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The PRESIDENT (Senator the Hon. Margaret Reid) took the chair at 9.30 a.m., and read prayers.

BUDGET

Consideration by Legislation Committees

Meetings

Motion (by Senator Tambling, at the request of Senator Ian Campbell) agreed to:

(1) That estimates hearings by legislation committees for the year 2001 be scheduled as follows:

2000-01 additional estimates:
- Monday, 19 February, Tuesday, 20 February and, if required, Friday, 23 February (Group A)
- Wednesday, 21 February, Thursday, 22 February and, if required, Friday, 23 February (Group B).

2001-02 Budget estimates:
- Monday, 28 May to Thursday, 31 May (Group A)
- Monday, 4 June to Thursday, 7 June (Group B)
- Wednesday, 14 November and, if required, Friday, 16 November (supplementary hearings—Group A)
- Thursday, 15 November and, if required, Friday, 16 November (supplementary hearings—Group B).

(2) That the committees meet in accordance with the groupings agreed to on 26 November 1998.

(3) That the committees report to the Senate on the following dates:
- Tuesday, 27 March 2001 in respect of the 2000-01 additional estimates, and
- Wednesday, 20 June 2001 in respect of the 2001-02 Budget estimates.

(4) That the committees consider the proposed expenditure in accordance with the allocation of departments to committees agreed to on 11 November 1998.

BUSINESS

Consideration of Legislation

Motion (by Senator Tambling, at the request of Senator Ian Campbell) agreed to:

That the provisions of paragraphs (5) to (7) of standing order 111 not apply to the Taxation Laws Amendment Bill (No. 8) 2000, allowing it to be considered during this period of sittings.

GENE TECHNOLOGY BILL 2000

GENE TECHNOLOGY
(CONSEQUENTIAL AMENDMENTS)
BILL 2000

GENE TECHNOLOGY (LICENCE CHARGES) BILL 2000

In Committee

GENE TECHNOLOGY BILL 2000
Consideration resumed from 30 November.

The CHAIRMAN—The committee is considering the Gene Technology Bill 2000 and separately considering clause 5. The question is that clause 5 stand as printed.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (9.32 a.m.)—Last evening when we were considering this issue a number of senators commented on the amendment proposed by Senator Brown. Regarding the first amendment proposed by Senator Brown, the government’s position is that clause 5 should stand as printed, and we would oppose Australian Greens amendment No. 128. These amendments would fundamentally affect the establishment of a national regulatory system for gene technology. The government strongly believes that clause 5 must stand as printed and opposes the amendment in relation to clause 189. The scheme is designed to be a national scheme. While the bill is a central component of the scheme, the Commonwealth does not have complete constitutional powers in relation to gene technology. The only way we can ensure that all GMOs are comprehensively regulated is to rely on a combination of Commonwealth and state legislation. The proposed amendments would not facilitate the implementation of a national system and the government does not support them.

Senator BROWN (Tasmania) (9.34 a.m.)—That is not right. It says, under this clause, that it is the ‘intention of the parliament’. This is not about implementing a law: it is about following an intention. The intention of parliament is that this act form a component of a nationally consistent scheme for the regulation of certain dealings with
GMOs by the Commonwealth and states. The point I was making was that we in Tasmania want to opt out from genetically modified crops for the next 12 months as a starter. Madam Chairman, as you know, I have a proposal down the line to have a five-year moratorium in Australia nationwide. I ask the government: does this clause prevent an opt-out for a region or a state?

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (9.35 a.m.)—I am advised that the clause does not prevent an opt-out. However, I should point out that it is very much the intent of clause 5 that the scheme be a national one.

Senator FORSHAW (New South Wales) (9.35 a.m.)—The opposition will not be supporting Senator Brown’s proposed amendments. We support the establishment of a nationally consistent scheme. I refer to some comments made by Senator Brown last night when he tried to fire a few shots at the opposition. It is a pity that Senator Brown never sits and listens to what people say before he jumps to respond. What I said last night was that we in the opposition are about improving this legislation. I might add that, as the day progresses, it will be demonstrated that we will be able to improve this legislation—if our amendments are approved, obviously. One of the areas that we will be pursuing is the provision of opportunities for opt out. Nevertheless, we support the concept of a nationally consistent scheme that is embraced within clause 5 of the bill, together with the opportunities for opt out in appropriate circumstances.

I actually find it somewhat incredible that the very first amendment that is dealt with in this debate—the amendment from Senator Brown—is a destructive one. It is actually about removing from the bill the provision which recognises that there is a need for the development of a nationally consistent scheme to regulate gene technology. I would have thought that was self-evident as an objective for this parliament and indeed for all of the other levels of government throughout the country. As I indicated, this is the first real legislation that will seek to regulate gene technology in a comprehensive way. We recognise that once a regulatory authority is established, with the improvements that we believe should be carried by this parliament to significantly enhance the role of that authority, there will be a need over time to further review its operation. That is another area where we will be moving amendments.

While I am on my feet making this general point, I might say that the very issues that we have been lobbied hard about by such organisations as the Australian Conservation Foundation are the ones that we have been pursuing and endeavouring to convince the government about and to see the wisdom of making amendments to this legislation. They will be the areas we will be pursuing today. On this particular amendment, we will not support the proposal. We see it as a backward step to remove from the proposed legislation the recognition of an intention to establish a nationally consistent scheme for regulating gene technology in the areas encompassed by the bill.

Senator HARRIS (Queensland) (9.39 a.m.)—I would like to comment on Senator Forshaw’s comment that the opposition is implementing the suggestions of the ACF, and I want to quote from an email I received from Mr Richard Underwood of the ACF. It is very clear that there are substantial recommendations that the ACF have suggested for this bill, and one of the main ones they are asking for is:

The recommendation that the Gene Technology Bill be amended to allow states to, one, opt out of the Commonwealth’s regulatory system and declare themselves totally GE free or GE free on a case by case basis and, two, adopt standards, laws and other measures that provide higher levels of protection for human health, safety and environment.

That is a very clear recommendation from the ACF about the Gene Technology Bill. I take it that the opposition are accepting some of the recommendations of the ACF, but certainly in this case they are not implementing one of their recommendations.

In speaking in support of Senator Brown’s amendment, as I said yesterday I believe there should be the ability for the states to opt out. Contrary to the government, I do not believe that with this clause in the bill it will
be possible for states to opt out, and particularly for local government areas within states to opt out. I believe that a subsequent amendment that will be proposed by the Democrats would in actuality take the place of clause 5 of the bill by requiring that only four states need to agree for the program to be considered a nationally consistent scheme. With those comments, I commend the Greens amendment to the chamber.

The TEMPORARY CHAIRMAN (Senator Sherry)—The question is that clause 5 stand as printed.

Question resolved in the affirmative.

Senator Brown, do you want to now move your amendment No. 128?

Senator BROWN (Tasmania) (9.42 a.m.)—No, because that is a consequential amendment to the one that has just been lost, in effect.

The TEMPORARY CHAIRMAN—So you are withdrawing the amendment?

Senator BROWN—I do so.

The TEMPORARY CHAIRMAN—Senator Tambling, are we going back to the start of the running sheet to opposition amendments Nos 1 and 2 on 2026, or are we going to keep going with the running sheet? The Australian Greens amendment is next on the running sheet.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (9.37 a.m.)—I propose that we continue to run. I would like to come back to those earlier ones a bit later in the day.

Senator Brown—Why is that?

Senator TAMBLING—The issues that have been raised in the amendment are still under consideration by the government.

Senator Bartlett—Why are we debating the bill if it is still under consideration?

Senator BROWN (Tasmania) (9.43 a.m.)—Exactly. What is under debate outside the chamber and why are the government and opposition not ready here? This is a situation we had last night. The matters that we are discussing, including the precautionary principle, are central to this. The government has asked us to expedite this bill if we can. We have been happy to do that, but I find it extraordinary that this morning, on that important matter, the government still does not know what it is doing, which means the opposition does not know what it is doing. It means that the government and the opposition, in making their arrangement outside the chamber, still have not been able to come to the final form of words and an agreement. I think we should stick with the running sheet as it is.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (9.44 a.m.)—The government last night moved for the consideration of the first four sections of the running sheet to be deferred. We did so deliberately. They are the only issues on which we seek deferment for further consideration. There are no other issues. Whilst I appreciate the points raised by Senator Brown, it is a matter of process. Let us get on with what we can do and achieve, and later in the day we will certainly return to those issues.

I just point out that, given the intent and the goodwill of all senators to seek to facilitate this legislation here today, the running sheet does include some 40 identified batch groups. Given that we have five hours, it will be incumbent on us to be very mindful that we would like to achieve the legislation today. We therefore have to manage that area. I do not want to return to issues on which we cannot settle at an early point. As I said, they are the only issues on which I seek deferment, unless other senators in the course of the debate want to do the same on other issues.

Senator BROWN (Tasmania) (9.46 a.m.)—That is a clear enough request, but what I asked Senator Tambling to tell the committee is: what is the problem? What is unresolved?

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (9.46 a.m.)—The issue of cost recovery is the issue that still has to be settled.

The TEMPORARY CHAIRMAN (Senator Sherry)—I see no alternative from
the chair’s position other than to continue on the running sheet that is in front of us, Senator Brown.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (9.47 a.m.)—Our understanding of the committee is that the cost recovery arrangements are the sticking point between the opposition and the government. But does that necessarily preclude discussion of the amendments that follow in relation to the objects and the precautionary principle? Most of us anticipated that would be one of the first areas for debate and amendment. That might be an area that we can proceed on as opposed to jumping down to the bottom of this running sheet and dealing with the second Greens amendment.

I note Senator Forshaw made reference to Senator Brown’s amendment. Ironically, he said:

... the very first amendment that is dealt with in this debate ... is a destructive one.

Of course, it would not have been the first amendment we dealt with, destructive or not, although I do put on the record the Democrats support for an opt-out provision for the states. As I mentioned last night, it is a principle to which we have long been committed. However, we do believe that the government’s negotiations with the states and territories have been sufficient to ensure that there is an opt-out provision operating for the states. I put that on the record on behalf of my party, but I again note that it was a bit ironic that indeed the first amendment we were dealing with. We anticipated last night that the first amendment we would be dealing with would be on the cost recovery arrangements. I understand the need for further discussion on that point, but if we are going to remain in the committee perhaps we can move on to clauses 3 and 4. There are certainly Democrats, One Nation and Greens amendments in relation to the objectives of the bill and the definition of ‘precautionary principle’. I understand, too, from the government that there are discussions still taking place in relation to those definitions, but perhaps Senator Tambling could advise us of the progress on those areas and why we cannot proceed on those matters.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (9.49 a.m.)—As I said earlier, the government is not seeking to delay the debate on this bill at all, and I am very hopeful of being able in the very near future to proceed with each of the issues that were defined in the first four sections of the running sheet. Whilst I appreciate that we are always at the start of the day trying to catch up with the work that has been done overnight, I would expect in the very near future that I will be able to proceed on each of those issues. With acceptance of the points made by Senator Stott Despoja and Senator Brown, I would indicate that I do not see much delay at all in returning to these issues very shortly.

The TEMPORARY CHAIRMAN—It is apparent to the chair that it is the will of the majority of the committee not to deal with those first four sections of the running sheet, so I am going to proceed, Senator Brown, to Australian Greens amendment No. 3 on sheet 1970.

Senator BROWN (Tasmania) (9.50 a.m.)—Thank you. I do understand that. I think the fact that the minor parties—the Greens, the Democrats and One Nation—are ready to go on the lot but the fact that the government and the opposition are not speaks for itself. I move Australian Greens amendment No. 3:

(3) Clause 6, page 2 (lines 27 and 28), omit subclause (2).

This is effectively to remove the second part of clause 6 of the bill. Clause 6 of the bill is entitled ‘Act to bind the Crown’, and subclause (1) says:

This Act binds the Crown in each of its capacities. Subclause (2), which I want to remove, says: Nothing in this Act renders the Crown liable to be prosecuted for an offence.

What we are saying here is: why are the government and its instrumentality beyond the law when it comes to the implementation of this legislation? We believe this legislation needs to have teeth, and here we see the first act of removing its teeth. The intent of the government, whichever government it is in the future, ought to be to defend the compo-
ments of this act and to ensure that Australians are protected by the objects of the act, which are to ensure the safety of Australians as far as the implementation of gene technology is concerned. That should make sure that the government and its instrumentalities implement a code or a bill for the reasons of this law to ensure that safety. Otherwise, you have an act but the government is not necessarily required to follow it through. It is pretty self-explanatory. I hope the amendment will be made.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (9.52 a.m.)—The government is opposed to this amendment. The amendment seeks to delete the clause in the legislation which relates to the liability of the Crown. This clause is a standard provision in Commonwealth legislation and it must be retained.

Senator HARRIS (Queensland) (9.52 a.m.)—I take the government to task on this position. I think it is quite impertinent to make a statement that just because it is the normal procedure to have this in the bill it must remain. This particular piece of legislation we are looking at is legislation that will have far-reaching effects on an industry that is not understood. The possible impact of this legislation on our environment, on our lives and on our health is totally unknown. There is no way with the scientific ability that we have today that any person in this chamber can stand up here and say with certainty that they can guarantee that this new industry will not have horrendous impacts upon the people of the world. In the long term it may well turn out to be legislation that may save the world. It may save thousands of people from hunger by increasing crop production, but the scientific information that we have today is the opposite. In actuality, crops that have been genetically modified that have actually regressed in yield outnumber those that have gained in yield. But the government has stood up and said, purely because convention says this must go into a bill, that the protection for the government must stay there.

