



New South Wales

Gene Technology (New South Wales) Bill 2001

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to give effect in this State to a nationally consistent scheme for the regulation of certain dealings with genetically modified organisms.

For that purpose, the Bill:

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

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 states the object of the proposed Act (which is principally to adopt in this State a uniform Australian approach to the regulation of genetically modified organisms).

Clause 4 defines expressions used in the proposed Act.

Part 2 The applied provisions

Clause 5 applies the Commonwealth gene technology laws (which are defined in clause 4 as the *Gene Technology Act 2000* of the Commonwealth, the *Gene Technology (Licence Charges) Act 2000* of the Commonwealth and all regulations, guidelines, principles, standards and codes of practice in force under either of those Acts) as a law of this State.

In addition, it provides that the Commonwealth gene technology laws so apply as if they extended to matters in relation to which this State may make laws, whether or not the Commonwealth may make laws in relation to those matters.

Clause 6 provides that the additional offences inserted into the *Commonwealth Gene Technology Act 2000* relating to human cloning and cell experimentation (namely, sections 192B–192D) are not applied as State law to enable separate State legislation to be developed to deal with the matter. The clause also permits the regulations under the proposed Act to modify the Commonwealth gene technology laws for the purposes of the proposed Act.

Clause 7 applies the *Acts Interpretation Act 1901* of the Commonwealth as a law of this State in relation to the interpretation of the applied provisions (which are defined in clause 4 as the Commonwealth gene technology laws that apply as a law of this State because of clause 5).

In addition, it provides that the *Interpretation Act 1987* of New South Wales does not apply to the applied provisions.

Part 3 Functions and powers under applied provisions

Clause 8 provides that the Gene Technology Regulator appointed under the Commonwealth Gene Technology Act (referred to in the proposed Act as the Commonwealth Regulator) and other authorities and officers have the same functions and powers under the applied provisions as they have under the Commonwealth gene technology laws.

Clause 9 provides that any delegation by the Commonwealth Regulator under the Commonwealth Gene Technology Act is taken to have effect for the purposes of the corresponding provision of the applied provisions.

Part 4 Offences

Clause 10 states that the object of Part 4 of the proposed Act is to further the Act's objects by providing for an offence against the applied provisions to be treated as if it were an offence against a law of the Commonwealth.

In addition, the clause gives examples of the purposes for which an offence is to be so treated.

Clause 11 applies the relevant Commonwealth laws as laws of this State in relation to an offence against the applied provisions as if those provisions were a law of the Commonwealth.

In addition, the clause provides that, except as provided by the regulations under the proposed Act, an offence against the applied provisions is taken to be an offence against the laws of the Commonwealth and not an offence against the laws of this State.

Clause 12 provides that a function or power in relation to an offence against the Commonwealth gene technology laws conferred on a Commonwealth officer or authority by Commonwealth laws applying because of clause 11 is also conferred on the officer or authority in relation to an offence against the corresponding provision of the applied provisions.

Clause 13 provides that a person is not liable to be punished for an offence under the applied provisions if the person has been punished for the same offence against the Commonwealth gene technology laws.

Part 5 Administrative law

Clause 14 applies the Commonwealth administrative laws (which are defined in clause 4) as laws of this State to any matter arising in relation to the applied provisions, except as provided by the regulations under the proposed Act.

The clause further provides that a matter arising in relation to the applied provisions is taken to be a matter arising in relation to the laws of the Commonwealth, not this State.

In addition, the clause provides that any provision of a Commonwealth administrative law applying because of this clause that purports to confer jurisdiction on a federal court is taken not to have that effect. This gives effect to High Court decision in *Wakim's case* that a State law cannot confer jurisdiction on the Federal Court.

Clause 15 provides that a function or power conferred on a Commonwealth officer or authority by a Commonwealth administrative law applying because of clause 14 is also conferred on the officer or authority in relation to a matter arising in relation to the applied provisions.

Part 6 Miscellaneous

Clause 16 provides that the proposed Act binds the Crown.

Clause 17 provides that the validity of a thing done for the purposes of the applied provisions is not affected only because it was done also for the purposes of the Commonwealth gene technology laws.

Clause 18 provides that a reference in a Commonwealth law to any provision of a Commonwealth law is taken, for the purposes of clauses 11 and 14, to be a reference to that provision as applying because of that clause.

