

Gene Technology (Western Australia) Bill 2014

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Defined terms

Western Australia

LEGISLATIVE COUNCIL

Gene Technology (Western Australia) Bill 2014

A Bill for

An Act to apply the *Gene Technology Act 2000 (Commonwealth)* and the *Gene Technology (Licence Charges) Act 2000 (Commonwealth)* as a law of the State, to repeal the *Gene Technology Act 2006*, and for related purposes.

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Gene Technology (Western Australia) Act 2014*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation.

3. Object of Act

(1) The object of this Act is to adopt in the State a uniform Australian approach to the regulation of genetically modified organisms.

(2) For that purpose, this Act —

- (a) applies the *Gene Technology Act 2000* (Commonwealth) and the *Gene Technology (Licence Charges) Act 2000* (Commonwealth) as a law of the State; and
- (b) makes provision to help ensure that the Commonwealth Acts and the applied law of the State are administered on a uniform basis by the Commonwealth as if they constituted a single law of the Commonwealth.

4. Terms used

(1) In this Act —

applied provisions means the Commonwealth gene technology laws that apply as a law of the State because of section 6;

Commonwealth administrative laws means the following Acts and regulations of the Commonwealth —

- (a) the *Administrative Appeals Tribunal Act 1975* (excluding Part IVA);

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- 1 (b) the *Freedom of Information Act 1982*;
- 2 (c) the *Ombudsman Act 1976*;
- 3 (d) the *Privacy Act 1988*;
- 4 (e) the regulations in force under any of those Acts;
- 5 **Commonwealth Gene Technology Act** means the *Gene*
- 6 *Technology Act 2000* (Commonwealth);
- 7 **Commonwealth gene technology laws** means —
- 8 (a) the Commonwealth Gene Technology Act; and
- 9 (b) the Commonwealth Licence Charges Act; and
- 10 (c) all regulations, guidelines, principles, standards and
- 11 codes of practice in force under either of those Acts;
- 12 **Commonwealth Licence Charges Act** means the *Gene*
- 13 *Technology (Licence Charges) Act 2000* (Commonwealth);
- 14 **Commonwealth Regulator** means the Gene Technology
- 15 Regulator appointed under the Commonwealth Gene
- 16 Technology Act;
- 17 **function** includes duty.
- 18 (2) If an expression is defined in the Commonwealth Gene
- 19 Technology Act and is also used in this Act, the expression as
- 20 used in this Act has, unless the contrary intention appears, the
- 21 same meaning as in that Act.
- 22 (3) In this Act, a reference to a Commonwealth Act includes a
- 23 reference to —
- 24 (a) the Commonwealth Act as amended and in force for the
- 25 time being; and
- 26 (b) another Act enacted in substitution for the
- 27 Commonwealth Act and, if it is amended, that other Act
- 28 as amended and in force for the time being.
- 29 **5. State bound**
- 30 This Act binds the State and, so far as the legislative power of
- 31 the Parliament permits, the Crown in all its other capacities.

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Part 2 — The applied provisions

6. Application of Commonwealth gene technology laws to this State

- (1) The Commonwealth gene technology laws, as in force for the time being and as modified to give effect to regulations under section 7, apply as laws of the State and, as so applying —
- (a) in so far as they consist of the Commonwealth Gene Technology Act and the Commonwealth Licence Charges Act — apply as if they were a part of this Act; and
 - (b) in so far as they consist of regulations and other instruments in force under either of those Commonwealth Acts — apply as if they were subsidiary legislation for the purposes of this Act.
- (2) Those Commonwealth gene technology laws so apply as if they extended to matters in relation to which the State may make laws —
- (a) whether or not the Commonwealth may make laws in relation to those matters; and
 - (b) even though the Commonwealth gene technology laws provide that they apply only to specified matters with respect to which the Commonwealth may make laws.

Note: The Commonwealth gene technology laws can be accessed at www.comlaw.gov.au.

7. Modification of Commonwealth gene technology laws

The regulations may set out modifications for the purposes of section 6(1) but only to the extent to which they are necessary or convenient for the purpose of enabling the effective operation of the provisions of the Commonwealth gene technology laws as laws of the State.

- 1 **8. Interpretation of Commonwealth gene technology laws**
- 2 (1) The *Acts Interpretation Act 1901* (Commonwealth) applies as a
- 3 law of the State in relation to the interpretation of the applied
- 4 provisions.
- 5 (2) That Act so applies as if the applied provisions were a
- 6 Commonwealth Act or were regulations or other instruments
- 7 under a Commonwealth Act, as the case requires.
- 8 (3) The *Interpretation Act 1984* (Western Australia) does not apply
- 9 in relation to the applied provisions.

Part 4 — Offences

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11. Object of Part

- (1) The object of this Part is to further the object of this Act by providing for an offence against the applied provisions to be treated as if it were an offence against a law of the Commonwealth.
- (2) The purposes for which an offence is to be treated as mentioned in subsection (1) include, for example (but without limitation) the following —
 - (a) the investigation and prosecution of offences;
 - (b) the arrest, custody, bail, trial and conviction of offenders or persons charged with offences;
 - (c) proceedings relating to a matter referred to in paragraph (a) or (b);
 - (d) appeals and reviews relating to criminal proceedings and to proceedings of the kind referred to in paragraph (c);
 - (e) the sentencing, punishment and release of persons convicted of offences;
 - (f) fines, penalties and forfeitures;
 - (g) liability to make reparation in connection with offences;
 - (h) proceeds of crime;
 - (i) spent convictions.