It is the government who will be imposing this legislation. By imposing this legislation they will be releasing into our environment and into our way of life the ability for companies to carry out genetic modification. If ever there was a bill by which the government should be exposed financially for their actions, this would have to be the bill. The Greens, the Democrats, Senator Harradine and One Nation have many concerns with this piece of legislation. It would appear that we are to be faced again, as we have been in the past with the defence bill, with the members of the government and the opposition merely voting down every amendment irrespective of its merit. I believe that we need to look at this particular section of the bill. The responsibility needs to lie with the people who will be implementing the bill. By implementing the bill the government will be allowing genetically modified crops to be grown in Australia. The government needs to be responsible for its actions. I support the amendment.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (9.57 a.m.)—I think that Senator Brown has raised an interesting point; that is, the issue of liability and what mechanisms there are for redress should there be emergencies or should something go wrong, say, in the context to which Senator Harris referred. We are dealing with the release of organisms and scientific and technological processes that can have far-reaching effects on scientific, biological, biodiversity and health levels. I am curious to hear from Senator Tambling, given that he believes that this amendment is not necessary. I am conscious of the fact that it is a standard provision. Many of us have been involved in debates such as this previously where we have tried to establish where the buck stops or, more importantly, where the responsibility lies when there is an emergency or a breach or a government agency acting inappropriately. I wonder whether Senator Tambling might outline to the chamber what the avenues for redress are if a government agency breaches its responsibility and there is an emergency of the kind that we all fear. What mechanisms are available to inspire community confidence? I use that terminology, ‘community confidence’, because I think that has to be the underlying principle in this bill.
If the Australian public is to have confidence in biotechnology and in genetic engineering to the point where they feel confident that they can buy GMOs and food products off the shelf and digest them with a sense of confidence that their health and the environment will not be adversely affected, then we have to ensure that we have a regulatory framework that inspires that confidence.

Certainly a lot of the amendments are designed to ensure that there is that community confidence, and we aim to provide that. The Democrat amendments and the amendments that I have seen from minor parties seek to do that by providing education and public awareness campaigns, as well as by tightening up this regulatory system. I understand that there is a delay in the discussion of the earlier amendments relating to the objects of the bill and the precautionary principle, but that actually should set the tone for the whole debate. What we determine the object of the act is will basically give us an understanding of where to go, of what the act is designed to achieve, of what amendments we should be passing and of how the bill needs to be changed in order to establish what principles we are going to abide by.

Are we going to aim to protect public health and safety? Are we going to ensure that the environment is not adversely affected? Are we going to promote or at least abide by the principles of ecological sustainability? That is why I think the debate on those earlier clauses should have occurred before we entered into the other amendments in the committee stage; not simply because people may be ready for those amendments, but because it sets the tone for the debate. I think that they have to be the underlying principles with which we approach this debate; that is, what is the purpose of this bill? Is it to inspire community confidence? Is it to provide for public awareness of and education about GM food, GM products and the release of GMOs into the environment or onto our supermarket shelves? We need to make clear to the Australian public that there are avenues of redress; that there are penalty provisions; that we are actually saying to them, ‘In the event of something going wrong, there is a government agency, and there are mechanisms through which you can achieve redress.’ I understand, as I said, the standard provision in Commonwealth law in relation to liability and the Crown or lack of liability. The last time we revisited this was probably at the time of the debate on the Space Activities Bill when we talked about a government being involved in allowing fissionable materials to go into space without really determining who would be liable in those circumstances—whether it was the private firms that were putting this material into space or whether the government was going to have an overarching or abiding role.

I would like to know from Senator Tambling how he will ensure that community confidence is respected and reflected in the legislation that is before us, and thus justify why the government and indeed the opposition will be opposing the amendment by Senator Brown. It is an amendment which, I think, aims to achieve a culture. It is quite a symbolic amendment, although I do recognise that, for the purposes of this and other pieces of Commonwealth law, it is unlikely to be successful or be in there.

Senator TAMBLING

(Parliamentary Secretary to the Minister for Health and Aged Care)

I refer senators to page 46 of the explanatory memorandum, where the act to bind the Crown is set out:

Sub-clause 6(1) provides that the Bill will bind the Crown in each of its capacities.

Sub-clause 6(2) provides that the Crown may not be prosecuted for a criminal offence against this Bill or regulations.

The Crown is not liable to be prosecuted for an offence because of difficulties in establishing mental elements of offences under a Westminster system whereby ministers have ultimate responsibility. However, the inclusion of this provision does not mean that government agencies go unpunished. The Bill provides significant powers to act against the Commonwealth agencies. It can withdraw their accreditation, it can withdraw certification, it can take over the management of facilities or dealings with GMOs and it can set new conditions. In short, Commonwealth agencies will be controlled as though they were subject to full liability. I certainly agree...
with the comments of Senator Stott Despoja that we must underpin this legislation in the area of acceptability and credibility in the community.

Senator FORSHAW (New South Wales) (10.03 a.m.)—I indicate on behalf of the opposition that we will not support this amendment. As has been indicated—and as is evident to anybody in the chamber who has had anything to do with legislation—this is a standard clause in legislation. To put forward the simplistic argument that has been put forward, at least by Senator Harris and somewhat by Senator Brown, that somehow this clause removes any opportunity to seek redress in situations such as have been identified by the parliamentary secretary is simply a false argument. We are not disposed to support this amendment.

Senator BROWN (Tasmania) (10.04 a.m.)—So Senator Forshaw is saying that if, for example, a government experimental farm releases a GMO and it contaminates the crops in the whole valley around it, depriving the crop owners of their organic or their GE-free status, they have no compensation provision, and that is okay with the Labor Party as well as with the government.

Senator HARRIS (Queensland) (10.05 a.m.)—I would also like to raise the situation that we now face in Queensland by way of an example of where the Crown should be responsible for its actions. The state government in Queensland has given permission for a biotech laboratory to be built on Commonwealth ground within a residential area of Brisbane. To look at some of the past history of these laboratories that have been conducted in other areas of the world, it is believed a biotech facility in America was responsible for the discharge of the Nile virus within New York. But that facility was approximately 16 kilometres away on a remote island. If there can be unintentional releases from a laboratory that has a buffer zone of approximately 16 kilometres around it, what liability will the federal government accept if there is an unintentional release from this biotech laboratory within the limits of the Queensland University at St Lucia? There is no buffer around this building; in actuality, some of the walls adjoining this building abut the accommodation for university students.

My concern is real. This government has responsibility for its actions. This government, by virtue of the biotech laboratory being built on Commonwealth land, is going to have an exposure. If we do have an unintentional release in Brisbane similar to the one that is reported to have happened in America, then the Commonwealth must accept the responsibility for it. I also believe that from the same St Lucia campus there were unintentional releases of legionnaire’s disease. That was denied initially by both the government and the university but has subsequently been proven to be correct. So there are substantial cases where there have been unintentional releases from those laboratories. I might add that the biotech laboratory at St Lucia is going to be at level 4, which is the second highest containment level that is currently available in laboratories. We have no understanding and no knowledge of what is going to be carried out in the facility, and here we have the Commonwealth government saying that they should not have responsibilities for the actions that they are carrying out. I think it is deplorable. I think it is time that we took a very good look at the situation and at the responsibilities and liabilities of government in introducing legislation.

I have concerns about unintentional releases not only from laboratories but also from the field trials. In theory, we have not even got anywhere near broadacre cropping. I do not believe that this bill has sufficient teeth to ensure that these actions are actually carried out even in line with the regulations that will be attached to this bill. We only have to look at the Mount Gambier situation to realise that there needs to be substantial overhauling of not only the regulations but also their implementation. In supporting the Greens amendment, I believe that the Commonwealth should be responsible for its actions in bringing this legislation into being.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (10.10 a.m.)—I take up the points that have been raised by Senator Brown and Senator Harris in the ex-
amples they have given and advise them that the most effective measure where an agency is not dealing appropriately with a GMO would be to remove their approval to deal, and the regulator would take over the responsibility. This, of course, is the ultimate sanction, to be unable to deal further with a GMO. All facilities like St Lucia will be fully regulated. If, however, there was an unintentional release, the Gene Technology Regulator has the full power to take remedial action and would be required to do so by this bill.

Senator BROWN (Tasmania) (10.11 a.m.)—I ask what has happened in the current situation regarding the concern by scientists who have conducted a study for the Public Health Association of Australia examining the procedures surrounding the application for release of three genetically modified foods—two corns and a canola—given preliminary approval by the Australia New Zealand Food Authority, ANZFA. I refer the minister to the Sunday Age of 29 October and the story by Mr Geoff Strong which reports that scientists claim that laboratory rats fed modified canola—most of us know that that, for example, goes into margarine—had livers up to 16 per cent larger than normal, but no further testing was done. I quote from Mr Strong’s article:

Australia’s food regulator has been accused of approving a range of genetically modified food products without adequate scientific testing.

.........

In their report, the scientists claimed that in one case laboratory rats fed the herbicide-tolerant genetically modified canola were found to have livers enlarged by up to 16 per cent, yet further testing to find the cause was not considered necessary.

.........

One of the authors of the report, Adelaide based epidemiologist and biochemist Judy Carman, said it appeared the food authority was prepared to allow Australians to eat modified food that had undergone almost no independent scientific safety assessment.

“Essentially all of the safety evidence has been obtained by the applicant company,” she said. “The precautionary principle that could be described as ‘unsafe until proven to be safe’ has been around for centuries to guide us in conditions of uncertainty. Yet ANZFA has officially adopted the opposite approach; that is, they permit 18.7 million Australians to eat GM foods based on a ‘safe until proven unsafe’ philosophy.”

Dr Carman said the only way an independent scientist or other member of the public could check the science was to personally visit the food authority’s offices in Canberra.

What an extraordinary situation. I ask the minister: is that not prima facie evidence for intervention in the Australia New Zealand Food Authority, given the attitude it has taken to protecting Australians from untoward effects of genetically modified food, by at least ensuring that it adopts the precautionary principle? The minister may say that we need this legislation to be able to do that, but, when the legislation is in, what comeback have you got on government authorities that do not do their job? Clearly ANZFA is not doing its job, if you take the public interest as being its priority.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (10.14 a.m.)—I would like to comment on the matter that Senator Brown has raised because, while it relates in some respects to the issue of Crown liability, I think that more broadly it perhaps brings us back to one of the first amendments that we were to be dealing with. That concerns the issue of cost recovery arrangements, something that has been identified through the committee process as a key issue as to whether the body is expected to be self-funding or there is going to be government assistance.

This relates again to the nature of the need for rigorous scientific assessment by ANZFA. One of the criticisms has been the fact that ANZFA are currently responsible for the assessment and approval of genetically modified organisms for both public consumption and farm production. On a number of occasions in this place—and certainly in the report to the committee—the Democrats have commented on the insufficient testing facilities that ANZFA have, despite the fact that they have this incredible responsibility, and also the fact that they are heavily reliant upon applicant scientific data
when it comes to the approval of these genetically modified food products. That is a consistent criticism by a range of groups, and I am glad that Senator Brown has put on record Dr Judy Carman’s work because it is worth acknowledgement. Certainly her work through the Public Health Association, who brought to our attention this particular issue in relation to canola, to which Senator Brown referred, should be acknowledged. I also made reference to this in our additional comments to the Senate committee’s inquiry into this legislation because the study conducted by the Public Health Association emphasised this very problem in relation to independence and the lack of scientific rigour in the tests conducted by applicants.

Scientists conducting the Public Health Association study examined procedures surrounding applications from Monsanto, the US based company. They studied those in relation to the release of food produced from, firstly, insect protected cornline Mon-810; and, secondly, the glyphosate tolerant cornline GA21 and/or the glyphosate tolerant canola line GT73. The Public Health Association, as Senator Brown has put on record, in their review of the glyphosate-tolerant canola found that the canola, when fed to laboratory rats, in one instance caused liver enlargement up to 16 per cent.

However, the concerning thing is that this finding did not warrant further investigation by the applicant. I suppose liver enlargement by 16 per cent in rats may not alarm some people but it certainly alarms a number of us. This highlighted a number of issues; issues that we have put on record previously and issues that I do not believe are rectified or addressed by the bill in its current form. They are the questions relating to the scientific rigour of the tests conducted by the applicants, the standard of current tests constructed to extrapolate valuable information regarding possible human health effects, the suitability of commercial interests to determine test models and procedures, the value of animal models to ascertain possible human health effects, and the right to cause animal distress for unusable test information.

All of those questions which we raise here—and which we have raised in other places, in the context of the committee debate on these bills today and in the actual Senate committee—are sustained by that Public Health Association inquiry and the work of Dr Judy Carman, as reported in the Age on an ongoing basis by Geoff Strong. He should also be commended for his work in this area because I think it is important that the media take an interest—and I acknowledge the nodding of the opposition adviser. I think all of us are glad to see the media, as well as the parliament, taking an active interest in this debate. Again this relates back to the issue of community confidence in and public awareness of these new technologies.

I know that there is a proposal before us for a moratorium. I have put on record before, on behalf of my party, that I do not support a moratorium for a range of reasons. That is not to say that I support any adverse or potentially adverse effects of this technology. I am excited by this technology, by biotechnology and by genetic engineering generally. I think it holds potentially dazzling benefits for the community but I do not want to know about these benefits or these opportunities, or these products being released to the community without adequate scientific testing, without them satisfying first that precautionary principle. Again, that is my concern: that this should shape the precautionary principle, the nature of the objects of the act and even those first amendments regarding cost effectiveness and cost recovery. They are the issues that should provide the context in which this debate occurs and continues.

