

## GENE TECHNOLOGY (WESTERN AUSTRALIA) BILL 2014

### EXPLANATORY MEMORANDUM

#### Outline

Under the Intergovernmental Agreement executed in 2001, all States and Territories committed to implementing a uniform national scheme for the regulation of genetically modified organisms and to ensuring their gene technology legislation remained consistent with the national scheme.

The *Gene Technology Act 2006*, enacted pursuant to this agreement, mirrored the provisions of the Commonwealth *Gene Technology Act 2000*. This meant that in order to remain consistent it needed to be amended each time the Commonwealth Act was amended. This is an inefficient method of ensuring uniformity.

This Bill will replace the Western Australian *Gene Technology Act 2006* with an Act applying the Commonwealth *Gene Technology Act 2000* as a law of the State. The new Act will ensure ongoing uniformity without the need for specific amendments to the State Act whenever the Commonwealth Act is amended.

The Bill includes a provision (clause 20) requiring tabling in Parliament of any changes to the applied Commonwealth legislation. This will ensure the Parliament is kept fully informed and can take any legislative action as it sees fit.

#### Part 1 – Preliminary

##### Clause 1 Short title

The short title is *Gene Technology (Western Australia) Act 2014*

##### Clause 2 Commencement

Part 1 of the Act will come into operation on the date of Royal Assent, and the remainder of the Act will come into operation on a day fixed by proclamation

##### Clause 3 Objects of the Act

The object of the Act is to adopt a uniform Australian approach to the regulation of genetically modified organisms.

To achieve this, the Act applies the Commonwealth *Gene Technology Act 2000* and *Gene Technology (Licence Charges) Act 2000* as a law

of the State and makes provision to ensure the Commonwealth law and the applied law of the State are administered on a uniform basis by the Commonwealth as a single law of the Commonwealth.

**Clause 4      Terms used**

This defines the terms used in the Act. The terms are mostly shortened forms of reference to various pieces of legislation that need to be referred to in the Act and are otherwise straightforward. Under subclause (2) expressions defined in the Commonwealth *Gene Technology Act 2000* have the same meanings in the State act. Subclause (3) make it clear that a reference to a Commonwealth Act includes a reference to that Act as amended and to an Act that is substituted for the Act referred to.

**Clause 5      Act binds the Crown**

The Act binds the State, and (as far as the power of Parliament permits) the Crown in all other capacities.

**Part 2 – The applied provisions**

**Clause 6      Application of Commonwealth gene technology laws to this State**

This is the main provision for application of the Commonwealth gene technology laws as laws of the State. The relevant Commonwealth Acts apply as if they were part of this Act, and the Commonwealth regulations apply as if they were subsidiary legislation.

By subclause (2) the Commonwealth gene technology laws apply to matters in relation to which the State can make laws, regardless of whether the Commonwealth can make laws in relation to those matters and even though those Commonwealth laws provide that they only apply to specified matters with respect to which the Commonwealth may make laws. This clarifies that when applied in WA as state laws under this Act, the applied Commonwealth gene technology laws apply in accordance with the State's legislative powers.

**Clause 7      Modification of Commonwealth gene technology laws**

Regulations may modify the Commonwealth laws as necessary or convenient to enable their effective operation as laws of the State.

**Clause 8      Interpretation of Commonwealth gene technology laws**

The *Acts Interpretation Act 1901* of the Commonwealth (and not the *Interpretation Act 1984* of Western Australia) applies in relation to interpreting the applied provisions as if those provisions were a Commonwealth Act. This will ensure a consistent application of the national scheme.

### **Part 3 – Functions and powers under applied provisions**

#### **Clause 9     Functions and powers of Commonwealth Regulator and other authorities and officers**

The Regulator (and other authorities and officers in the Commonwealth laws) have the same powers under the applied provisions as they have under the Commonwealth gene technology laws as applying to the Commonwealth.

#### **Clause 10    Delegations by Commonwealth Regulator**

This clause allows a delegation by the Commonwealth Regulator to have effect for the corresponding provision of the applied provisions.

