

THIS PUBLIC BILL has this day been read a Third time and passed

The Clerk of the Parliament.

*Legislative Assembly Chamber,
Brisbane, October 2016*



Queensland

**No.
A BILL for**

An Act to apply the Gene Technology Act 2000 (Cwlth) and Gene Technology (Licence Charges) Act 2000 (Cwlth) as laws of Queensland, to repeal the Gene Technology Act 2001, and to amend this Act and the legislation mentioned in schedule 1 for particular purposes



Queensland

Gene Technology (Queensland) Bill 2016

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2016

A Bill

for

An Act to apply the *Gene Technology Act 2000* (Cwlth) and *Gene Technology (Licence Charges) Act 2000* (Cwlth) as laws of Queensland, to repeal the *Gene Technology Act 2001*, and to amend this Act and the legislation mentioned in schedule 1 for particular purposes

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Gene Technology (Queensland) Act 2016*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Purpose of Act

(1) The purpose of this Act is to—

- (a) protect the health and safety of people, and to protect the environment, by identifying risks posed by, or as a result of, gene technology; and
- (b) manage those risks through regulating certain dealings with genetically modified organisms.

(2) The purpose is achieved by—

- (a) applying the Commonwealth gene technology laws, as modified under this Act, as laws of Queensland; and
- (b) making provision to help ensure the Commonwealth gene technology laws and applied provisions are administered on a uniform basis by the Commonwealth as if they constituted a single law of the Commonwealth.

4 Act binds all persons

- (1) This Act binds all persons, including the State, and, to the extent the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) However, the State, the Commonwealth or another State can not be prosecuted for an offence against this Act.

5 Interpretation

- (1) In this Act—

applied provisions means the Commonwealth gene technology laws that apply as laws of this State because of section 6, including any modifications of those laws under section 7.

Commonwealth administrative laws means the following Acts and any regulations in force under those Acts—

- (a) the *Administrative Appeals Tribunal Act 1975* (Cwlth) (excluding part IVA of that Act);
- (b) the *Freedom of Information Act 1982* (Cwlth);
- (c) the *Ombudsman Act 1976* (Cwlth);
- (d) the *Privacy Act 1988* (Cwlth).

Commonwealth Gene Technology Act means the *Gene Technology Act 2000* (Cwlth).

Commonwealth gene technology laws means—

- (a) the Commonwealth Gene Technology Act; and
- (b) the Commonwealth Licence Charges Act; and
- (c) all regulations, guidelines, principles, standards and codes of practice in force under an Act mentioned in paragraph (a) or (b).

Commonwealth Licence Charges Act means the *Gene Technology (Licence Charges) Act 2000* (Cwlth).

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Commonwealth regulator means the Gene Technology Regulator appointed under the Commonwealth Gene Technology Act.

- (2) Terms used in this Act and also in the Commonwealth Gene Technology Act have the same meanings in this Act as the terms have in the Commonwealth Act.
- (3) However, subsection (2) does not apply to the extent the context or subject matter of this Act otherwise indicates or requires.

Part 2 Applied provisions

6 Application of Commonwealth gene technology laws

The Commonwealth gene technology laws, as modified under this Act—

- (a) apply as laws of Queensland; and
- (b) apply as if the laws extend to matters in relation to which this State may make laws—
 - (i) whether or not the Commonwealth may make laws in relation to those matters; and
 - (ii) 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) A regulation may modify the Commonwealth gene technology laws for the purposes of this Act.
- (2) Without limiting subsection (1), a regulation may provide that the Commonwealth gene technology laws apply under section 6 as if an amendment to the Commonwealth gene technology laws, made by a law of the Commonwealth and stated in the regulation, had not taken effect.

8 Interpretation of Commonwealth gene technology laws

- (1) The *Acts Interpretation Act 1901* (Cwlth) applies—
 - (a) as a law of this State in relation to the interpretation of the applied provisions; and
 - (b) as if the applied provisions were a Commonwealth Act, or a regulation or other instrument under a Commonwealth Act.
- (2) The *Acts Interpretation Act 1954* and the *Statutory Instruments Act 1992* do not apply in relation to the interpretation of the applied provisions.