Through you, Chair: I do acknowledge, Senator Tambling, that these things happen, that it takes a while and that we have to allow that process to continue, but that is why my remarks will continually relate to those issues, because obviously that is how we inspire community confidence once we have a bill that says to people, ‘These are the things that we aim to protect. We are going to guarantee that your health and your safety and your environment are protected.’ I guess that is the gist of Senator Brown’s amendment and certainly Senator Harris’s comments. They also reflect the widespread con-
cerns that, at the end of the day, if something goes wrong, there is not going to be effective recourse or redress.

I thank Senator Tambling for outlining his view on behalf of the government as to what other mechanisms there may be. I think they are insufficient but I am sure that, through the process of this committee stage, we can beef them up and we can tighten them so that we get that community confidence. I want to acknowledge the Public Health Association’s review in relation to that canola, but I think it again raises broader questions in relation to the independence of ANZFA and of the scientific testing. If we are going to be dependent on these agri-multinational companies to basically conduct their own research when, for example, they were not concerned about liver increases of 16 per cent, then clearly we are not going to have that confidence and public faith that we require in order to further this genetic technology in a way that is advantageous.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (10.21 a.m.)—I am pleased to note the comments of the various senators. I trust that, in the exercise of self-discipline that we have agreed to today, and as a number of the points that have been raised will come back to visit us on other amendments, Senator Stott Despoja and others will not have to repeat those points when we get to the amendments that cover more appropriately some of the other issues. Having already put all of those points on the record, I hope we will not have to be constantly reviewing them.

With regard to this particular clause and on the points that have been raised, can I say that this legislation sets the world’s best practice for risk assessment and risk management. It has many different offence provisions and, as I have said, the regulator will deal with Commonwealth agencies rigorously. I invite answers to this question: would senators prefer to maintain the current voluntary system? I do not think anybody is arguing to that effect on this issue.

Senator Brown raised some issues that really are matters that should be pursued with ANZFA and, if he likes, with me as the appropriate person with ministerial responsibility for ANZFA. They are not specifically relevant to this clause or this bill, and I invite Senator Brown to make separate representations to me or to ANZFA on those issues where he has concerns that go to implementation or administration in those areas.

Senator Stott Despoja raised the issue of cost recovery, and we will be returning to that amendment a little later. Can I put a smile on my face and say that I think I will be giving you some very good news in that area; I am sure you will be pleased when we get to that section of the bill. I flag that news, given that you are raising the issue and teasing the matter out. I will also be pleased to address Senator Stott Despoja’s comments on the precautionary principle when we return to those amendments. The government is happy to entertain enhancements in that area.

Senator FORSHAW (New South Wales) (10.24 a.m.)—I want to make one further comment and again it relates to this habit, this tactic, of Senator Brown putting up a straw man, asking people to knock it over for him and putting the rider that the Labor Party must agree with his assertion if they do not respond to his argument. Senator Brown put the proposition that, because we are opposing this amendment, somehow we are supporting a total abrogation of any possible responsibility or indeed liability at law for the sorts of actions that Senator Brown then referred to. Senator Brown, could I respectfully suggest that you go and get a little bit of advice on the operation of constitutional law. This provision is contained in all legislation where it is required. The concept of the Crown not being liable for prosecution is essentially related to the fact that the Crown cannot sue itself. The Crown ultimately cannot put itself in jail, and it is the Crown that launches criminal prosecutions. But that does not prevent an agency, a department or any number of other bodies from being prosecuted or from being sued.

If Senator Brown’s proposition were correct, then you would never be able to take action against a whole host of government bodies and agencies, whether it be a public hospital or whether it be the CSIRO, for instance. One could go back and examine this
issue and find quite a lot of cases where agencies or departments have been sued. I am not in a position to give detailed legal advice on this, but that is certainly my understanding. I think it is wrong for Senator Brown to stand up here and say that, because you will not agree to his amendment to remove what is effectively a standard provision in all legislation, somehow you are supporting the proposition that no action can ever be taken against any government department or any government agency. That is totally preposterous, and I think that even Senator Brown knows that.

Senator BROWN (Tasmania) (10.27 a.m.)—I am grateful to Senator Forshaw for interpreting what I said as ‘the opposition is supporting a total abrogation of any liability at law’. That was not how I interpreted it, but I will accept his interpretation. What I can do is take up his point that the opposition is not in favour of total abrogation. I therefore flag a new amendment which, instead of eliminating the provision that the act does not make the Crown liable to be prosecuted for an offence, would add a subclause (3): ‘the protection in Subsection 2 does not apply to an authority of the Crown’. I am sure the opposition and the government will be able to entertain that because that is in other legislation. For example, that is in the legislation on interactive gambling which is before the Senate at the moment. That would go a great way towards assuaging my concern, and it fits in exactly with the opposition’s position as just put forward by Senator Brown knows that.

Senator BROWN (Tasmania) (10.30 a.m.)—I move Green amendment (1) on sheet 2066:

(1) Clause 6, page 2 (after line 28), at the end of the clause, add:

(3) The protection in subsection (2) does not apply to an authority of the Crown.

I am very happy to hold off further debate on this amendment if the opposition would like to look at it, because it is an important clause. It applies to such things as the example I gave earlier where you may have a government instrumentality which is itself involved in crop experimentation and it ought to be under the same obligation as a private instrumentality doing the same thing. I think it would be wise if we were to hold this amendment over while the opposition gets advice on it.

Senator FORSHAW (New South Wales) (10.31 a.m.)—We are prepared to deal with it now. We will not support the amendment. We do not regard it as necessary for the reasons I outlined earlier.

Senator BROWN (Tasmania) (10.31 a.m.)—Well, let us explore it. I ask Senator Forshaw: what does the opposition think about the situation where a government instrumentality is involved in crop trials with genetically modified crops, in a region where there are farmers who want to stay GE free, and the contamination spreads? Does the opposition believe that, under those circumstances, the farmers in that region have no
recourse under law for compensation from the government instrumentality?

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (10.32 a.m.)—In relation to liability of the Crown, the bill as it stands has a provision that is standard in Commonwealth legislation, but Senator Brown has made reference to at least one other piece of legislation that contains the wording relating to ‘an authority of the Crown’. I am wondering why it would be appropriate in some legislation but not in this bill. Please do not take that to mean that I think that the government’s Interactive Gambling (Moratorium) Bill 2000, in which that particular line is contained, is a flawless bill, because it is not. It is an unworkable piece of undesirable legislation and full of holes. I am wondering whether one of those holes is reference to the authority of the Crown and whether the government could explain why this amendment should be rejected in its new form.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (10.33 a.m.)—I do not propose to trawl through every piece of legislation for anomalies or issues that might support a particular argument on this one. We oppose this amendment as it is unnecessary. We have canvassed the issue fully. I have addressed it comprehensively. I suggest we move on.

Senator BROWN (Tasmania) (10.33 a.m.)—I ask Senator Tambling the same question that has completely silenced the opposition, and that is: does the government not believe that a government instrumentality which is experimenting with crops that may put at risk the crops of farmers in adjacent farmlands should be under the same liability as a private farmer? Why should an experimental farm not have the same liability to its neighbours that any other farmer has? Why should there not be a provision that allows farmers who may lose their livelihood over the escape of a genetically modified organism to take action against that government instrumentality?

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (10.34 a.m.)—I am advised that the provision is only about fines. The liability would still stand with regard to common law.

Senator BROWN (Tasmania) (10.34 a.m.)—Exactly. So why do we need to have farmers in the whole subject to the law and fines but not a government authorised farm? Why make this difference?

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (10.35 a.m.)—We have already canvassed this issue in considerable detail. As I said, there are many other sanctions available.

Senator BROWN (Tasmania) (10.35 a.m.)—And all those sanctions are available against private farmers, but you are setting up a double standard here. I have already pointed out one major government instrumentality that has defaulted on its responsibility to work for the safety of Australians as far as genetically modified organisms are concerned. If the government and the opposition have faith in this legislation, then they are not going to be concerned about government instrumentalities being under the same legal requirements as private instrumentalities. You have no argument. It is not good enough to say, ‘I’ve canvassed that already.’ You haven’t answered the question I am putting, which is: why not make the same law for government instrumentalities as you make for private farmers?

Question put:
That the amendment (Senator Brown’s) be agreed to.

The committee divided. [10.40 a.m.]

(The Chairman—Senator S.M. West)

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AYES
Bartlett, A.J.J.  Brown, B.J.  Harradine, B.  Murray, A.J.M.  Stott Despoja, N.

NOES
Abetz, E.  Bishop, T.M.  Buckland, G.  Calvert, P.H.

* denotes teller

Question so resolved in the negative.

Senator BROWN (Tasmania) (10.43 a.m.)—by leave—I move:

(4) Page 3 (after line 19), at the end of Part 1, add:

8A Approval required before use etc. of GMO or GM product

Nothing in this Act permits, or is to be taken to permit, the development, use or release of a GMO or a GM product in a State or local government area without the prior approval of:

(a) that State; and
(b) that local government body.

(8) Clause 10, page 8 (after line 25), after the definition of licence holder, insert:

local government Authority means the person or entity appointed by each local government body to carry out functions under this Act.

(16) Clause 10, page 10 (after line 13), after the definition of State agency, insert:

State Authority means the person or entity appointed by each State to carry out functions under this Act.

(20) Clause 16, page 14 (after line 21), at the end of the clause, add:

(3) Nothing in this section affects or is to be taken to affect, the powers of States, or local government bodies to:

(a) appoint a State, or local government Authority; or
(b) to determine the terms of appointment of that Authority.

(62) Clause 55, page 39 (lines 8 and 9), omit paragraph (b), substitute:

(b) if the Regulator decides to issue the licence:

(i) must specify the conditions to which the licence is subject; and
(ii) must first obtain the approval of all relevant State and local government Authorities.

(65) Clause 57, page 40 (after line 7), at the end of the clause, add:

(3) The Regulator must not issue the licence if it would be inconsistent with a notice from a State or local government Authority under section 72A.

(4) The Regulator must not issue the licence if the Regulator is not satisfied that the GMO or its genetic material can be contained within the areas covered by the approval of the relevant State or local government Authorities.

(73) Clause 71, page 47 (after line 29), after subclause (2), insert:

(2A) The Regulator must not issue a notice under subsection (1) unless the Regulator has obtained the approval of the relevant State and local government Authorities for the licence variation.

(74) Clause 71, page 48 (lines 4 to 9), omit subclause (4), substitute:

(4) The Regulator must not vary the licence unless the Regulator is satisfied that any risks posed by the dealings proposed to be authorised by the licence as varied to:

(a) the health and safety of people; and
(b) the environment;

are negligible.

(75) Page 49 (after line 7), at the end of Part 5, add:

Division 8—Powers of States etc. in relation to proposed licences

72A Powers of States etc. in relation to proposed licences

(1) The Regulator must notify the relevant State and local government Authorities of his or her intention to:

(a) issue a licence under section 55; or
(b) vary a licence under section 71; or
(c) approve a notifiable dealing under section 72D.

(2) A State or local government Authority must inform the Regulator within the prescribed period whether it:
(a) approves the proposed dealing; or
(b) does not approve the proposed dealing; or
(c) approves the proposed dealing subject to conditions.

(3) If a State or local government Authority does not respond to the Regulator within the prescribed period, the State or local government Authority is taken to have approved the proposed dealing.

(4) A State or local government Authority may, at any time, notify the Regulator that it will not approve:
(a) any dealings with a GMO or GM product for a specified period; or
(b) particular dealings with a GMO or GM product for a specified period; or
(c) any dealings with a specified class of GMOs or GM products for a specified period; or
(d) particular dealings with a specified class of GMOs or GM products for a specified period; or
(e) any dealings with a particular GMO or GM product for a specified period; or
(f) particular dealings with a particular GMO or GM product for a specified period; or
(g) a particular class of dealings with a GMO or GM product for a specified period; or
(h) a particular class of dealings with a specified class of GMOs or GM products for a specified period.

(5) The Regulator must not take any action under this Act that is contrary to a notification by a State or local government Authority under subsection (2) or (4).

These amendments are right at the heart of the matter as far as Tasmania is concerned and, I think, every other region of Australia because they seek to give state governments and, indeed, local authorities the ability to say no to the spread of genetically modified organisms in their regions. I will read the recommended clause in relation to this:

Nothing in this Act permits, or is to be taken to permit, the development, use or release of a GMO or a GM product in a State or local government area without the prior approval of:

(a) that State; and
(b) that local government body.

The next three clauses define who in the state or local government area determines the matter. It is effectively an appointed person. Greens amendment No. 62 says:

... omit paragraph (b), substitute:

(b) if the Regulator—

this is the Gene Technology Regulator—

decides to issue the licence:

(i) must specify the conditions to which the licence is subject; and

(ii) must first obtain the approval of all relevant State and local government Authorities.

It is a really democratic measure which says, ‘If you are going to give a licence for crops to be planted in a region, firstly you need the approval of the local government and the state government concerned.’ Our new clause 57, which is amendment No. 65, reads:

(3) The Regulator must not issue the licence if it would be inconsistent with a notice from a State or local government Authority under section 72A.

(4) The Regulator must not issue the licence if the Regulator is not satisfied that the GMO or its genetic material can be contained within the areas covered by the approval of the relevant State or local government Authorities.

That is a really important clause. It says that the regulator can’t not take notice of a state and local government authority that wants to remain free of contamination of the genetic material and must make sure that the licence is constructed in such a way that those local government areas or states that want to remain free of the contaminated material will not be infected by somebody next door planting the crop that contains the material. I am using the picture image of planting a crop, although it is not restricted to that. We are talking about the use of genetic material in any way.

