

# TASMANIA

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## GENE TECHNOLOGY (TASMANIA) BILL 2012

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### CONTENTS

#### **PART 1 – PRELIMINARY**

1. Short title
2. Commencement
3. Object of Act
4. Interpretation
5. Act binds Crown

#### **PART 2 – THE APPLIED PROVISIONS**

6. Application of Commonwealth gene technology laws to this State
7. Modification of Commonwealth gene technology laws
8. Interpretation of Commonwealth gene technology laws

#### **PART 3 – FUNCTIONS AND POWERS UNDER APPLIED PROVISIONS**

9. Functions and powers of Commonwealth Regulator and other authorities and officers
10. Delegations by Commonwealth Regulator

#### **PART 4 – OFFENCES**

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

13. Functions and powers conferred on Commonwealth officers and authorities relating to offences
14. No double jeopardy for offences against applied provisions

**PART 5 – ADMINISTRATIVE LAWS**

15. Application of Commonwealth administrative laws to applied provisions
16. Functions and powers conferred on Commonwealth officers and authorities

**PART 6 – MISCELLANEOUS**

17. Things done for multiple purposes
18. Reference in Commonwealth law to a provision of another law
19. Fees and other money
20. Regulations
21. Administration of Act
22. Consequential amendments
23. Legislation repealed
24. Legislation rescinded
25. Legislation revoked

**SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS**

**SCHEDULE 2 – LEGISLATION REPEALED**

**SCHEDULE 3 – LEGISLATION RESCINDED**

**SCHEDULE 4 – LEGISLATION REVOKED**

# **GENE TECHNOLOGY (TASMANIA) BILL 2012**

*(Brought in by the Minister for Primary Industries and Water,  
the Honourable Bryan Alexander Green)*

## **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 and to repeal the *Gene Technology Act 2001***

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

## **PART 1 – PRELIMINARY**

### **1. Short title**

This Act may be cited as the *Gene Technology (Tasmania) Act 2012*.

### **2. Commencement**

This Act commences on a day to be proclaimed.

### **3. Object of Act**

- (1) The object of this Act is to protect the health and safety of people, and to protect the environment, by identifying risks posed by or as a result of

*Gene Technology (Tasmania) Act 2012*  
*Act No. of*

s. 4

Part 1 – Preliminary

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gene technology, and by managing those risks through regulating certain dealings with GMOs.

- (2) For that purpose, this Act –
- (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.

#### **4. Interpretation**

- (1) In this Act –

***applied provisions*** means the Commonwealth gene technology laws that apply as a law of this 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);
- (b) the *Freedom of Information Act 1982*;

*Gene Technology (Tasmania) Act 2012*  
*Act No. of*

Part 1 – Preliminary

s. 4

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- (c) the *Ombudsman Act 1976*;
- (d) the *Privacy Act 1988*;
- (e) the regulations in force under any of those Acts;

***Commonwealth gene technology laws***  
means –

- (a) the *Gene Technology Act 2000* of the Commonwealth; and
- (b) the *Gene Technology (Licence Charges) Act 2000* of the Commonwealth; and
- (c) all regulations, guidelines, principles, standards and codes of practice in force under either of those Acts;

***Commonwealth Regulator*** means the Gene Technology Regulator appointed under the *Gene Technology Act 2000* of the Commonwealth;

***function*** includes duty;

***modify*** includes add to, omit and substitute.

- (2) If an expression is defined in the *Gene Technology Act 2000* of the Commonwealth 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.

*Gene Technology (Tasmania) Act 2012*  
*Act No. of*

s. 5

Part 1 – Preliminary

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- (3) In this Act, a reference to a Commonwealth Act includes a reference to –
- (a) that Commonwealth Act, as amended and in force for the time being; and
  - (b) an Act enacted in substitution for that Act and, if it is amended, as amended and in force for the time being.

**5. Act binds Crown**

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

## **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 by or under this Act, apply as a law of this State.
- (2) Those Commonwealth gene technology laws so apply as if they extended to matters in relation to which this 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.

### **7. Modification of Commonwealth gene technology laws**

- (1) The Commonwealth gene technology laws are modified for the purposes of this Act by prohibiting the operation in Tasmania of any licence granted by the Commonwealth Regulator for a dealing with a GMO if the dealing is in contravention of an order made under section 5 of the *Genetically Modified Organisms Control Act 2004*.

*Gene Technology (Tasmania) Act 2012*  
*Act No. of*

s. 8

Part 2 – The Applied Provisions

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- (2) The regulations made under this Act may also modify the Commonwealth gene technology laws for the purposes of this Act.
- (3) Without limiting subsection (2), the regulations may provide that the Commonwealth gene technology laws apply under section 6(1) as if an amendment to the Commonwealth gene technology laws, made by a law of the Commonwealth and specified in the regulations, had not taken effect.

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

- (1) The *Acts Interpretation Act 1901* of the Commonwealth applies as a law of this State in relation to the interpretation of the applied provisions.
- (2) The *Acts Interpretation Act 1901* of the Commonwealth 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.
- (3) The *Acts Interpretation Act 1931* does not apply to the applied provisions.