Part 3 Functions and powers under applied provisions

9 Functions and powers of Commonwealth regulator and other authorities and officers

- (1) The Commonwealth regulator and other authorities and officers mentioned 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.
- (2) Subsection (1) is subject to any modifications to the Commonwealth gene technology laws made under section 7.

10 Delegations by Commonwealth regulator

A 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.

Part 4 Offences

11 **Object of part**

- (1) The object of this part is to further the purpose 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, 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 mentioned in paragraph (a) or (b);
 - (d) appeals and reviews relating to criminal proceedings and to proceedings mentioned 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 this State in relation to an offence against the applied provisions as if the applied provisions were a law of the Commonwealth and not a law of this State.

Examples of relevant Commonwealth laws—

- the *Crimes Act 1914* (Cwlth)

- the *Criminal Code Act 1995* (Cwlth)
 - the *Director of Public Prosecutions Act 1983* (Cwlth)
 - the *Judiciary Act 1903* (Cwlth)
- (2) For 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 the applied 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 a law of this State, other than as prescribed by regulation.

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 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

- (1) This section applies if—
- (a) an act or omission is an offence against both the applied provisions and the Commonwealth gene technology laws; and

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- (b) the offender has been punished for the offence under the Commonwealth gene technology laws.
- (2) The offender must not be prosecuted or punished under the applied provisions for the offence.

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 the applied provisions were a law of the Commonwealth and not a law of this State.
- (2) 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.
- (3) For this section, a reference in a provision of the *Administrative Appeals Tribunal Act 1975* (Cwlth), as that provision applies as a law of this jurisdiction, to the whole or part of part IVA of that Act is taken to be a reference to the whole or part of that part as it has effect as a law of the Commonwealth.

16 Exclusion of legislation of this jurisdiction

- (1) The following Acts of this jurisdiction do not apply to the applied provisions—
 - (a) the *Auditor-General Act 2009*;
 - (b) the *Financial Accountability Act 2009*;
 - (c) the *Information Privacy Act 2009*;
 - (d) the *Ombudsman Act 2001*;
 - (e) the *Public Records Act 2002*;
 - (f) the *Public Sector Ethics Act 1994*;

- (g) the *Public Service Act 2008*;
 - (h) the *Right to Information Act 2009*;
 - (i) the *Statutory Bodies Financial Arrangements Act 1982*.
- (2) However, if an entity of the State, other than the Commonwealth regulator, is exercising functions under the applied provisions, the Acts mentioned in subsection (1) apply to the entity.

17 Functions and powers conferred on Commonwealth officers and authorities

- (1) A Commonwealth administrative law applying because of section 15 and conferring 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

18 Things done for multiple purposes

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

19 Reference in Commonwealth law to a provision of another law

For sections 12 and 15, a reference in a Commonwealth law to a provision of that law or another Commonwealth law is taken

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to be a reference to that provision as applying because of those sections.

20 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 a person, other than an amount ordered to be refunded to another person, must be paid to the Commonwealth.

21 Tabling amendments of particular Commonwealth Acts

- (1) The Minister must table a copy of an amendment of any of the following in the Legislative Assembly within 10 sitting days from the day on which the amendment commences—
 - (a) the Commonwealth Gene Technology Act;
 - (b) the Commonwealth Licence Charges Act;
 - (c) a regulation under an Act mentioned in paragraph (a) or (b).
- (2) This section does not affect the operation of an amendment of the Commonwealth Gene Technology Act or the Commonwealth Licence Charges Act.

22 Regulation-making power

The Governor in Council may make regulations under this Act.

Part 7 Repeal

23 Repeal

The Gene Technology Act 2001, No. 68 is repealed.

Part 8 Transitional provisions for repeal of Gene Technology Act 2001

Division 1 Preliminary

24 Definitions for part

In this part—

existing GMO licence means a GMO licence given under the repealed Act, section 55 that is in force immediately before the commencement.

repealed Act means the repealed *Gene Technology Act 2001*.

