



New South Wales

Gene Technology (New South Wales) Bill 2003

Explanatory note

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

The *Gene Technology (GM Crop Moratorium) Bill 2003* is cognate with this Bill.

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, the clause 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 Commonwealth gene technology laws are modified for the purposes of the proposed Act by prohibiting the Commonwealth Regulator from granting a licence for a dealing that would involve an intentional release of a genetically modified organism (GMO) into the New South Wales environment if the dealing is in contravention of a moratorium order made under the *Gene Technology (GM Crop Moratorium) Act 2003*. The clause also permits the regulations under the proposed Act to modify the Commonwealth gene technology laws.

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, the clause 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 object 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 under the Commonwealth gene technology laws.

Part 5 Administrative laws

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 is consistent with the High Court decision in Wakim's case (*Re Wakim; Ex parte McNally* (1999) 198 CLR 511) 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 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.

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 of the *Federal Courts (State Jurisdiction) Act 1999* of New South Wales to include the proposed Act. In particular the amendment will enable regulations to be made under section 16 (2) of that 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

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Contents

	Page
Part 1 Preliminary	
1 Name of Act	2
2 Commencement	2
3 Object of Act	2
4 Definitions	2
Part 2 The applied provisions	
5 Application of Commonwealth gene technology laws to this State	4
6 Modification of Commonwealth gene technology laws	4
7 Interpretation of Commonwealth gene technology laws	4
Part 3 Functions and powers under applied provisions	
8 Functions and powers of Commonwealth Regulator and other authorities and officers	6

Contents

	Page
9 Delegations by the Commonwealth Regulator	6
Part 4 Offences	
10 Object of this Part	7
11 Application of Commonwealth criminal laws to offences against applied provisions	7
12 Functions and powers conferred on Commonwealth officers and authorities relating to offences	8
13 No double jeopardy for offences against applied provisions	8
Part 5 Administrative laws	
14 Application of Commonwealth administrative laws to applied provisions	9
15 Functions and powers conferred on Commonwealth officers and authorities	9
Part 6 Miscellaneous	
16 Act to bind Crown	10
17 Things done for multiple purposes	10
18 Reference in Commonwealth law to a provision of another law	10
19 Fees and other money	10
20 Regulations	10
21 Amendment of Federal Courts (State Jurisdiction) Act 1999 No 22	10



New South Wales

Gene Technology (New South Wales) Bill 2003

No. , 2003

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.

See also *Gene Technology (GM Crop Moratorium) Bill 2003*.

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 2003*. 4

2 Commencement 5

 This Act commences on a day or days to be appointed by 6
 proclamation. 7

3 Object of Act 8

(1) The object of this Act is to adopt in this State a uniform Australian 9
 approach to the regulation of genetically modified organisms. 10

(2) For that purpose, this Act: 11

(a) applies the *Gene Technology Act 2000* and the *Gene 12*
 Technology (Licence Charges) Act 2000 of the 13
 Commonwealth as a law of this State, and 14

(b) makes provision to help ensure that the Commonwealth Acts 15
 and the applied law of this State are administered on a 16
 uniform basis by the Commonwealth as if they constituted a 17
 single law of the Commonwealth. 18

4 Definitions 19

(1) In this Act: 20

applied provisions means the Commonwealth gene technology laws 21
that apply as a law of this State because of section 5, including any 22
modification under section 6. 23

Commonwealth administrative laws means the following Acts and 24
regulations of the Commonwealth: 25

(a) the *Administrative Appeals Tribunal Act 1975* (excluding 26
 Part IVA), 27

(b) the *Freedom of Information Act 1982*, 28

(c) the *Ombudsman Act 1976*, 29

(d) the *Privacy Act 1988*, 30

(e) the regulations in force under any of those Acts. 31

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- Commonwealth Gene Technology Act*** means the *Gene Technology Act 2000* of the Commonwealth. 1
2
- Commonwealth gene technology laws*** means: 3
- (a) the Commonwealth Gene Technology Act, and 4
 - (b) the Commonwealth Licence Charges Act, and 5
 - (c) all regulations, guidelines, principles, standards and codes of 6
practice in force under either of those Acts. 7
- Commonwealth Licence Charges Act*** means the *Gene Technology (Licence Charges) Act 2000* of the Commonwealth. 8
9
- Commonwealth Regulator*** means the Gene Technology Regulator 10
appointed under the Commonwealth Gene Technology Act. 11
- function*** includes duty. 12
- modifications*** includes additions, omissions and substitutions. 13
- (2) If an expression is defined in the Commonwealth Gene Technology 14
Act and is also used in this Act, the expression as used in this Act 15
has, unless the contrary intention appears, the same meaning as in 16
that Act. 17
 - (3) In this Act, a reference to a Commonwealth Act includes a reference 18
to: 19
 - (a) that Commonwealth Act, as amended and in force for the time 20
being, and 21
 - (b) an Act enacted in substitution for that Act and, if it is 22
amended, as amended and in force for the time being. 23
-