Clause 19 requires all money payable under the proposed Act and the applied provisions to be paid to the Commonwealth.

Clause 20 empowers the Governor to make regulations for carrying out or giving effect to the proposed Act.

Clause 21 extends the definition of *relevant State Act* in section 3 (1) of the *Federal Courts (State) Jurisdiction) Act 1999* of this State to include the proposed Act. The amendment will enable regulations to be made under section 16 (2) of that

Gene Technology (New South Wales) Bill 2001

Explanatory note

Act to make modifications to the administration and enforcement of the applied Commonwealth laws as a consequence of any future decisions of the High Court with respect to the conferral of functions on Commonwealth officials in connection with co-operative Commonwealth/State legislative arrangements.



New South Wales

Gene Technology (New South Wales) Bill 2001

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New South Wales

Gene Technology (New South Wales) Bill 2001

No. , 2001

A Bill for

An Act to apply the *Gene Technology Act 2000* and the *Gene Technology (Licence Charges) Act 2000* of the Commonwealth as a law of this State; and for other purposes.

Clause 1 Gene Technology (New South Wales) Bill 2001

Part 1 Preliminary

The Legislature of New South Wales enacts: 1

Part 1 Preliminary 2

1 Name of Act 3

This Act is the *Gene Technology (New South Wales) Act 2001*. 4

2 Commencement 5

This Act commences on a day or days to be appointed by proclamation. 6
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3 Object of Act 8

(1) The object of this Act is to adopt in this State a uniform Australian approach to the regulation of genetically modified organisms. 9
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(2) For that purpose, this Act: 11

(a) applies the *Gene Technology Act 2000* and the *Gene Technology (Licence Charges) Act 2000* of the Commonwealth as a law of this State, and 12
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(b) makes provision to help ensure that the Commonwealth Acts and the applied law of this State are administered on a uniform basis by the Commonwealth as if they constituted a single law of the Commonwealth. 15
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4 Definitions 19

(1) In this Act: 20

applied provisions means the Commonwealth gene technology laws that apply as a law of this State because of section 5, including any modification under section 6. 21
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Commonwealth Gene Technology Act means the *Gene Technology Act 2000* of the Commonwealth. 24
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Commonwealth Licence Charges Act means the *Gene Technology (Licence Charges) Act 2000* of the Commonwealth. 26
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<i>Commonwealth administrative laws</i> means the following Acts and regulations of the Commonwealth:	1
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(a) the <i>Administrative Appeals Tribunal Act 1975</i> (excluding Part IVA),	3
	4
(b) the <i>Freedom of Information Act 1982</i> ,	5
(c) the <i>Ombudsman Act 1976</i> ,	6
(d) the <i>Privacy Act 1988</i> ,	7
(e) the regulations in force under any of those Acts.	8
<i>Commonwealth Regulator</i> means the Gene Technology Regulator appointed under the Commonwealth Gene Technology Act.	9
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<i>Commonwealth gene technology laws</i> means:	11
(a) the Commonwealth Gene Technology Act, and	12
(b) the Commonwealth Licence Charges Act, and	13
(c) all regulations, guidelines, principles, standards and codes of practice in force under either of those Acts.	14
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<i>function</i> includes duty.	16
<i>modifications</i> includes additions, omissions and substitutions.	17
(2) If an expression is defined in the Commonwealth Gene Technology Act and is also used in this Act, the expression as used in this Act has, unless the contrary intention appears, the same meaning as in that Act.	18
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(3) In this Act, a reference to a Commonwealth Act includes a reference to:	21
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(a) that Commonwealth Act, as amended and in force for the time being, and	23
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(b) an Act enacted in substitution for that Act and, if it is amended, as amended and in force for the time being.	25
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Part 2 The applied provisions	1
5 Application of Commonwealth gene technology laws to this State	2
(1) The Commonwealth gene technology laws, as in force for the time being and as modified by or under this Act, apply as a law of this State.	3 4 5
(2) Those Commonwealth gene technology laws so apply as if they extended to matters in relation to which this State may make laws:	6 7
(a) whether or not the Commonwealth may make laws in relation to those matters, and	8 9
(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.	10 11 12
6 Modification of Commonwealth gene technology laws	13
(1) The Commonwealth gene technology laws are modified for the purposes of this Act by the omission of sections 192B, 192C and 192D the <i>Gene Technology Act 2000</i> of the Commonwealth.	14 15 16
(2) The regulations under this Act may also modify the Commonwealth gene technology laws for the purposes of this Act.	17 18
7 Interpretation of Commonwealth gene technology laws	19
(1) The <i>Acts Interpretation Act 1901</i> of the Commonwealth applies as a law of this State in relation to the interpretation of the applied provisions. That Act so applies as if the applied provisions were a Commonwealth Act or were regulations or other instruments under a Commonwealth Act, as the case requires.	20 21 22 23 24
(2) The <i>Interpretation Act 1987</i> of New South Wales does not apply to the applied provisions.	25 26