Division 2 Provision for offences

25 Offences committed before commencement

- (1) This section applies to an offence by a person against the repealed Act for which investigations or proceedings had not been conducted, taken or completed before the repeal.
- (2) The investigations and proceedings may be conducted, taken or continued against the person, and the person may be punished, as if the repeal had not happened.

Division 3 Provisions for licensing system

26 Continuing effect of existing GMO licences

- (1) An existing GMO licence continues as a GMO licence under the applied provisions.
- (2) For this Act and the applied provisions, an existing GMO licence—

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- (a) is taken to have had effect on the day the licence had effect under the repealed Act; and
- (b) is subject to—
 - (i) the conditions mentioned in the repealed Act, section 61; and
 - (ii) any conditions imposed by the Commonwealth regulator under the applied provisions.

27 Licence applications under repealed Act

- (1) This section applies to an application for a GMO licence made, or taken to have been made, under the repealed Act, part 5, division 2, but not decided, before the commencement.
- (2) For dealing with and deciding the application, the repealed Act continues to apply as if this Act had not commenced.
- (3) If a GMO licence is given under the repealed Act, section 55 in relation to the application, the GMO licence is taken to be a GMO licence given under the applied provisions.

28 Continuing application of repealed Act, s 67

The repealed Act, section 67 continues to apply to a person who, before the commencement, gave information to the Commonwealth regulator under section 65, 66 or 72D(2)(h) of that Act.

29 Notices about cancellation, suspension, transfer or variation of existing GMO licences under repealed Act

- (1) This section applies to any of the following notices in force under the repealed Act immediately before the commencement—
 - (a) a notice given under the repealed Act, section 68 suspending an existing GMO licence;

- (b) a notice given under the repealed Act, section 70 approving the transfer of an existing GMO licence to another person;
 - (c) a notice given under the repealed Act, section 72 about a proposal to cancel, suspend or vary an existing GMO licence.
- (2) The notice continues in effect as if it had been given under the corresponding provision of the applied provisions.

30 Applications to transfer existing GMO licences under repealed Act

- (1) This section applies to an application made under the repealed Act, section 70, but not decided, before the commencement.
- (2) For dealing with and deciding the application, the repealed Act continues to apply as if this Act had not commenced.
- (3) If a notice is given under the repealed Act, section 70, approving the application, the notice is taken to have been given under the corresponding provision of the applied provisions.

31 Applications to vary existing GMO licences under repealed Act

- (1) This section applies to an application made under the repealed Act, section 71, but not decided, before the commencement.
- (2) For dealing with and deciding the application, the repealed Act, other than section 71(2B) of the repealed Act, continues to apply as if this Act had not commenced.
- (3) The Commonwealth regulator must not vary the licence the subject of the application unless satisfied that the risks posed by the dealings proposed to be authorised by the licence as varied are covered by—
 - (a) the risk assessment and risk management plan in respect of the original application for the licence; or

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- (b) the risk assessment and risk management plan in respect of an application for another licence, but only if the other licence was given.
- (4) If a notice is given under the repealed Act, section 71, approving the application, the notice is taken to have been given under the corresponding provision of the applied provisions.

32 Continuation of restrictions on varying particular GMO licences

- (1) This section applies to a GMO licence given under the repealed Act before or after the commencement.
- (2) The repealed Act, section 71(2) and (2A) continues to apply to a variation of the GMO licence.

Division 4 Provisions for GMO register

33 Continuing effect of determinations under repealed Act, s 78 or 80

A determination made under the repealed Act, section 78(1) or 80(1), and in force immediately before the commencement, continues to have effect as if it had been made under the corresponding provision of the applied provisions.

34 Applications for determinations under repealed Act, s 78

- (1) This section applies to an application for a determination made under the repealed Act, section 78(2)(a), but not decided, before the commencement.
- (2) For dealing with and deciding the application, the repealed Act continues to apply as if this Act had not commenced.
- (3) If a determination is made under the repealed Act, section 78(1) in relation to the application, the determination is taken

to be a determination made under the corresponding provision of the applied provisions.