Finally, Greens amendment No. 75 adds a division 8 after part 5 of this bill, which outlines the powers of the states in relation to the proposed licence:
(1) The Regulator must notify the relevant
State and local government Authorities
of his or her intention to:
(a) issue a licence under section 55; or
(b) vary a licence under section 71; or
(c) approve a notifiable dealing under
section 72D.
(2) A State or local government Authority
must inform the Regulator within the
prescribed period whether it:
(a) approves the proposed dealing; or
(b) does not approve the proposed deal-
ing; or
(c) approves the proposed dealing sub-
ject to conditions.
(3) If a State or local government Author-
ity does not respond to the Regulator
within the prescribed period, the State
or local government Authority is taken
to have approved the proposed dealing.

Fourthly, the state or local government
authority may at any time notify the regula-
tor that it will not approve a dealing with a
genetically modified organism if it does not
fulfil specific conditions, including a speci-
fied period. The committee can see the eight
different conditions or variations that are
possible. Fifthly, and finally, the regulator
must not take any action under this act that is
contrary to a notification by a state or local
government authority.

There it is. We are empowering the people
through democracy to have a very powerful
say indeed in this enormously important
business of the spread of genetically modi-
fied organisms in regions in Australia. This
is saying that, at the grassroots level, farm-
ers, handlers and consumers will have a say
in what goes on in their area. This is pure
coalition philosophy, and it says to local
governments that they are recognised by this
national parliament as having on-the-ground
knowledge of what their constituents think in
a matter which does affect everybody in their
area—because gene technology is affecting
and will affect every Australian. It is saying
that if state governments want to opt out they
can.

This is an absolutely crucial amendment
to the legislation. It is at the heart of the
Greens’ submission that gene technology
should not be simply a matter for the gov-
ernment in Canberra to decide what is good
for people in Cairns, Borroloola or the Huon
Valley. People locally should have a say, and
that say should count. Here is the mechanism
for that say to be implemented, with the
Gene Technology Regulator—the central
authority—having to notify councils of an
application to put a genetically modified or-
ganism into that environment, thereby giving
the council an opportunity to discuss that
with its constituents, with people on the
ground, before making a decision. It is a very
sensible, democratic and ethical decision that
is being made here.

I want to finish by saying that the alterna-
tive is to leave this to a centralised author-
ity—a Gene Technology Regulator, a gov-
ernment and a minister behind it—under the
huge lobbying power of multinational corpo-
rations, which are in this to push their geneti-
cally modified organisms into the environ-
ment—into the crop lands of Australia—in
the interests of their shareholders somewhere
else around the world, with the overriding
motive being the pursuit of profit.

We have to make it very clear—and I do
not think anybody in this chamber is going to
say anything different: once genetically
modified organisms escape into the natural
environment, they are not recoverable. I
think we are all going to be talking about the
precautionary principle later. The best pre-
cautionary principle is to allow locals to have
a say in what risks they want to take, to
weigh up the advantages that no doubt the
corporations will continue to push for them—as the corporations would have it,
economically—in pursuing genetically modi-
fied crops. I think that should appeal to eve-
rybody, but I am concerned, of course, that it
is not going to. I will be interested to hear the
debate as to why local governments and state
governments should not have this say in what
goes on under their jurisdictions.

Senator BARTLETT (Queensland)
(10.53 a.m.)—I would like to speak to these
amendments as well. Senator Stott Despoja
and I, to a lesser a extent, have followed the
debate and the committee inquiry process on
this legislation with as much diligence as
possible. That is because of the importance
we attach to it. I have had a particular inter-
est not only in the environmental aspects but also in the community confidence in, and awareness of, this issue. A lot of fear comes through ignorance, and it is crucial that as much opportunity as possible to overcome ignorance is put in place in the structures we set up. The requirements suggested in this amendment are the folding in of state and local governments—and I would suggest that local government is more important in many respects, being the grassroots level of government; in some ways it is a more admirable level of government than state government.

The principle being put forward here is particularly important. It goes to one of the hearts of why this is such an important bill and why there is such attention being paid to the issue—because it is one that the community has fears about. In many cases a lot of those fears are just unease. I am uneasy as well, and hopefully I know more about it than a lot of people in the general community as I am taking part in deciding the outcome of the legislation. There is a lot to be uneasy about. As part of that, it is important to fold in as many parts of the community as possible. Obviously that has to be balanced against not making everything so unwieldy that nothing ever happens. But reasonable attempts to ensure input from all levels should be a key part of the structures that are put in place. For that reason, the intent behind this amendment is particularly important.

**Senator FORSHAW** (New South Wales) (10.55 a.m.)—The opposition will not be supporting these amendments. Indeed, we will be moving some amendments later in the debate which will, firstly, provide the opportunity for state governments to declare GM-free zones. In that context we also believe that the interests of local governments can be accommodated. Further, as we understand it, local government will have a significant opportunity—and should have such an opportunity—to be involved in the consultation process with respect to applications to the regulator. We are very conscious of the issues raised and the role that state and local governments should have, but we believe that they will be appropriately recognised and accommodated within the amendments that we will be moving at a later stage.

**Senator TAMBLING** (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (10.57 a.m.)—The government will be opposing these amendments. These amendments fundamentally alter the operation of the national scheme. They also give local governments a veto role over the scheme. Therefore, these amendments are strongly opposed. As it currently stands, the bill ensures that there is full consultation across all state and territory governments, local governments and the community for every proposed release of a GMO into the environment. Whilst Senator Brown is proposing these changes, he seems to be unaware that the states and territories have collaborated in the development of the scheme and that the bill has the full support of all states and territories. The Gene Technology Bill 2000 is only one part of a national regulatory scheme for the regulation of gene technology. Each state and territory will introduce complementary legislation into their parliaments that mirrors the Commonwealth legislation.

The centralised national regulator, the GTR, will administer the legislative scheme on behalf of all jurisdictions. To ensure that all jurisdictions have a say in the regulation of gene technology, all jurisdictions have agreed that all information about the scheme, including full applications, will be made available to all states and territories. Further, the GTR must seek and take into account the advice of states and territories on each and every application involving intentional release of a GMO into the environment. As has been reported in the media, all jurisdictions have also agreed that states be allowed to declare GMO-free zones on the basis of marketability issues. These GM-free zones will be observed by the regulator in issuing any licences and will ensure that decisions on the marketability of GM or non-GM crops continue to rest within the states. These arrangements provide the high degree of accountability and scientific certainty that states and territories wished to see in the national scheme, without creating unnecessary duplication and increasing costs that would
ultimately be passed on to the Australian community.

Apart from the adverse effect the amendments would have on the sensible and comprehensive arrangements set out in the bill, I do not believe that states and territories would support these amendments. It will certainly not be a case of Canberra dictating to the rest of Australia, as Senator Brown suggests. The legislation ensures that, in relation to all intentional releases of GMOs into the environment, every member of the public can have a say and the regulator is bound to take this advice into account. The comprehensive consultation provisions in the legislation are world-class. There is not another country in the world that provides for more consultations on applications and draft decisions. However, to take the next step of allowing every local government to be able to veto the decision of the regulator is entirely unworkable. We will, however, be supporting the inclusion of amendments into the bill explicitly providing for states to establish GM-free zones. As I indicated, the government opposes these amendments.

Senator BROWN (Tasmania) (11.01 a.m.)—Why is it entirely unworkable for a local government to declare itself GE free?

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (11.01 a.m.)—I do not know whether Senator Brown has ever worked in local government, state government or federal government. I certainly have, at all levels, and I thought common-sense would have dictated the answer to that. This is not an issue that normally falls within the ambit of local government. Certainly, they have a stake. The consultation process picks up a very adequate involvement for local government in this issue.

Senator BROWN (Tasmania) (11.01 a.m.)—Senator Tambling is wrong, Mr Temporary Chairman. Quite a number of local government areas in Australia have already declared themselves GE free: that is the wish at local level. Let me make it quite clear that this legislation, as put forward by the majority parties, is going to ride roughshod over that sentiment, because it does not provide for local government to have a say in keeping itself GE free. We will get to the debate about state governments further down the line. The GE question is very much a local one—and you can ask the organic farming community in Australia.

Senator Tambling mentioned that we do not want too many options for people at a local level to be able to declare themselves GE free because, goodness me, it might increase the cost and that cost would have to be passed on to the consumer. What I put forward here is the reverse point of view. If you do have the escape of GE organisms, or GE contamination, into the growing GE-free and organic farming community in Australia, the costs are huge. Why should that farming community in Australia not have a say at local level as to whether or not it wants to run the risk of GMO crops being pushed, by Monsanto and so on, into its area? Of course it should. What we have here is the government and the Labor Party saying, ‘People at a local level should not have a say.’ Farmers who want to remain GE free, because they are picked up on the world news—

Senator Forshaw—When did we say that?

Senator BROWN—You are saying it now.

Senator Forshaw—No, we are not saying it. You are a liar.

Senator BROWN—You are saying it.

The TEMPORARY CHAIRMAN (Senator Watson)—Order! Senator Forshaw, you will have to withdraw that comment.

Senator Forshaw—I withdraw it, in deference to the chair.

Senator BROWN—That was a good ruling again, Mr Temporary Chair. What I am saying is that the Labor Party is backing the government in voting down a clear amendment which says that local government should have an explicit decision making role here—not consultation. The word ‘consultation’ is coming up. We all know what that means. I am talking about a decision making role, which is a very different thing. What I am also saying is that farmers in this nation are very much aware of what is happening around the world. There is huge consumer resistance. Major food outlets in
Europe, and now North America, are saying, ‘We are totally GE free,’ and gaining market advantage because of it—more customers.

We have had a situation where shiploads of grain from North America, contaminated with genetically modified organisms, have been turned around because they were not allowed into port. We are going to see more of that. The promise that those grain growers in North America who went the way of Monsanto were going to reap the benefits has turned out, in reality, to be quite the reverse in that it is the people who stayed GE free who are getting the advantage currently. It is the same with the Japanese markets. People elsewhere around the world are saying, ‘We don’t accept what the multinational corporations are saying. We want our foodstuffs to be GE free.’ That sends a very clear message to farmers that there is a growing economic advantage in having the GE-free label. If you are going to allow farmers to take that option, you do it at local level. These amendments by the Greens and the Democrats and One Nation, as I hear it, are saying, ‘Yes, farmers should have that option and they should have the power to implement that option at the local level.’ If the government and the opposition vote this down, they are saying, ‘We will give them the power to consult but not to make the decision.’ That is the difference here. We are saying, ‘Empower people at a local level.’ They are saying, ‘We will talk to people at a local level.’ Tell that to regional Australia.

Senator HARRIS (Queensland) (11.05 a.m.)—I indicate that One Nation will support the Greens amendment, and I also foreshadow that One Nation has a similar amendment following. Depending on how the chamber votes on the Greens amendment, I may consider not moving my amendment. I would like to place on record that there are slight differences between what is being proposed by the Greens and by One Nation. It is One Nation’s intention to add clause 72A to the bill about powers of the states in relation to proposed licences. This would actually give the state a say in the issue of that licence and also give the local authority from within a state the ability to reject an application. In regard to the states, the One Nation amendment would bring in at subclause (1):

1. The Regulator must notify the relevant State of his or her intention to:
   a. issue a licence under section 55; or
   b. vary a licence under section 71; or
   c. include dealings with GMOs on the GMO Register under section 92; or
   d. certify a facility under section 84; or
   e. accredit an organisation under section 92.

So the difference between the Greens amendment and One Nation’s is that the regulator would have to notify the state in relation to any of those actions. Subclause (2) states:

2. A State must inform the Regulator within the prescribed period whether it:
   a. approves the proposed dealing; or
   b. does not approve the proposed dealing; or
   c. approves the proposed dealing subject to conditions.

So it is not an automatic right for the state to refuse a licence. That licence may in actuality be granted with conditions. Subclause (3) proposes:

3. If a State does not respond to the Regulator within the prescribed period, the State is taken to have approved the proposed dealing.

So that would facilitate the process. If there was no objection to the dealing, the state would not have to take any action. Subclause (4) proposes:

4. A State may, at any time, notify the Regulator that it will not approve a particular future dealing or class of dealings.

So under the One Nation amendment, the state would be able to indicate to the gene technology regulator conditions under which they would not approve a dealing or a class of dealings. Subclause (5) is the important one, and it states:

5. The Regulator must not take any action under this Act that is contrary to a notification by a State or local government Authority under subsection (2) or (4).

I acknowledge that the Greens amendment is far more detailed in subclauses (4) and (5),
but I think One Nation’s subclause (1) is more explicit and clear.

We have had issues raised in the chamber about all of the states concurring with the legislation that the government was bringing forward. But page 162 of the Senate Community Affairs References Committee report on the Gene Technology Bill 2000 said:

Tasmania concluded that the opt-out arrangements should not, therefore, be considered as an all or nothing approach and should be provided as a measure for giving effect to sovereign States rights ...

This is what both the Greens amendment and One Nation’s amendment would achieve. It would allow the states to continue to exercise their sovereign rights. For too long, we have had a convention both here and in the other place that, if section 51 of the Constitution—which should explicitly restrict the powers of the Commonwealth government as to what laws they can make—is silent, then the Commonwealth can make laws. I believe the Australian Constitution says totally the opposite. We are within a very short period of the 100th anniversary of the Commonwealth. When those states transferred rights to the Commonwealth government, it was done in such a way as to retain the sovereign rights of the states. I believe convention, not the Constitution, has been used by the Commonwealth government to override the rights of the states. In the same report, under 6.69 on page 162, it stated:

As noted above, the Victorian Government is now also looking at the possibility of GM-free zones within their State.