Part 3 Functions and powers under applied provisions	1
8 Functions and powers of Commonwealth Regulator and other authorities and officers	2 3
The Commonwealth Regulator and other authorities and officers referred to in the applied provisions have the same functions and powers under the applied provisions as they have under the Commonwealth gene technology laws, as those laws apply to the Commonwealth.	4 5 6 7 8
9 Delegations by the Commonwealth Regulator	9
Any delegation by the Commonwealth Regulator under the Commonwealth Gene Technology Act is taken to extend to, and have effect for the purposes of, the corresponding provision of the applied provisions.	10 11 12 13

Part 4 Offences

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10 Object of this Part

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- (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. 3
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- (2) The purposes for which an offence is to be treated as mentioned in subsection (1) include, for example (but without limitation): 6
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- (a) the investigation and prosecution of offences, and 8
 - (b) the arrest, custody, bail, trial and conviction of offenders or persons charged with offences, and 9
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 - (c) proceedings relating to a matter referred to in paragraph (a) or (b), and 11
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 - (d) appeals and review relating to criminal proceedings and to proceedings of the kind referred to in paragraph (c), and 13
14
 - (e) the sentencing, punishment and release of persons convicted of offences, and 15
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 - (f) fines, penalties and forfeitures, and 17
 - (g) liability to make reparation in connection with offences, and 18
 - (h) proceeds of crime, and 19
 - (i) spent convictions. 20

11 Application of Commonwealth criminal laws to offences against applied provisions

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- (1) The relevant Commonwealth laws apply as laws of this 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 this State. 23
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- (2) For the purposes of a law of this State, an offence against the applied provisions: 27
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- (a) is taken to be an offence against the laws of the Commonwealth, in the same way as if those provisions were a law of the Commonwealth, and 29
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 - (b) is taken not to be an offence against the laws of this State. 32

(3) Subsection (2) has effect for the purposes of a law of this State except as provided by the regulations under this Act.	1 2
12 Functions and powers conferred on Commonwealth officers and authorities relating to offences	3 4
(1) A Commonwealth law applying because of section 11 that confers on a Commonwealth officer or authority a function or power in relation to an offence against the Commonwealth gene technology laws also confers on the officer or authority the same function or power in relation to an offence against the corresponding provision of the applied provisions.	5 6 7 8 9 10
(2) In performing a function or exercising a power conferred by this section, the Commonwealth officer or authority must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power in relation to an offence against the corresponding provision of the Commonwealth gene technology laws.	11 12 13 14 15 16
13 No double jeopardy for offences against applied provisions	17
If:	18
(a) an act or omission is an offence against both the applied provisions and an offence against the Commonwealth gene technology laws, and	19 20 21
(b) the offender has been punished for that offence under those Commonwealth laws,	22 23
the offender is not liable to be punished for the offence under the applied provisions.	24 25

Part 6 Miscellaneous	1
16 Act to bind Crown	2
This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.	3 4 5
17 Things done for multiple purposes	6
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.	7 8 9 10
18 Reference in Commonwealth law to a provision of another law	11
For the purposes of sections 11 and 14, 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.	12 13 14 15
19 Fees and other money	16
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.	17 18 19 20
20 Regulations	21
The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.	22 23 24 25

Clause 21 Gene Technology (New South Wales) Bill 2001

Part 6 Miscellaneous

21	Amendment of Federal Courts (State Jurisdiction) Act 1999 No 22	1
	The <i>Federal Courts (State Jurisdiction) Act 1999</i> is amended by	2
	inserting after paragraph (e) of the definition of <i>relevant State Act</i> in	3
	section 3 the following paragraph:	4
	(e1) <i>Gene Technology (New South Wales) Act 2001,</i>	5