Division 5 Provisions for certification

35 Continuing effect of certification under repealed Act, s 84

A certification given under the repealed Act, section 84, and in force immediately before the commencement—

- (a) continues to have effect as if it had been given under the corresponding provision of the applied provisions; and
- (b) is subject to—
 - (i) the conditions mentioned in the repealed Act, section 86; and
 - (ii) any conditions imposed by the Commonwealth regulator under the applied provisions.

36 Applications for certification under repealed Act

- (1) This section applies to an application for certification made under the repealed Act, section 83, but not decided, before the commencement.
- (2) For dealing with and deciding the application, the repealed Act continues to apply as if this Act had not commenced.
- (3) If certification is given under the repealed Act, section 84 in relation to the application, the certification is taken to be a certification given under the corresponding provision of the applied provisions.

37 Notices about cancellation, suspension, transfer or variation of certification under repealed Act

- (1) This section applies to any of the following notices in force under the repealed Act immediately before the commencement—

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- (a) a notice given under the repealed Act, section 88 suspending a certification;
 - (b) a notice given under the repealed Act, section 89 about a proposal to cancel, suspend or vary a certification;
 - (c) a notice given under the repealed Act, section 89A approving the transfer of a certification to another person.
- (2) The notice continues in effect as if it had been given under the corresponding provision of the applied provisions.

38 Applications to transfer certification under repealed Act

- (1) This section applies to an application made under the repealed Act, section 89A(1), but not decided, before the commencement.
- (2) For dealing with and deciding the application, the repealed Act continues to apply as if this Act had not commenced.
- (3) If a notice is given under the repealed Act, section 89A(4) approving the application, the notice is taken to have been given under the corresponding provision of the applied provisions.

Division 6 Provisions for accreditation

39 Continuing effect of accreditation under repealed Act, s 92

An accreditation given under the repealed Act, section 92, and in force immediately before the commencement—

- (a) continues in effect as if it had been given under the corresponding provision of the applied provisions; and
- (b) is subject to—
 - (i) the conditions mentioned in the repealed Act, section 94; and

- (ii) any conditions imposed by the Commonwealth regulator under the applied provisions.

40 Applications for accreditation under repealed Act

- (1) This section applies to an application for accreditation made under the repealed Act, section 91, but not decided, before the commencement.
- (2) For dealing with and deciding the application, the repealed Act continues to apply as if this Act had not commenced.
- (3) If accreditation is given under the repealed Act, section 92 in relation to the application, the accreditation is taken to be an accreditation given under the corresponding provision of the applied provisions.

41 Notices about cancellation, suspension or variation of accreditation under repealed Act

- (1) This section applies to any of the following notices in force under the repealed Act immediately before the commencement—
 - (a) a notice given under the repealed Act, section 96 suspending an accreditation;
 - (b) a notice given under the repealed Act, section 97 about a proposal to cancel, suspend or vary an accreditation.
- (2) The notice continues in effect as if it had been given under the corresponding provision of the applied provisions.

Division 7 Provisions about enforcement

42 Continuing effect of directions under repealed Act, s 146

- (1) This section applies to a direction given under the repealed Act, section 146 before the commencement, that is in effect immediately before the commencement.

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- (2) The direction continues in effect as if it had been given under the corresponding provision of the applied provisions.

43 Continuing application of repealed Act, s 147

- (1) Subsection (2) applies to an application made to the Supreme Court under the repealed Act, section 147, but not determined, before the commencement.
- (2) The Supreme Court may continue to determine the application under the repealed Act as if this Act had not commenced.
- (3) Subsection (4) applies if, before the commencement a person—
 - (a) engaged in conduct that is an offence against the repealed Act; or
 - (b) refused or failed to do a thing and the refusal or failure is an offence against the repealed Act.
- (4) An application for injunction may be made to the Supreme Court under the repealed Act, section 147 as if this Act had not commenced.
- (5) If the Supreme Court grants an injunction under the repealed Act before or after the commencement, section 147(4) of that Act continues to apply to the injunction.