There is substantial evidence to support the fact that both state and local governments should have the right to remain GM free. I would like to quote from a transcript of the Australian Broadcasting Corporation’s national rural news on Tuesday, 24 October. It is an interview with Clint Munroe from Riverland Oilseeds, which is Victoria’s second largest canola crusher. Clint Munroe believes that Europe is looking to buy up to half a million tonnes of canola seed from Australia. He goes on to say:

I think it’s going to have a great impact for Australian farmers this season, having a GMO free canola crop, and the reason is that European supplies have fallen at the end of their season and they will require extra canola, they can’t buy it from Canada because their crop is GMO, so I think Australian might export between three and five hundred thousand tonnes to Europe this season. And that’ll have a great impact and increase prices for Australian farmers.

So we do not have to go overseas to get examples of people rejecting genetically modified food, as I have previously indicated. We should also look at the situation in America. On 22 October, the tribune news service said:

The Kellogg Co., the maker of Frosted Flakes and Special K cereals and other products, has shut down a Michigan plant because it could not guarantee corn used in production would be free of a genetically modified grain approved only for animal consumption, the Washington Post reported Saturday.

Two food industry sources familiar with the situation told the Post that the food giant, based in Battle Creek, had stopped production at the plant in midweek, and one said it remains closed. The location of the plant was not specified. Kellogg officials would not confirm the shutdown.

Big grain suppliers are unable to certify that their corn is not mixed with gene-altered corn, called StarLink, linked to a nationwide recall of taco shells. StarLink was mixed with regular corn in several sites around the country.

There are questions about its potential to cause allergic reactions in humans. Federal officials say the health risk is remote. Aventis CropScience, which makes the corn, is trying to recover 9 million bushels that may be headed to food companies.

So there is substantial concern from consumers who wish to have the choice of purchasing GM food or not, but it is very obvious that the industries, particularly in America, do not have the ability to ensure the separation of GM and non-GM grains that will ultimately come into food production. We can go to Central Queensland and look at genetically modified cottonseed. There are concerns there that there have been mix-ups with genetically modified cottonseed that has been used as stock food. It is important, as Senator Brown has previously stated, that the people of Australia can express their democratic right through their elected representatives at the local council level to ensure that, if they wish to remain genetically modified food free, the local council can do it.
I would like to speak briefly on the amendment that Senator Forshaw has indicated that the opposition will move. On reading that amendment, I am of the opinion that it relates only to the state. I am premising his amendment, but I think it is important that at this point we raise the issue that the Labor amendment is to insert on page 16 after line 27 a new paragraph (aa) with the words:

... recognising area, if any, designated under state law for the purpose of preserving the identity of one or both of the following:

(i) GM crops;
(ii) non-GM crops;

for marketing purposes.

I do not believe that Labor’s amendment goes far enough to give local governments the ability to remain GM free. We are also again seeing in the committee the situation where we will have Labor vote down amendments that would ensure with clarity the ability of local governments to exclude GM crops and food from their areas only to put up an amendment that is substantially less efficient in this case, knowing well that other senators in this chamber will have no option other than to support what we believe is the second choice.

In concluding my remarks, I believe there are two reasons why the Greens amendments should be supported. One is that they retain, or help to retain, the sovereign right of the state. They allow people within local areas to actually have control over their own destiny. Senator Tambling incorrectly stated before that this proposal would not be workable.

(Time expired)

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (11.20 a.m.)—We have just had 15 minutes of time wasting. I thought we had an agreement that we would certainly deal specifically with the issues. I do not have a problem with the issues. But Senator Harris has just wasted 15 minutes, and we are now on the fourth batch of 40 batches of amendments that we were proposing to deal with today. I have no problem dealing with the issues, but I do have a problem when we ramble in ways that have no relevance to the argument. I could not see the synergy or connection between many of Senator Harris’s comments and the arguments that were quite rightfully proposed by Senator Brown.

I differ with Senator Brown. Let me return to the issues that Senator Brown raised initially in this important amendment. What Senator Brown proposed could kill farming across Australia, particularly in local government areas, and it could pose major implementation problems for farmers. You could have a situation under Senator Brown’s amendments where one local government would have one approach and then across the shire or municipal boundary there could be a different one, and that could create major problems in that area. A local government approach was strongly opposed during the national consultations that were held on this legislation right round Australia where thousands of people in regional Australia, many drawn from local government, participated. The amendments Senator Brown has proposed fundamentally alter the operation of a national scheme which was intended and was supported in many of those national consultations. The amendments also would give local governments a role akin to that of states and territories. Put this in practical terms: this could mean that over 300 local governments must be consulted on the over 3,000 applications per year that we anticipate and would have the right of veto over approvals. Apart from the huge negative effect this would have on the smooth operation of the scheme, local governments are not resourced to undertake this role and do not wish to be consulted on low risk applications or applications that have nothing to do with their local government area.

While Senator Brown is proposing these changes, he seems unaware that all of the states and territories collaborated in the development of this scheme. The bill has the full support of all states and territories. The types of changes proposed are not only unsupported by states and territories but would also lead to a significant duplication, impose additional layers of regulation and require each of the states and territories to effectively establish, resource and run their own office
of gene technology regulation to assess individual applications. States vehemently oppose this approach, which negates the need for any centralised system. Notwithstanding Senator Harris’s remarks, I reiterate that this legislation has been developed jointly by the states and the Commonwealth and is supported by all states and territories. We will not jeopardise the high degree of national commitment to this scheme as it stands by considering these amendments.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (11.24 a.m.)—I would like to put on record the fact that Senator Harris addressed not only Senator Brown’s amendments but his own amendments which are due to follow and which, certainly in relation to the power of the states, constitute quite a substantial amount of the discussion and the debate before us. I thank Senator Harris for putting some issues on the record in relation to not only Senator Brown’s amendments but his own. I am also grateful for the fact that he put on the record the issue of the StarLink debate and controversy, because that very issue, to use a home-grown example of the case in Mount Gambier, highlights issues in this debate that have concerned local councils.

I acknowledge Senator Tambling’s discussion points where he talked about state and territory involvement, negotiation, discussion, consultation, but the words that were fundamentally missing towards the end of his contribution were the words ‘local government’. I am sure that I cannot possibly do justice to his two years as an alderman on the Darwin City Council between 1972 and 1974, so I would like to quote Senator Macdonald’s view of Senator Tambling’s contribution to the debate about local government. When addressing the Local Government (Financial Assistance) Bill in 1995, Senator Macdonald said:

As Senator Tambling, who led this debate for us, indicated, local government is the sphere of government that is absolutely closest to the people. It is the most democratic form of government and one that really represents to the minutest degree the wishes of the constituents it serves. Here we are faced with a wonderful opportunity to represent the wishes of constituents. With amendments before us we have an opportunity to ensure that the people of Australia are empowered in relation to this debate on genetic engineering. We have an opportunity to ensure that not only the states and the territories, which the government purports today to be concerned about, are empowered—although I suspect the state of Tasmania would have a few comments to make on the recent consultation process that was involved in reaching this agreement. I do not mean the most recent consultations—because it seems we have reached some form of agreement that is agreeable to my party and other groups—but the way Tasmania was treated when they put forward the notion of an opt-out provision for the states, the way they were treated when it came to whether it was Solicitor-General advice saying that this was contrary to the Constitution or the WTO. I do not mean to misrepresent any of the advice that came from government on a legal perspective, but they were certainly some of the arguments that were bandied around. And legal opinions were flying back and forth between Tasmania and the Commonwealth government. You may say that that is just a nice part of robust democracy, but let us get it clear that the federal government had no qualms about overriding or overruling or not taking into account the concerns of that small state, a state we have previously identified through this debate as a unique geographic location where we could actually talk about GE free in a valuable context.

This is an opportunity to give those people a say—those people who Senator Macdonald, in praising his colleague, has talked about as the ‘closest to the people’. I have no illusions as to why the government do not want to support this. It is not because of its so-called unworkability, according to the government—whether for organisational and administrative or financial reasons—but because they know perfectly well that this would possibly jeopardise some of the releases that they think appropriate but the people might not. It would be a very different situation in Australian politics today had local governments had a role in the nuclear debate—the engagement and further en-
gagement, continual engagement, of Australia in the nuclear fuel cycle. We all remember those local council signs saying ‘We are nuclear free.’ Now they are saying, ‘We are GMO free.’

What is wrong with that? I have already said that I support aspects of this nascent science that most scientists will acknowledge has a long way to go before we know its real effects and impacts. But at the same time I respect the right of Australians to be represented through their democratic institutions—not just this federal parliament, but through the other tiers of government, the government structures in which Senator Tambling has been involved, I might add. He put that on the record, and I congratulate him for his involvement in all tiers of government. But now is the time to make very clear to Australians, Senator Tambling, that you are not saying that this is the better form of government, but that you acknowledge the role of those other tiers of government. Like my colleague Senator Bartlett, who is not only our environment spokesperson but also our animal welfare spokesperson—hence his additional involvement in this debate—I speak in favour of these amendments on behalf of the Australian Democrats. I thank Senator Harris for outlining his amendments in the context of this debate, for explaining where there might be differences and also for outlining to us what he would do with those amendments. That was not time wasting; that facilitated this debate. So I thank Senator Harris for that. I also thank him for putting the StarLink information on record, which, at the risk of being told that it is inappropriate or irrelevant to this debate, I might hold off for another time.

But this is where the government does not get it; this is fundamentally related to this debate, because the people of Australia who are listening to and have a keen interest in this debate or the people who have concerns or queries about GMOs will want to know how they are empowered, if in any way, to determine whether their community is involved in the growing of these crops. They have concerns, and we know that through research and surveys, in much the same way the government knows that. What we are saying today is, ‘Okay, we acknowledge your concerns. We’re not going to do anything about them.’ The government talks about consultation in the context of dealing with the states and territories and about consultation with local government. But in the first contribution from Senator Tambling, when they talked about states and territories being consulted, that is quite a rhetorical form of consultation. In fact, I want to quote Senator Tambling in a debate involving local government in which he was involved a few years ago. When he was talking about the then ALP government’s approach to local government, he said:

But this is symptomatic of the government’s whole approach to this portfolio. On so many issues of concern to Australia’s 741 municipalities, the government’s promised consultation is revealed as just empty promises. It would be bad enough if the government’s dismissive treatment of local government were confined to this bill. But it is just one of a long series of occasions on which the government has ignored or disregarded the interests of local government.

So, Senator Tambling, do not be guilty of what you accused the former government. This is an opportunity for you to say, ‘Yes, as a former alderman, as a former Territory representative at the Territory level of government, as a now member of the federal parliament, I am going to acknowledge that all these tiers of government are important: that they should work together, that they should not only be consulted but also be consulted in a meaningful way, and that they should also have a say in the debate.’ In doing so you would ensure that the true interests and concerns of the Australian people are not only adequately but also properly represented in this place and reflected in this bill. Here is an opportunity to do it; take advantage of that opportunity.

Senator HARRIS (Queensland) (11.33 a.m.)—I would just like to take a few moments to irrefutably reject the assertion by Senator Tambling that I wasted 15 minutes of the Senate’s time. I did not. We have had situations in this chamber before involving the process of putting amendments on a running sheet, and where I have been ruled out of order by the chair for moving an amendment that was similar to an amendment that
had been defeated. I had a purpose in speaking to Senator Brown’s amendments, and I remind Senator Tambling that I indicated that I might not move the amendments. So rather than reducing and wasting the time of the Senate, I was trying to do exactly what Senator Tambling is asking us to do; that is, to correlate and debate together as many of the amendments as we can. I refute his assertion.

Senator BROWN (Tasmania) (11.34 a.m.)—I have two questions to Senator Tambling. Firstly, he said that he did not think that local governments should be dealing with low risk applications for GMOs. I ask him if he thinks that local government should not be dealing with high risk applications for GMOs. Secondly, I ask him which local governments he consulted with regarding this legislation.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (11.35 a.m.)—I indicate that there will be full consultation on those very important issues with local government, particularly on the high risk areas. The issue with regard to this legislation is that they will not have the right of veto. The consultation process is not intended to in any way forestall the area that is necessarily addressed, and I think that is important.

Senator FORSHAW (New South Wales) (11.35 a.m.)—I would like to make a couple of quick comments, because I do believe we should get on with dealing with the issues that remain. I think we have canvassed this issue fairly extensively, but I make just a couple of points. Firstly, it is wrong to suggest that local government will not have a say in the operation of this legislation. It will, as has been pointed out, have a say through the consultation processes that are required. Secondly, I think again we need a little bit of elucidation, if you like, of the constitutional arrangements that operate in this country. I believe there are some serious constitutional issues that could arise if this amendment is carried. But the fact of the matter is that it is the states that ultimately have responsibility for local government. Indeed, Senator Harris, I remind you that the Labor government some years ago put forward a constitutional amendment to include a specific power for the Commonwealth government with respect to local government, but that was defeated. So the Labor Party cannot be criticised for not wanting to promote the interests of local government. Indeed, as senators know, on some key issues I am particularly involved in ensuring that the voice of local government in my area is heard—on the issue of the nuclear reactor, for example.

But the point is that local government is regulated by the states; the states have the power. We believe the way this issue will be ultimately addressed is through the states being given the power, through our amendments, to declare GM-free zones. It will be through that mechanism that local government can pursue its interest. The other thing that needs to be pointed out is that this is complementary legislation. The states have signed up to this legislation, and this amendment therefore would, if it were carried, raise some serious constitutional issues. Secondly, it would start to unravel the fabric of that agreement between the Commonwealth and all the states on this legislation and how the office of the regulator should operate.