12. Application of Commonwealth criminal laws to offences against applied provisions

- (1) 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 and not a law of the State.

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- 1 (2) For the purposes of a law of the State, an offence against the
2 applied provisions —
- 3 (a) is taken to be an offence against the laws of the
4 Commonwealth in the same way as if those provisions
5 were a law of the Commonwealth; and
- 6 (b) is taken not to be an offence against the laws of the
7 State.
- 8 (3) Subsection (2) has effect for the purposes of a law of the State
9 except as provided by regulations made under this Act.

10 **13. Functions and powers conferred on Commonwealth officers**
11 **and authorities relating to offences**

- 12 (1) A Commonwealth law applying because of section 12 that
13 confers on a Commonwealth officer or authority a function or
14 power in relation to an offence against the Commonwealth gene
15 technology laws also confers on the officer or authority the
16 same function or power in relation to an offence against the
17 corresponding provision of the applied provisions.
- 18 (2) In performing a function or exercising a power conferred by this
19 section, the Commonwealth officer or authority must, to the
20 extent practicable, act as the officer or authority would act in
21 performing or exercising the same function or power in relation
22 to an offence against the corresponding provision of the
23 Commonwealth gene technology laws.

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

- 25 If —
- 26 (a) an act or omission is an offence against the applied
27 provisions and an offence against the Commonwealth
28 gene technology laws; and

1 (b) the offender has been punished for that offence under
2 those Commonwealth laws,
3 the offender is not liable to be punished for the offence under
4 the applied provisions.

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Part 5 — Administrative laws

15. Application of Commonwealth administrative laws to applied provisions

- (1) The Commonwealth administrative laws apply as laws of the State to any matter arising in relation to the applied provisions as if those provisions were a law of the Commonwealth and not a law of the State.
- (2) For the purposes of a law of the State, a matter arising in relation to the applied provisions —
 - (a) is taken to be a matter arising in relation to laws of the Commonwealth in the same way as if those provisions were a law of the Commonwealth; and
 - (b) is taken not to be a matter arising in relation to laws of the State.
- (3) Subsection (2) has effect for the purposes of a law of the State except as provided by regulations made under this Act.
- (4) A provision of a Commonwealth administrative law applying because of this section that purports to confer jurisdiction on a federal court is taken not to have that effect.
- (5) For the purposes of this section, a reference in a provision of the *Administrative Appeals Tribunal Act 1975* (Commonwealth) (as that provision applies as a law of the State) to the whole or any part of Part IVA of that Act is taken to be a reference to the whole or any part of that Part as it has effect as a law of the Commonwealth.

16. Functions and powers conferred on Commonwealth officers and authorities

- (1) A Commonwealth administrative law applying because of section 15 that confers on a Commonwealth officer or authority a function or power also confers on the officer or authority the

1 same function or power in relation to a matter arising in relation
2 to the applied provisions.

3 (2) In performing a function or exercising a power conferred by this
4 section, the Commonwealth officer or authority must act as
5 nearly as practicable as the officer or authority would act in
6 performing or exercising the same function or power under the
7 Commonwealth administrative law.

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Part 6 — Miscellaneous

17. Things done for multiple purposes

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

18. Reference in Commonwealth law to a provision of another law

For the purposes 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.

19. Fees and other money

All fees, penalties, fines and other money that, under this Act and the applied provisions, are authorised or directed to be payable by or imposed on any person (but not including an amount ordered to be refunded to another person) must be paid to the Commonwealth.

20. Tabling amendments to the Commonwealth gene technology Acts and regulations

- (1) The Minister must ensure that a copy of an amendment to —
 - (a) the Commonwealth Gene Technology Act; or
 - (b) the Commonwealth Licence Charges Act; or
 - (c) regulations under either of those Acts,

is laid before each House of Parliament within 10 sitting days after the day on which the amendment comes into operation.

- (2) This section does not affect the application of the amendment under section 6 as a law of the State.

1 **21. Regulations**

2 (1) The Governor may make regulations prescribing all matters that
3 are required or permitted to be prescribed by this Act to be
4 prescribed, or are necessary or convenient to be prescribed for
5 giving effect to this Act.

6 (2) The regulations may deal with all matters of a savings or
7 transitional nature arising as a result of the enactment of this
8 Act.

1 **Part 7 — Consequential repeals and amendments**

2 **22. *Gene Technology Act 2006 and Gene Technology***
3 ***Regulations 2007 repealed***

4 (1) The *Gene Technology Act 2006* is repealed.

5 (2) The *Gene Technology Regulations 2007* are repealed.

6 **23. *Agricultural and Veterinary Chemicals (Western Australia)***
7 ***Act 1995 amended***

8 (1) This section amends the *Agricultural and Veterinary Chemicals*
9 *(Western Australia) Act 1995*.

10 (2) In section 23A(2) delete “Regulator within the meaning of the
11 *Gene Technology Act 2006*” and insert:
12

13 Gene Technology Regulator
14

15 (3) After section 23A(2) insert:
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17 (3A) In subsection (2) —

18 ***Gene Technology Regulator*** means the
19 Commonwealth Regulator as defined in the *Gene*
20 *Technology (Western Australia) Act 2014* section 4(1).
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Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
applied provisions	4(1)
Commonwealth administrative laws	4(1)
Commonwealth Gene Technology Act.....	4(1)
Commonwealth gene technology laws	4(1)
Commonwealth Licence Charges Act.....	4(1)
Commonwealth Regulator	4(1)
function	4(1)