops consisting of or including plants of the species *Brassica napus*, common name canola, tolerant to the herbicide glufosinate ammonium due to genetic modification derived from lines T45, Topas 19/2, MS1, MS8, RF1, RF2 and RF3 defined in the application under section 40 of the Gene Technology Act 2000 of the Commonwealth designated DIR010/2001 and DIR021/2002 made to the Gene Technology Regulator;

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(b) GM crops consisting of or including plants of the species *Brassica napus*, common name canola, tolerant to the herbicide glyphosate due to genetic modification derived from transformation event GT73 defined in the application under section 40 of the Gene Technology Act 2000 of the Commonwealth designated DIR020/2002 made to the Gene Technology Regulator.

Note 1: Paragraph (a) describes canola plants (generally but not exclusively known as InVigor Canola) which have been genetically modified and have been licensed under the Gene Technology Act 2000 of the Commonwealth for intentional release into the environment.

Note 2: Paragraph (b) describes canola plants (known as Roundup Ready® Canola) which have been genetically modified and have been licensed under the Gene Technology Act 2000 of the Commonwealth for intentional release into the environment.

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Endnotes

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 1 April 2004

Legislative Council: 4 May 2004

The long title for the Bill for this Act was "to provide for the designation of areas of the State for the purpose of preserving for marketing purposes the identity of crops as genetically modified or non-genetically modified and for other purposes."

The **Control of Genetically Modified Crops Act 2004** was assented to on 11 May 2004 and came into operation on 12 May 2004: section 2.

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Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Control of Genetically Modified Crops Act 2004** by Acts and subordinate instruments.

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04

Commencement Date: S. 117(1)(Sch. 3 item 41) on 5.4.05: Government Gazette 31.3.05 p. 602

Current State: This information relates only to the provision/s amending the **Control of Genetically Modified Crops Act 2004**

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Endnotes

3. Explanatory Details

No entries at date of publication.