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 prohibiting the Commonwealth Regulator from granting a licence for a dealing that would involve an intentional release of a GMO into the New South Wales environment if the dealing is in contravention of a moratorium order made under the <i>Gene Technology (GM Crop Moratorium) Act 2003</i> .	14 15 16 17 18 19 20
(2)	The regulations under this Act may also modify the Commonwealth gene technology laws for the purposes of this Act.	21 22
(3)	Without limiting subsection (2), the regulations may provide that the Commonwealth gene technology laws apply under section 5 (1) as if an amendment to the Commonwealth gene technology laws:	23 24 25
(a)	made by a law of the Commonwealth, and	26
(b)	specified in the regulations,	27
	had not taken effect.	28
7	Interpretation of Commonwealth gene technology laws	29
(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.	30 31 32 33 34

Gene Technology (New South Wales) Bill 2003

Clause 7

The applied provisions

Part 2

(2) The *Interpretation Act 1987* of New South Wales does not apply to the applied provisions.

1
2

Clause 8 Gene Technology (New South Wales) Bill 2003

Part 3 Functions and powers under applied provisions

Part 3 Functions and powers under applied provisions 1
2

8 Functions and powers of Commonwealth Regulator and other authorities and officers 3
4

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. 5
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9 Delegations by the Commonwealth Regulator 10

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. 11
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Part 4	Offences	1
10	Object of this Part	2
(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 4 5
(2)	The purposes for which an offence is to be treated as mentioned in subsection (1) include, for example (but are not limited to):	6 7
(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 10
(c)	proceedings relating to a matter referred to in paragraph (a) or (b), and	11 12
(d)	appeals and reviews 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 16
(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	21 22
(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 24 25 26
(2)	For the purposes of a law of this State, an offence against the applied provisions:	27 28
(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 30 31
(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.	33 34

12	Functions and powers conferred on Commonwealth officers and authorities relating to offences	1 2
(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.	3 4 5 6 7 8
(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.	9 10 11 12 13 14
13	No double jeopardy for offences against applied provisions	15
	If:	16
(a)	an act or omission is an offence against both the applied provisions and an offence against the Commonwealth gene technology laws, and	17 18 19
(b)	the offender has been punished for that offence under those Commonwealth laws,	20 21
	the offender is not liable to be punished for the offence under the applied provisions.	22 23

Part 5 Administrative laws

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| | 1 |
| 14 Application of Commonwealth administrative laws to applied provisions | 2
3 |
| (1) The Commonwealth administrative laws apply as laws of this 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 this State. | 4
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7 |
| (2) For the purposes of a law of this State, a matter arising in relation to the applied provisions: | 8
9 |
| (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 | 10
11
12 |
| (b) is taken not to be a matter arising in relation to laws of this State. | 13
14 |
| (3) Subsection (2) has effect for the purposes of a law of this State except as provided by the regulations under this Act. | 15
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| (4) Any 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. | 17
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| (5) For the purposes of this section, a reference in a provision of the <i>Administrative Appeals Tribunal Act 1975</i> of the Commonwealth (as that provision applies as a law of this jurisdiction) 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. | 20
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| 15 Functions and powers conferred on Commonwealth officers and authorities | 26
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| (1) A Commonwealth administrative law applying because of section 14 that confers on a Commonwealth officer or authority a function or power also confers on the officer or authority the same function or power in relation to a matter arising in relation to the applied provisions. | 28
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| (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 under the Commonwealth administrative law. | 33
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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
21	Amendment of Federal Courts (State Jurisdiction) Act 1999 No 22	26
	The <i>Federal Courts (State Jurisdiction) Act 1999</i> is amended by inserting after paragraph (e) of the definition of <i>relevant State Act</i> in section 3 the following paragraph:	27 28 29
	(e1) <i>Gene Technology (New South Wales) Act 2003</i>	30