The final point I make is this. Senator Brown, you are good at giving examples of what might happen. Consider what would happen in a situation where, under your proposal, a local council area in New South Wales declared itself to be a GM-free zone but an adjoining local council did not. These issues do not stop at the boundary between one local council and another, and there could be many farming properties that spread across local boundaries. How do you solve that? What would happen ultimately is that it would probably have to go back to the state to resolve the sorts of issues that could inevitably arise where adjoining local councils take entirely opposite views with respect to GM production.

Senator BROWN (Tasmania) (11.39 a.m.)—Absolutely no difference. I presume the Labor Party is going to support the second-best amendments to allow state governments to have some authority over which GMO crops are allowed in those states.
There is the same problem. State boundaries have to be dealt with there, and areas within states have to be dealt with. What a curious contortion of the debate when Senator Forshaw says, ‘Well, the Labor Party put up a referendum proposal to clarify the situation as far as local governments are concerned, and it is worth reminding ourselves in here that it was the coalition that lobbied to have that referendum proposal knocked down. But now we get the opportunity on the floor of the Senate to support local government and we won’t do it.’

Let us be clear about this. By turning down this amendment, the big parties are stripping local government of power. You can say as much as you like about consultation, but everybody understands what that means: that means the power to have your wish overridden. You might be invited to engage in talks, but at end of the day you have no power. This Greens amendment gives people at the local level that power to determine whether it is going to be a GM-free zone or not. What the government and the Labor Party are saying is, ‘We’re not going to extend that power.’ Monsanto is going to be delighted by that outcome, but it is simply disempowering regional Australia from making decisions in a crucially important matter. This is not just about their health and wellbeing but also about economic prosperity for the future as they see it.

Question put:
That the amendments (Senator Brown’s) be agreed to.

The committee divided. [11.46 a.m.]
(The Chairman—Senator S.M. West)

Ayes............ 10
Noes............ 36
Majority........ 26

AYES
Bartlett, A.J.J. Bourne, V.W *
Brown, B.J. Greig, B.
Harradine, B. Harris, L.
Murray, A.J.M. Ridgeway, A.D.
Stott Despoja, N. Woodley, J.

NOES
Bishop, T.M. Boswell, R.L.D.
Calvert, P.H. Campbell, G.
Carr, K.J. Collins, J.M.A.
Conroy, S.M. Cooman, H.L.
Crowley, R.A. Denman, K.J.
Eggleston, A. Evans, C.V.
Forshaw, M.G. Gibson, B.F.
Heffernan, W. Hogg, J.J.
Kemp, C.R. Knowles, S.C.
Lightfoot, P.R. Ludwig, J.W *
Macdonald, J.A.L. Mason, B.J.
McKerinan, J.P. Murphy, S.M.
O’Brien, K.W.K. Patterson, K.C.
Payne, M.A. Ray, R.F.
Reid, M.E. Schacht, C.C.
Sherry, N.J. Tambling, G.E.
Tchen, T. Troeth, J.M.
Watson, J.O.W. West, S.M.
* denotes teller

Question so resolved in the negative.

The CHAIRMAN—Senator Harris, do you wish to move your amendment (38)?

Senator HARRIS (Queensland) (11.49 a.m.)—When I spoke on the previous amendments by the Australian Greens, I indicated that they were substantially similar to those of Pauline Hanson’s One Nation. In the interests of facilitating the debate timewise, I will not be moving amendment (38).

The CHAIRMAN—So you are withdrawing that amendment; thank you.

Senator BROWN (Tasmania) (11.50 a.m.)—by leave—I move:

(9) Clause 10, page 8 (after line 27), after the definition of Ministerial Council, insert:

notifiable dealing means a dealing in respect of which a responsible authority is required to notify the Regulator.

(13) Clause 10, page 9 (after line 25), after the definition of premises, insert:

primary GMO or GM product notice means:

(a) a notice issued by the National Registration Authority under subsection 8A(4) of the Agricultural and Veterinary Chemicals (Administration) Act 1992;

(b) a notice issued by the Australia New Zealand Food Authority under subsection 13A(1A) or paragraph 22(1)(b) of the Australia New Zealand Food Authority Act 1991;

(c) a notice issued by the Director of Chemicals Notification and Assessment under subsection 10A(2) of the
(14) Clause 10, page 9 (after line 29), after the definition of Regulator, insert:

respondible authority means:
(a) the Australia New Zealand Food Authority; or
(b) the National Food Standards Council; or
(c) the Secretary of the Department with primary responsibility for administering obligations under the Therapeutic Goods Act 1989; or
(d) the National Registration Authority for Agricultural and Veterinary Chemicals; or
(e) the Director of Chemicals Notification and Assessment; or
(f) any regulatory agency with primary responsibility for administering obligations under of one or more of the following Acts:
(i) the Agricultural and Veterinary Chemicals (Administration) Act 1992;
(ii) the Australia New Zealand Food Authority Act 1991;
(iii) the Industrial Chemicals (Notification and Assessment) Act 1989;
(iv) the Therapeutic Goods Act 1989.

(15) Clause 10, page 9 (after line 30), after the definition of reviewable decision, insert:

secondary GMO or GM product notice means:
(a) a notice issued by the National Registration Authority under subsection 8B(3) of the Agricultural and Veterinary Chemicals (Administration) Act 1992;
(b) a notice issued by the Australia New Zealand Food Authority under paragraph 17B(3)(b) or 24(1)(a) of the Australia New Zealand Food Authority Act 1991;
(c) a notice issued by the Director of Chemicals Notification and Assessment under subsection 10D(3) of the Industrial Chemicals (Notification and Assessment) Act 1989;
(d) a notice issued by the Secretary under subsection 30F(3) of the Therapeutic Goods Act 1989;
(e) such other notices as are prescribed by the regulations for the purposes of this definition.

(35) Clause 32, page 23 (lines 25 to 27), omit subclause (3), substitute:

(3) In this section:

exempt dealing means a dealing that is:
(a) regulated under any of the following:
(i) the Agricultural and Veterinary Chemicals (Administration) Act 1992;
(ii) the Australia New Zealand Food Authority Act 1991;
(iii) the Industrial Chemicals (Notification and Assessment) Act 1989;
(iv) the Therapeutic Goods Act 1989;
and
(b) specified by the regulations to be an exempt dealing.

(36) Clause 32, page 24 (after line 2), at the end of the clause, add:

(5) Regulations under subsection (3) may not be made without the approval of all jurisdictions.

(76) Page 49 (after line 7), after Part 5, insert:

PART 5A—REGULATION OF DEALINGS UNDER OTHER LEGISLATION

Division 1—Simplified outline

72B Simplified outline

The following is a simplified outline of this Part:

This Part establishes a mechanism for consultation with, and authorisation by, the Regulator in relation to certain dealings with GMOs that are primarily regulated by responsible authorities under other legislation.

When a responsible authority receives an application in relation to a notifiable dealing it must issue a primary GMO or GM product notice to the Regulator. The Regulator must undertake certain consultations
before providing advice to the responsible authority.

Before a responsible authority decides to approve a notifiable dealing it must issue a secondary GMO or GM product notice to the Regulator. The Regulator must undertake further consultations with the relevant State and local government authorities before issuing a certificate of authorisation to the responsible authority.

Division 2—Primary GMO or GM product notices

72C Regulator to take certain action on receipt of primary GMO or GM product notice

(1) This section sets out what the Regulator must do when the Regulator receives a primary GMO or GM product notice from a responsible authority.

(2) The Regulator must:
(a) publish a notice:
   (i) in the Gazette; and
   (ii) in a newspaper circulating generally in all States; and
   (iii) on the Regulator’s Internet website; and
(b) give a written notice to each relevant State or local government Authority; and
(c) give a written notice to:
   (i) the Gene Technology Technical Advisory Committee; and
   (ii) the Consultative Group; and
   (iii) the Ethics Committee;
   containing details of the proposed dealing and inviting submissions on the ethical, environmental and human health issues in relation to the proposed dealing.

(3) A notice under subsection (2) must include an address where submissions may be lodged and specify the closing date for submissions.

(4) After considering all relevant matters, including any submissions received under subsection (2), the Regulator must provide advice to the responsible authority about:
(a) the ethical concerns; and
(b) the risks to human health or the environment;
   in relation to the proposed dealing, and
(c) the means to address the ethical concerns and the risks to human health or the environment to ensure that such risks are negligible.

(5) The Regulator must provide advice within the period specified in the primary GMO or GM product notice.

Division 3—Secondary GMO or GM product notices

72D Regulator to take certain action on receipt of secondary GMO or GM product licence

(1) This section sets out what the Regulator must do when the Regulator receives a secondary GMO or GM product notice from a responsible authority.

(2) The Regulator must be satisfied that:
(a) the risks to human health or the environment in relation to the proposed dealing are capable of being managed so as to protect:
   (i) the health and safety of people; and
   (ii) the environment; and
(b) the proposed decision of the responsible authority addresses all relevant ethical issues and will ensure that any risks to human health or to the environment are negligible.

(3) If the Regulator is not satisfied about either or both of the matters mentioned in subsection (2), the Regulator must issue a notice to the responsible authority prohibiting approval of the proposed dealing.

(4) If the Regulator is satisfied about the matters mentioned in subsection (2), the Regulator must notify the relevant State and local government Authorities about his or her intention to authorise a notifiable dealing.

(5) A State or local government Authority must inform the Regulator within the prescribed period whether it:
(a) approves the proposed dealing; or
(b) does not approve the proposed dealing; or
(c) approves the proposed dealing subject to conditions.
(6) If a State or local government Authority does not respond to a notification under subsection (4) within the prescribed period, the State or local government Authority is taken to have approved the proposed dealing.

(7) If a State or local government Authority informs the Regulator that it does not approve the proposed dealing, the Regulator must issue a written notice to the responsible authority prohibiting approval of the proposed dealing.

(8) If all the relevant State and local government authorities approve, or are taken to have approved, the proposed dealing, the Regulator may issue a written notice to the responsible authority authorising approval of the proposed dealing, subject to any conditions required by a State or local government Authority.

(9) The Regulator must inform any person who made a submission under subsection 72C(2) about the following decisions:

(a) a decision of the Regulator under subsection (2) that the Regulator is satisfied or not satisfied about the matters mentioned in that subsection;

(b) a decision of a state or local government Authority under subsection (5) whether to approve, disapprove or approve with conditions a proposed dealing;

(c) a decision of the Regulator under subsection (8) to authorise the approval by a responsible authority of a proposed dealing.

72E Regulator may seek information

The Regulator may, at any time, request information from a responsible authority about a notifiable dealing approved under this Part.

72F Revocation of authorisation

(1) At any time after authorising the approval of a proposed dealing under subsection 72D(8), the Regulator may issue a notice to a responsible authority directing the approved dealing to cease.

(2) A person must comply with a direction under subsection (1).

(3) Where a direction under subsection (1) would result in the acquisition of property of a person, within the meaning of paragraph 51 (xxxi) of the Constitution on other than just terms (within the meaning of that paragraph), the person is entitled to such compensation from the Commonwealth as is necessary to ensure the acquisition is made on just terms.

72G Review of Authorisation

As soon as practicable after each third anniversary of a decision made under subsection 72D(8), the Regulator must review the decision.

Division 4—Precautionary principle

72H Regulator to have regard to the precautionary principle

In making any decision under this Part, the Regulator must have regard to the precautionary principle.

(100) Clause 138, page 86 (line 25) to page 87 (line 6), omit subclauses (5) and (6), substitute:

(5) The Record must contain details of all dealings that involve GMOs or GM products that have been approved under any of the following Acts:

(a) the Agricultural and Veterinary Chemicals (Administration) Act 1992;

(b) the Australia New Zealand Food Authority Act 1991;

(c) the Industrial Chemicals (Notification and Assessment) Act 1989;

(d) the Therapeutic Goods Act 1989.

(6) The information required for the purposes of subsection (5) in respect of each dealing that involves GMOs or GM products includes:

(a) the specific geographic location, including the State and local government area, at which the dealing is authorised to be carried out; and

(b) the conditions (if any) attached to the dealing; and

(c) the person or persons involved in carrying out the dealing; and

(d) a description of the dealing; and

(e) the date of approval of the dealing and the duration of the approval.

These quite extensive amendments will ensure that the Gene Technology Regulator, in dealings with a range of other authorities which are involved in the process of author-
ising the use of genetically modified organisms, has a standard practice and goes through a standard series of requirements. I will not list all of those, but they do include these requirements: that the regulator notify the public what he or she is considering—that is done through the Gazette, newspapers and the Internet web site; that the regulator gives notice to the relevant state and local government authorities that the regulator is considering an application for a genetically modified organism to be used; and that the regulator also gives written notice to the Gene Technology Technical Advisory Committee, the public consultative group, and the Ethics Committee involved.

It is also important that the regulator provide advice to the responsible authority about ethical concerns and the risk to human health or the environment if the proposed use of a genetically modified organism goes ahead. It should provide the means to address those ethical concerns and the risk to human health or the environment to ensure that such risks are negligible—in other words, to invoke the precautionary principle. In fact, the amendments specifically include a new section 72H which says that the regulator is to have regard to the precautionary principle. Mr Temporary Chairman, you would know that we are yet to deal with exactly how the precautionary principle is to be written up in this bill. There are different approaches to that from the various parties in the committee. Our new section 72H says that:

In making any decision ... the Regulator must have regard to the precautionary principle.

We are going to have a precautionary principle. Here it is stating in black and white that the regulator has to have regard to that principle as it is written in the bill.

It is also important that the regulator be satisfied that, in the use of a GMO, the risk to human health or the environment is capable of being managed so as to protect the health and safety of the Australian people and of the environment wherever this might be occurring and to make sure that the responsible authority—for example, the Australia New Zealand Food Authority or the gene technology agency—addresses all the relevant ethical issues and will ensure that any risks to human health or the environment are negligible. If the regulator is not satisfied about these things, then the regulator must issue a notice to that responsible authority prohibiting the approval of the proposed dealing.