**PART 3 – FUNCTIONS AND POWERS UNDER  
APPLIED PROVISIONS**

**9. Functions and powers of Commonwealth Regulator  
and other authorities and officers**

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.

**10. Delegations by Commonwealth Regulator**

Any delegation by the Commonwealth Regulator under the *Gene Technology Act 2000* of the Commonwealth is taken to extend to, and have effect for the purposes of, the corresponding provision of the applied provisions.

## **PART 4 – OFFENCES**

### **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 are not limited to) –
  - (a) the investigation and prosecution of offences; and
  - (b) the arrest, custody, bail, trial and conviction of offenders or persons charged with offences; and
  - (c) proceedings relating to a matter referred to in paragraph (a) or (b); and
  - (d) appeals and reviews relating to criminal proceedings and to proceedings of the kind referred to in paragraph (c); and
  - (e) the sentencing, punishment and release of persons convicted of offences; and
  - (f) fines, penalties and forfeitures; and
  - (g) liability to make reparation in connection with offences; and
  - (h) proceeds of crime; and

- (i) spent convictions.

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

- (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.
- (2) For the purposes of a law of this State, an offence against the applied provisions –
- (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
- (b) is taken not to be an offence against the laws of this State.
- (3) Subsection (2) has effect for the purposes of a law of this State except as provided by the regulations made under this Act.

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

- (1) A Commonwealth law applying because of section 12 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

*Gene Technology (Tasmania) Act 2012*  
*Act No. of*

s. 14

Part 4 – Offences

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or authority the same function or power in relation to an offence against the corresponding provision of the applied provisions.

- (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.

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

If –

- (a) an act or omission is an offence against the applied provisions and is also an offence against the Commonwealth gene technology laws; and
- (b) the offender has been punished for that offence under those Commonwealth laws –

the offender is not liable to be punished for the offence under the applied provisions.

**PART 5 – ADMINISTRATIVE LAWS**

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

- (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.
- (2) For the purposes of a law of this 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 this State.
- (3) Subsection (2) has effect for the purposes of a law of this State except as provided by the regulations made under this Act.
- (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.
- (5) For the purposes of this section, a reference in a provision of the *Administrative Appeals Tribunal Act 1975* 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

*Gene Technology (Tasmania) Act 2012*  
*Act No. of*

s. 16

Part 5 – Administrative Laws

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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 same function or power in relation to a matter arising in relation to the applied provisions.
- (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.

**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.

*Gene Technology (Tasmania) Act 2012*  
*Act No. of*

s. 20

Part 6 – Miscellaneous

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**20. Regulations**

The Governor may make regulations for the purposes of this Act.

**21. Administration of Act**

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Primary Industries and Water; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Primary Industries, Parks, Water and Environment.

**22. Consequential amendments**

The legislation specified in Schedule 1 is amended as specified in that Schedule.

**23. Legislation repealed**

The legislation specified in Schedule 2 is repealed.



*Gene Technology (Tasmania) Act 2012*  
*Act No. of*

Part 6 – Miscellaneous

s. 24

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**24. Legislation rescinded**

The legislation specified in Schedule 3 is rescinded.

**25. Legislation revoked**

The legislation specified in Schedule 4 is revoked.

*Gene Technology (Tasmania) Act 2012*  
*Act No. of*

sch. 1

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**SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS**

Section 22

***Agricultural and Veterinary Chemicals (Tasmania) Act 1994***

1. Section 23A(2) is amended by omitting “*Gene Technology Act 2001*” and substituting “*Gene Technology Act 2000* of the Commonwealth”.

***Federal Courts (State Jurisdiction) Act 1999***

1. Section 3 is amended by inserting after paragraph (e) in the definition of *relevant State Act* the following paragraph:

(ea) *Gene Technology (Tasmania) Act 2012*;

***Genetically Modified Organisms Control Act 2004***

1. Section 3(1) is amended as follows:
  - (a) by omitting “*Gene Technology Act 2001*” from the definition of *genetically modified organism* and substituting “*Gene Technology Act 2000* of the Commonwealth”;
  - (b) by omitting the definition of *GMO licence* and substituting the following definition:

***GMO licence*** means a *GMO licence* within the meaning of section

*Gene Technology (Tasmania) Act 2012*  
*Act No. of*

**sch. 1**

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10(1) of the *Gene Technology Act*  
2000 of the Commonwealth;

*Gene Technology (Tasmania) Act 2012*  
*Act No. of*

**sch. 2**

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**SCHEDULE 2 – LEGISLATION REPEALED**

Section 23

*Gene Technology Act 2001* (No. 53 of 2001)

*Gene Technology (Tasmania) Act 2012*  
*Act No. of*

**sch. 3**

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**SCHEDULE 3 – LEGISLATION RESCINDED**

Section 24

*Gene Technology Regulations 2003* (No. 21 of 2003)

*Gene Technology (Tasmania) Act 2012*  
*Act No. of*

**sch. 4**

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**SCHEDULE 4 – LEGISLATION REVOKED**

Section 25

*Proclamation under the Gene Technology Act 2001 (No. 20 of  
2003)*