Division 8 Provisions for powers of inspection

44 Continuing effect of appointment of inspectors under repealed Act

An appointment made under the repealed Act, section 150, and in effect immediately before the commencement, continues in effect as if it had been made under the corresponding provision of the applied provisions.

45 Continuing application of repealed Act, pt 11, div 9 to seized things

- (1) This section applies to a thing seized under the repealed Act, part 11 before or after the commencement.
- (2) The repealed Act, part 11, division 9 continues to apply to the seizure, retention and disposal of the thing.

46 Continuing effect of warrants under repealed Act

A warrant issued under the repealed Act, part 11, division 10, and in force immediately before the commencement, continues in effect as if it had been issued under the corresponding provision of the applied provisions.

Division 9 Provisions for review of decisions

47 Review of decisions made under repealed Act

- (1) A decision made under the repealed Act and mentioned in schedule 1, column 1 of that Act is taken to be a reviewable decision under the applied provisions.
- (2) A person mentioned in the repealed Act, schedule 1, column 2 opposite a reviewable decision is taken to be an eligible person for the decision under the applied provisions.

48 Applications for review under repealed Act

- (1) This section applies to an application for review made under the repealed Act, section 181 or 183, but not decided, before the commencement.
- (2) For dealing with and deciding the application, the repealed Act continues to apply as if this Act had not commenced.
- (3) A decision made under the repealed Act, section 181 or 183, in relation to the application, is taken to be a decision under the corresponding provision of the applied provisions.

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Division 10 Provisions relating to confidential commercial information

49 Continuing effect of declarations under repealed Act, s 185

A declaration made under the repealed Act, section 185, and in force immediately before the commencement, continues in effect as if it had been made under the corresponding provision of the applied provisions.

50 Applications for declaration under repealed Act, s 184

- (1) This section applies to an application for a declaration made under the repealed Act, section 184, but not decided, before the commencement.
- (2) For dealing with and deciding the application, the repealed Act continues to apply as if this Act had not commenced.
- (3) If a declaration is made under the repealed Act, section 185 in relation to the application, the declaration is taken to be a declaration made under the corresponding provision of the applied provisions.

51 Continuing effect of revocations under repealed Act, s 186

A notice given under the repealed Act, section 186 revoking a declaration, and in force immediately before the commencement, continues in effect as if it had been given under the corresponding provision of the applied provisions.

Part 9 Consequential amendments

Division 1 Amendment of this Act

52 Act amended

This division amends this Act.

53 Amendment of long title

Long title, from ‘Queensland,’—
omit, insert—

Queensland

Division 2 Amendment of other Acts

54 Acts amended

Schedule 1 amends the Acts it mentions.

Schedule 1 Other amendments

section 54

Agricultural and Veterinary Chemicals (Queensland) Act 1994

1 Section 23A(2), from ‘regulator within’ to ‘2001’—

omit, insert—

gene technology regulator

2 Section 23A—

insert—

(5) In this section—

gene technology regulator means the Gene Technology Regulator appointed under the *Gene Technology Act 2000* (Cwlth).

Biodiscovery Act 2004

1 Schedule, definitions *DSDI chief executive* and *DSDI Minister*, ‘Gene Technology Act 2001’—

omit, insert—

Gene Technology (Queensland) Act 2016

Biosecurity Act 2014

1 Section 9(2)(d)—

omit, insert—

- (d) the *Gene Technology Act 2000* (Cwlth), as applied as a law of Queensland by the *Gene Technology (Queensland) Act 2016*;

Right to Information Act 2009

1 Schedule 1, section 12—

omit, insert—

12 Particular documents under the Gene Technology (Queensland) Act 2016

A document to the extent it contains confidential commercial information under the *Gene Technology Act 2000* (Cwlth), as applied as a law of Queensland by the *Gene Technology (Queensland) Act 2016*.

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