What we have here is a very clear statement of the coordinating position of the regulator. These are good amendments; they are very clear, they are very precise and they are all-encompassing. They make sure that the regulator has knowledge of what is going on whenever a genetically modified organism is being proposed. Even though the application may have gone to another government body, that government body is responsible for ensuring that the regulator knows about it and then deals with it, taking into account the health and environmental considerations and turning down the application if it does not fulfil the requirements of the act. All importantly, it involves the regulator in making sure that the public that will be affected by the gene technology is aware of it and is able to respond to the application that is being made. If Monsanto want to come in with a new strain of a genetically modified crop, this is a very clear process to ensure that the people who might be affected by it will be consulted and that, if the company cannot guarantee health, safety and environmental requirements, their application will not go ahead.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (11.55 a.m.)—The government is opposed to these amendments. The amendments propose a complex system involving the issue of primary and secondary notices. The changes are cumbersome, resource intensive and unnecessary. The bill as it stands ensures that the regulator is notified of all GM products assessed by existing regulators and that the regulator can provide advice to other regulators. Senator Brown’s amendments fundamentally undermine the existing assessment processes of agencies such as the TGA and ANZFA, and therefore they are opposed.

Senator BROWN (Tasmania) (11.56 a.m.)—There you have it: we are going to
have a gene tech regulator without power. Far from being cumbersome, this is a one-stop shop with teeth; these amendments give power to the regulator. The government are saying, ‘No, we don’t want that; the regulator can give advice.’ It is back to the debate we had a while ago about local governments: they can give advice but they have no power. Rather than this proposal being cumbersome, what the government are standing for is a much more cumbersome and complicated situation, where a number of authorities are dealing with the decision making component of the GMOs. The regulator, who has all the centralised knowledge and advice, is being disempowered. The multinational corporations will love this; the people will hate it.

It is time the government had the gumption to put the people before the multinational corporations. The corporations know how to pick off these authorities, and they do so with extraordinary capability—but not in the interests of the public; they are doing it in the interests of shareholders and their profit line. As I said earlier, their shareholders very often are not even in this country. This is the wrong way of doing things. The Greens amendments make it the right way; they re-empower the people and certainly empower the regulator. They do so in a way that makes the regulator very clearly the defender of the public interest. It is not in the public interest to have a number of regulatory bodies which corporations can go to, making the whole system complicated. It is in the interest of the public that the system be simple, that they know which office is defending their interest and that they are informed by that office and given an opportunity to have input at all points. But the government are saying, ‘We don’t stand for that.’ Monsanto, Aventis or the other big corporations with interests in the genetically engineered future could not wish for a better outcome. As Senator Stott Despoja has said a number of times, there are very exciting possibilities in gene technology, not least in the medical field, and we want to see those possibilities realised. But there are also incredibly broad dangers, including economic dangers, and we want to make sure that safeguards are in place. The safeguards should be simple, accessible, transparent and publicly available above all things. That is what these Green amendments do, and that is what the government are turning down.

**Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (11.59 a.m.)—** The essential point is that this legislation does achieve a one-stop shop. All GMOs must be regulated by the GTR. If there are any products flowing from the GMOs, these then undergo a second round of assessment by other regulators with advice from the GTR. The GTR will not usurp the proper role of the other regulators. The bill ensures comprehensive disclosure of all GMOs and GM products, regardless of which regulator deals with the product, through the public record of GMOs and GM products.

**Senator HARRIS (Queensland) (12.01 p.m.)—** I would like to respond briefly to the Greens amendments relating to dealings and other legislation. I believe that it is very important that we give clear and concise directions as to how the regulator—whether that be a single entity or an authority made up of three people—is to carry out its function. I recognise that there will be regulations that will result from this legislation, but I believe it is far more efficient to have a debate in this chamber relating to the issues that will ultimately end up being the actual working engine of the legislation and that it is important that they are written into the legislation. The only thing we get to do with regulations, once they are produced in this chamber, is totally reject them or accept them. So on the basis that these Green amendments clarify considerably the direction that either the regulator or the authority must take, I believe that the bill is the correct place to have such detail. I place on record One Nation’s support for the amendments.

**Senator FORSHAW (New South Wales) (12.02 p.m.)—** On behalf of the opposition, I indicate that we will not be supporting these amendments. The Parliamentary Secretary to the Minister for Health and Aged Care has outlined the position in regard to the role of the GTR and other regulators. The primary role of the GTR is to assess issues relating to biosafety and genetically modified organisms. The other role is to regulate those...
GMOs not covered by other regulators. The opposition considers that a one-stop shop is a feasible model to be looked at. Indeed, the report of the Senate Community Affairs References Committee—I note the chair of that committee, Senator Crowley, is in the chamber and I take this opportunity to congratulate her and the members of the committee on their excellent report—states on page XIV:

The Committee RECOMMENDS that as part of the review of the scheme as recommended by the Committee, the review consider the feasibility of introducing a ‘one-stop shop’ model having regard to the operational effectiveness of the proposed ‘gap filler’ arrangements.

That issue certainly should be on the agenda when the legislation and the operation of the scheme, the GTR, is reviewed. We will be proposing an amendment later as to when that review should take place.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (12.04 p.m.)—Senator Forshaw has drawn the committee’s attention to the same recommendation that I was hoping the government would address in this debate in relation to the one-stop shop issue and, indeed, the recommendation of the majority of the Senate committee in regard to a review. I take on board Senator Forshaw’s comment that this will happen later in the debate, but I am wondering whether the government is prepared to give an undertaking now that that recommendation will be adopted and implemented by government. Certainly, the Democrats have put on record a number of times our concerns in relation to the current regulatory arrangements and how we do not necessarily believe that this legislation will solve some of those issues. We have talked about the one-stop shop notion for a while. I am curious to see some progress on that matter. Perhaps the government could outline its intention in relation to that express recommendation from the committee, given that it has made clear how it feels about Senator Brown’s amendments.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (12.05 p.m.)—In answer to Senator Stott Despoja, I indicate that the government is not opposed to a one-stop shop. However, it is a complex issue, cutting across legislation that affects the TGA, ANZFA, the NRA, as well as this bill, and it would have implications for state authorities. I assure Senator Stott Despoja that the government is working on this matter separately.

Senator BROWN (Tasmania) (12.06 p.m.)—I stand by the Greens amendments which would not only make it a one-stop shop but make it a one-stop decision making entity, which would really simplify the matter and be trailblazing legislation at an international level. It is a very complex issue. We all agree with that. Having a process which is simple and identifiable is very important for empowering the public to take a maximum role in it. I take this opportunity to come back to the document that I referred to in the Senate last night and ask the government for some feedback on it. This document involves ANZFA as well as the Genetic Manipulation Advisory Committee. Apparently, they have endorsed a document from the University of Queensland Botany Department, the text of which is copyrighted by Dr Robert G. Birch, which indicates that organic farming is not sustainable farming but is an alternative to it. Under a picture of the planet, it says:

Earth, a finite resource inhabited by a large human population. New gene technologies are a key to sustainable food supply and environmental conservation.

In other words, we need genetic engineering to conserve the environment. This document uses the word ‘trash’ at one point. It is an extraordinary document in itself. It is quite clearly a criticism of organic farming—one of the fastest growing and most important components of Australian agriculture. It is saying, in effect, that you cannot have sustainable farming without genetic engineering. For goodness sake! It has a list of questions against people who push organic farming. Well, I am one of them. The question I have to ask is: did ANZFA—the Australia New Zealand Food Authority—and the Genetic Manipulation Advisory Committee really endorse this document? Did they pay for it? Was authorisation given? I know questions are going to be asked in the New Zealand...
parliament about this as well. I would be very pleased if the minister could provide some answers at some stage during these proceedings.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (12.09 p.m.)—I indicate to Senator Brown that this is totally irrelevant to the discussion under debate insofar as what he is seeking to know with regard to ANZFA’s involvement in the document that is being distributed. I will certainly seek from ANZFA the basis on which it is being distributed and if it has been distributed with the authority of ANZFA. I am aware that ANZFA do engage in very comprehensive information with regard to these issues. It has a number of fact sheets on its own web site and which it distributes, and it has been certainly engaged in a wide range of community consultations to enable the debate to be proficient. Therefore, I would want to see the thing; it does not appear to have been put up front. The copy I have is a photocopy with something added at the end. Outside this debate, I will certainly seek that information for Senator Brown, but I do not see it as being particularly relevant to this bill.

Senator BROWN (Tasmania) (12.10 p.m.)—It is relevant because we are talking about the power of various authorities and the complication caused when you have a number of authorities having not only the information but the authority to make decisions regarding GMOs. I want to know that ANZFA—one of those authorities that is going to have very big decision making powers in this matter—as well as the Genetic Manipulation Advisory Committee, are not biased against organic farming, as this document would have them be. It is as simple as that. It is very germane to what we are talking about. I want to know that they have not endorsed this document.

Senator Ian Campbell—You have asked that three times.

Senator BROWN—It is three times because I asked about this last night and I expected an answer. I am just making it clear that I have had to get up and ask about it again. I will press the matter because there is a very clear question of compromise regarding these authorities, with their logos appearing on this document.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (12.11 p.m.)—Through you, Mr Temporary Chairman, I ask Senator Tambling, while he has acknowledged for the record that he is not opposed to that notion of a review of the gap filler approach and the suitability of a one-stop shop model, whether he will give an undertaking to the parliament that he will, in the context of that review, consult with those groups that provided quite meaningful evidence—in both a verbal and a written form—to the Senate committee in relation to that issue. There was a quite comprehensive discussion in relation to the scope of the scheme before the committee, and, for example, groups such as the ACF GeneEthics Network argued that the OGTR should be the lead agency in all GE related matters. And the Consumer Food Network argued that you would not necessarily have to have the super-regulator; that you could have a one-stop shop model, with a range of other issues.

I am just hoping that those organisations would be included in any review and, once again, I put on record the Democrats’ concerns with the notion of the gap filler approach, or at least the fact that the consequence of there being so many differing bodies involved in the assessment and approval of this technology has been somewhat artificial delineations in the gene technology processes. But I think it is a matter worthy of review and, hopefully, resolution. I hope to see a number of those groups that gave evidence to the committee involved in that process. I take the opportunity, as did Senator Forshaw, through you, Mr Temporary Chairman, to acknowledge the role of the chair in that inquiry, Senator Crowley, who is not only very enjoyable to work with but did a very good job in the context of that inquiry.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (12.13 p.m.)—The government is well advanced on the work in this particular area. We are very mindful of the need for very broad consulta-
tion, and I will ensure that the groups that Senator Stott Despoja has identified will be fully consulted.

Amendments not agreed to.

Senator HARRIS (Queensland) (12.13 p.m.)—by leave—I move:

(2) Clause 9, page 4 (line 8), omit “Regulator”, substitute “Authority”.
(3) Clause 10, page 5 (after line 12), after the definition of Australian Health Ethics Committee, insert:

Authority means the Gene Technology Regulatory Authority appointed under section 118.

(4) Clause 10, page 5 (line 23), omit “Regulator”, substitute “Authority”.
(5) Clause 10, page 9 (lines 28 and 29), omit the definition of Regulator.
(6) Clause 17, page 14 (line 22) to page 15 (line 24), omit “Regulator” (wherever occurring), substitute “Authority”.
(7) Clause 19, page 16 (line 7), omit “Regulator”, substitute “Authority”.
(8) Clause 21, page 17 (line 1), omit “Regulator”, substitute “Authority”.
(9) Clause 22, page 17 (line 18), omit “Regulator”, substitute “Authority”.
(10) Clause 23, page 17 (line 30) to page 18 (line 6), omit “Regulator” (wherever occurring), substitute “Authority”.
(13) Clause 24, page 18 (line 13), omit “Regulator”, substitute “Authority”.

Heading to Part 3, page 19 (line 2), omit the heading, substitute:

28A Decisions etc. of the Authority

(1) Any decision required to be made, or act or thing required to be done, by the Authority for the purposes of this Act is to be made or done with the agreement of a majority of the members of the Authority.
(2) The Authority may determine its operating procedures as it considers appropriate. However, those procedures must not be inconsistent with subsection (1).
(20) Clause 29, page 20 (line 18), omit “Regulator’s”, substitute “Authority’s”.
(21) Clause 30, page 20 (line 31) to page 21 (line 1), omit “his or her”, substitute “its”.
(24) Part 5, page 28 (line 2) to page 49 (line 7), omit “Regulator” (wherever occurring), substitute “Authority”.
(26) Clause 45, page 31 (line 6), omit “Regulator’s”, substitute “Authority’s”.
(29) Clause 49, page 33 (line 18), omit “Regulator’s”, substitute “Authority’s”.
(32) Clause 52, page 36 (line 30), omit “Regulator’s”, substitute “Authority’s”.
(34) Clause 59, page 41 (line 25), omit “Regulator’s”, substitute “Authority’s”.
(39) Part 6, page 50 (line 2) to page 55 (line 5), omit “Regulator” (wherever occurring), substitute “Authority”.
(40) Part 7, page 56 (line 2) to page 63 (line 2), omit “Regulator” (wherever occurring), substitute “Authority”.
(41) Clause 100, page 65 (line 13), omit “Regulator”, substitute “Authority”.
(43) Clause 101, page 66 (line 25), omit “Regulator”, substitute “Authority”.
(44) Clause 104, page 67 (line 20) to page 68 (line 13), omit “Regulator” (wherever occurring), substitute “Authority”.
(45) Clause 105, page 68 (line 16), omit “Regulator’s”, substitute “Authority’s”.
(46) Clause 107, page 69 (line 9), omit “Regulator”, substitute “Authority”.
(48) Clause 108, page 69 (line 23), omit “Regulator”, substitute “Authority”.
(49) Clause 110, page 71 (line 20), omit “Regulator”, substitute “Authority”.
(50) Clause 110, page 71 (line 22), omit “Regulator”, substitute “Authority”.
(51) Clause 111, page 72 (line 13), omit “Regulator”, substitute “Authority”.
A considerable view was expressed during those days that the situation would be far better facilitated by an authority than by a single regulator. I will speak to three of the amendments included in this group.