### **Part 4 – Offences**

#### **Clause 11    Object of Part**

The object of this part is to further the object of the Act (the adoption in the State of a uniform Australian approach to the regulation of genetically modified organisms) by providing for an offence against the applied provisions to be treated as if it were an offence against a law of the Commonwealth. Subclause (2) lists some, but not all of the purposes for which an offence is to be treated in this way. These include investigation and prosecution, arrest, custody, bail, trial, conviction, appeals, sentencing, punishment and release, fines, penalties, forfeitures and liability for reparation.

#### **Clause 12    Application of Commonwealth criminal laws to offences against applied provisions**

The relevant Commonwealth laws apply as laws of the State in relation to an offence against the applied provisions as if those provisions were a law of the Commonwealth.

Except as provided by regulation, for the purposes of a law of the State, an offence against the applied provisions is taken to be an



offence against the laws of the Commonwealth as if those provisions were a law of the Commonwealth, and is taken not to be an offence against the laws of the State.

**Clause 13 Functions and powers conferred in Commonwealth officers and authorities relating to offences.**

If, under a Commonwealth law applying because of section 12, a Commonwealth officer or authority is conferred a function or power in relation to an offence against the Commonwealth gene technology laws, the officer or authority has the same function or power in relation to an offence against the corresponding provision of the applied provisions.

In performing a function or exercising a power under this section, the officer or authority must, to the extent practicable, act as they would in relation to an offence against the corresponding provision of the Commonwealth gene technology laws.

**Clause 14 No double jeopardy for offences against applied provisions.**

If an act or omission is an offence against both the applied provisions and the Commonwealth gene technology laws, and the offender has been punished under the Commonwealth laws, they cannot also be punished under the applied provisions.

**Part 5 – Administrative laws**

**Clause 15 Application of Commonwealth administrative laws to applied provisions**

The Commonwealth administrative laws apply as laws of the State in relation to the applied provisions as if those provisions were a law of the Commonwealth.

Except as provided by regulation, a matter arising in relation to the applied provisions is taken to be a matter arising in relation to the laws of the Commonwealth as if those provisions were laws of the Commonwealth and is taken not to be a matter arising in relation to laws of the State.

A provision of a Commonwealth administrative law that purports to confer jurisdiction on a federal court is taken not to have that effect.

For the purposes of this section, a reference in the *Administrative Appeals Tribunal Act 1975 (Commonwealth)* to Part IVA of that Act is

taken to be a reference to any section of Part IVA as it has effect as a law of the Commonwealth.

**Clause 16 Functions and powers conferred on Commonwealth officers and authorities**

Where a Commonwealth administrative law, confers on a Commonwealth officer or authority a function or power, it also confers that function or power in relation to the applied provisions.

In performing a function or exercising a power conferred by this section, the officer or authority must, to the extent practicable, act as they would in performing or exercising the same function or power in relation to the Commonwealth administrative law.

**Part 6 – Miscellaneous**

**Clause 17 Things done for multiple purposes**

The validity of a licence, certificate or other issued document given for the purposes of the applied provisions is not affected because it was also done for the Commonwealth gene technology laws.

**Clause 18 Reference in Commonwealth law to a provision of another law**

For the purpose of sections 12 and 15, a reference in a Commonwealth law to a provision of that or another Commonwealth law is taken to be a reference to that provision as applying because of that section.

**Clause 19 Fees and other money**

All fees, penalties, fines and other money ordered to be paid under the applied provisions (excluding refunds to another person) must be paid to the Commonwealth.

**Clause 20 Tabling amendments to the Commonwealth gene technology Acts and regulations**

The Minister must table before Parliament a copy of any amendment to the Commonwealth Gene Technology Act or Commonwealth Licence Charges Act (or the associated regulations) within 10 sitting days after the amendment comes into operation.

**Clause 21 Regulations**

The Governor may make regulations required or permitted to be prescribed by this Act, or necessary or convenient to give effect to this Act.

The regulations may deal with all matters of savings or transitional nature.

**Part 7 – Repeal of *Gene Technology Act 2006* and consequential repeal and amendments**

**Clause 22    *Gene Technology Act 2006* and *Gene Technology Regulations 2007* repealed**

This clause repeals the Act and Regulations that are being replaced by this Act.

**Clause 23    *Agricultural and Veterinary Chemicals (Western Australia) Act 1995* amended**

This clause amends the *Agricultural and Veterinary Chemicals (Western Australia) Act 1995* to refer to the new Act rather than the replaced Act.