Amendment No. 3 says:

(3) Clause 10, page 5 (after line 12), after the definition of Australian Health Ethics Committee, insert:

Authority means the Gene Technology Regulatory Authority appointed under section 118.

Amendment No. 17 says:

Clause 26, page 19 (after line 10), at the end of the clause, add:

(2) The Authority consists of 3 persons appointed in accordance with section 118.

Amendment No. 19 says:

(19) Page 20 (after line 15), after clause 28, insert:

28A Decisions etc. of the Authority

(1) Any decision required to be made, or act or thing required to be done, by the Authority for the purposes of this Act is to be made or done with the agreement of a majority of the members of the Authority.

(2) The Authority may determine its operating procedures as it considers appropriate. However, those procedures must not be inconsistent with subsection (1).

The essence of this group of amendments is to amend the bill from having a single regulator to an authority of three people. The decisions of that authority must be made by a majority of its members—in other words, two of the three must agree before the decision could be carried out. That is the essence of this group of amendments.
I would like to turn to the Senate Community Affairs Reference Committee’s hearings on this matter. The committee’s report A cautionary tale: fish don’t lay tomatoes says on page 82:

Some evidence suggested that the independence of the office would be increased if the Regulator were established as an independent statutory authority. The Consumer Food Network of the Consumers’ Federation of Australia (CFN) argued for the establishment of a statutory authority governed by an independent board and reporting to a Cabinet Minister, preferably the Minister for Health or the Minister for the Environment.

I believe that that is a very important suggestion that has been made by the Consumer Food Network because these are the people who are representing the people of Australia in relation to their consumption of food. When we have this authority or this group that is recommending that the decision making process not remain with a single person, I believe that is quite substantial.

In submission 110, the South Australian government clearly indicates that in its view the independence of the regulator would be further enhanced if constituted as a statutory corporation established jointly by the Commonwealth and the states. Further, we believe that such an authority may provide a more secure constitutional basis for the administration of the stand. The South Australian government has clearly indicated that it is of the opinion that a statutory authority that encompassed the Commonwealth and the state governments would be by far a better proposition. It also speaks to the essence of the constitutionality of that authority. The report goes on further to say:

The Committee believes, however, that the need for all decisions made by the Regulator to be not only scientifically based but entirely independent is crucial to ensuring public confidence in the regulatory system. The fact that under the current proposal the final decision rests with one person is of concern in terms of the level of responsibility and pressure this one person will have and perceptions that one person may not be able to resist pressure from outside influences, industry or Government. This being the case the Committee recommends that the independence and impartiality of the office will be enhanced by the establishment of the Regulator as a statutory authority, where a board of three people will take ultimate responsibility for decision-making.

The recommendation from the committee was:

The Committee RECOMMENDS that the Regulator be established as a statutory authority consisting of a board of three people who will take ultimate responsibility for decision-making.

This is the report from a committee that spent four days taking substantial evidence from a wide variety of people. From the evidence gathered, there is a clear indication that there are concerns about the pressures that would be brought to bear on such a person. I believe the workload could be shared, but for one person to be given the ultimate responsibility for the decision to grant a licence under this legislation—for example, in a broadacre cropping situation—will bring enormous pressure on that person. I believe that such a decision would be far better facilitated if it were to be made by an authority made up of three people. I take the suggestion of the South Australian government that it would be preferable for that to be extended to also include representation from each of the states. I believe that would be the ultimate way both of having representation and of spreading the load. I am talking not of the physical workload but of the emotional responsibility of the person who is going to have to make these decisions.

Senator Tambling—Come on! Twelve minutes—you’re wasting time.

Senator HARRIS—I could liken this to Henry Ford. When Henry Ford first proposed his motor vehicle there were people who raised the issue that the motor vehicle would be an absolute disaster. Subsequently, as time has progressed, the motor vehicle has proven to be a substantial advantage. We may well find in subsequent years that genetic modification will be similar to Henry Ford’s invention of the motor vehicle and be of benefit to the people of Australia and the world. So what we need to do is ensure that, in the meantime when these enormous decisions are being made that will have paramount effects on both the way we live and the food we consume, the workload and the emotional responsibility are shared. When you take into account that we are what we eat, that will
have a substantial effect on who we are as well. I commend the amendments to the chamber.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (12.26 p.m.)—I indicate that the government is opposed to these amendments. These amendments propose that the regulator be replaced by a statutory board. This would make the system significantly more cumbersome and costly. Most importantly, the amendments add no value. The regulator established in the bill will be a strong, independent regulator with significant powers. While not adding value, I note that these amendments represent a great divergence from the system jointly developed by all states, territories and the Commonwealth. Any such move from the agreed national system would have to be negotiated with the states and territories. This would mean a delay of many more months before the regulatory system would be up and running. The government is committed to implementing a comprehensive and rigorous regulatory system for gene technology as soon as possible. The government will not agree to the amendments, which would result in further significant delays without any value added at the end of the day.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (12.27 p.m.)—I remind the chamber that Senator Harris has moved a total of 77 amendments—how dare he spend more than 12 minutes discussing 77 amendments! Clearly the government wants to get this legislation through as quickly as possible. The government wants to get this legislation through as quickly as possible. The government wants to get this legislation through as quickly as possible. The government wants to get this legislation through as quickly as possible. The government wants to get this legislation through as quickly as possible. The government wants to get this legislation through as quickly as possible. The government wants to get this legislation through as quickly as possible. The government wants to get this legislation through as quickly as possible. The government wants to get this legislation through as quickly as possible. The government wants to get this legislation through as quickly as possible. The government wants to get this legislation through as quickly as possible. The government wants to get this legislation through as quickly as possible. The government wants to get this legislation through as quickly as possible. The government wants to get this legislation through as quickly as possible. The government wants to get this legislation through as quickly as possible. The government wants to get this legislation through as quickly as possible. The government wants to get this legislation through as quickly as possible. The government wants to get this legislation through as quickly as possible. The government wants to get this legislation through as quickly as possible. The government wants to get this legislation through as quickly as possible. The government wants to get this legislation through as quickly as possible. The government wants to get this legislation through as quickly as possible. The government wants to get this legislation through as quickly as possible. The government wants to get this legislation through as quickly as possible. The government wants to get this legislation through as quickly as possible. The government wants to get this legislation through as quickly as possible. The government wants to get this legislation through as quickly as possible. The government wants to get this legislation through as quickly as possible. The government wants to get this legislation through as quickly as possible. The government wants to get this legislation through as quickly as possible. The government wants to get this legislation through as quickly as possible. The government wants to get this legislation through as quickly as possible. The government wants to get this legislation through as quickly as possible. The government wants to get this legislation through as quickly as possible.

If the government do not understand the analogy of the motor car, its benefits and, originally, its perceived risks, in the same way that Senator Knowles, when discussing this report when it was tabled did not quite understand why the issue of BSE was debated in the context of food regulation, what more can we do for them? It may be funny or laughable to the government to bring up such issues. Henry Ford said that history was bunkum and the government might think that analogy is bunkum, but there probably would be a few people around who would remember their concerns about any kind of new untested and untried technologies. I am not suggesting that this is untested or untried, but there are elements of this nascent science that are uncertain, and any geneticist will tell you that. So I wish the government would put this in perspective. Thank you for that elucidation on 77 amendments, Senator Harris. I look forward to seeing these amendments passed, as they were a recommendation of the majority of the members of the committee, including me, and of course you, Senator Harris, supported by the Greens and the Labor Party. These amendments should improve the bill, and I hope the state government of South Australia recognises that the Democrats are quite happy to speak out on its behalf when it does the right thing.

Sitting suspended from 12.30 p.m. to 1.15 p.m.

Senator FORSHAW (New South Wales) (1.15 p.m.)—We are dealing with the group
of amendments moved by Senator Harris which, in summary, seek to establish a statutory authority for the regulation of gene technology. The opposition does have a great deal of empathy with the position put by senators from the minor parties on this issue. Indeed, the Senate Community Affairs References Committee recommended that a statutory authority be established instead of a single person office of the regulator. The reasons for that are canvassed in the committee’s report. We believe that that is a reasonable proposition; however, we are unable to support the amendments on this occasion. We take that position because, as has been indicated by the parliamentary secretary, there is a need to get this legislation enacted and we are apprehensive that such a proposition will not be accepted by the Commonwealth government and would also mean going back to the states to push the issue there. That proposition has been considered, as I understand it, and at this point in time is not acceptable to all of the states and the Commonwealth. We wish it was the other way. We wish they did accept the proposition, but reality demonstrates that there would be a substantial delay in the introduction of this legislation if this proposition were carried.

We would have liked to have seen the gene technology regulator as a statutory authority, but we are fortified somewhat by a couple of things. Firstly, the proposal that is before us in this legislation of a single office holder, with all of the additional requirements that are enacted through the legislation and with the improvements from our amendments, will mean that the regulator in this instance will be an improvement on the usual models. We also point out that we will be moving for a review of the operation of the regulatory arrangements, and I understand the government and all parties have agreed to that. We certainly think that is one of the key issues that should be considered, as we would have had the opportunity of the legislation being in force for a couple of years and so have some indication of how the office has operated. There is also a provision contained within the intergovernmental agreement between the states and the Commonwealth for a review of the operations of the regulatory arrangements if the ministerial council believes that should be the case. We certainly believe that mechanism would be available if concerns along the lines of those raised by senators and during the committee were demonstrated to be problems. One would then expect that those issues would come before the ministerial council, which could lead to the structure of the regulatory arrangements being reviewed even earlier than the statutory review that will be put into the legislation in due course.

So we certainly support the principle of the proposal here, but we cannot support the amendment, given that we believe it would, firstly, significantly delay the introduction of this regulatory arrangement—which everybody accepts needs to be in place—and, secondly, cause great difficulties because it would involve the renegotiation of a substantial part of the legislation between the Commonwealth and the states. I finish by saying that we have endeavoured to persuade the government to adopt this proposal. We have not been successful, I acknowledge that. I suppose you cannot win them all. But we believe we have, as we will demonstrate, persuaded the government on a range of other matters that will improve the legislation.

Senator BROWN (Tasmania) (1:23 p.m.)—How pathetic for the opposition to say, ‘We cannot get the government to come on side; we capitulate.’ We are talking about the public interest here. We are talking about the impact that GMOs will have on every Australian—from those who grow it to those who consume it. To say, as the opposition has, ‘If the government will not agree to it, we have done our best,’ is pitiful. We and the opposition have the numbers in this chamber to substantially improve this legislation, to make it in the public interest and to give people not just a say but a powerful say from the local government level right through to the national government level. The opposition is disempowering people by not taking the same stand as the three minor parties on this occasion. I cannot believe in the run-up to an election the Labor Party could be so weak on a matter so important as this. I just cannot believe it.
I do not accept this excuse by the Labor Party, which is even selling out on the Senate committee report. I think it was a good report. It is whittling that back. Let us remember that Labor Party members signed up to that report and no doubt had a major influence in the drawing up of that report. I will not accept this hollow excuse of the Labor Party: ‘The government will not agree to this, so what can we do?’ That is what this chamber is about. It is about putting the government to the test. It is about saying to the government, ‘Where you fail the public interest, we will defend it.’ There is no excuse for a Labor-coalition deal made outside this chamber to replace the power that we have through numbers in this chamber to improve this legislation. Labor will not get away with that.

Senator FORSHAW (New South Wales) (1.25 p.m.)—I am going to respond to Senator Brown. Once again it was a case of engaging in whatever hyperbole he could. We are on broadcast, so this is a forum where Senator Brown can wax lyrical. What we are about, Senator Brown, is achieving some real legislation out of this. You have just said that, if this proposition were not passed, it would somehow remove the public interest. That is just absolute nonsense. Let us understand what this amendment is about. It is about whether the Office of the Gene Technology Regulator comprises a single person accountable to this parliament or whether it is a statutory authority made up of three people. That is a structural issue. We are saying that we have a lot of support for the concept of making it a statutory authority, but this legislation is not going to stand or fall on that narrow issue of the structure of the Office of the Gene Technology Regulator—whether it is to be one person or three.

The essential point here is whether or not the public interest will be protected. To suggest it will not be protected under the arrangements that are contained in the bill and enhanced by our amendments is just an exercise in absolute sophistry. You have not put forward a single argument in relation to the issues we have raised whereby the states need to be on board in this complementary legislation. Your attitude is, ‘We will move an amendment and engage in a rhetorical and hyperbole attack upon all other parties,’ because they are actually seeking to improve this legislation.

This issue is one that we have said will be able to be addressed further down the line. We are living in the practical world here of endeavouring to get legislation into place for the first time. Frankly, your assertion that we have deserted the public interest is an absolute falsehood. The public interest, we believe, will still be enshrined in the legislation with the improved amendments that we will be putting forward.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (1.28 p.m.)—This is not a minor point. This is not a slight debating issue in relation to—

Senator Brown interjecting—

Senator STOTT DESPOJA—as Senator Brown interjects, sophistry or even semantics. I know Senator Forshaw, Senator Crowley and their colleagues who signed off on the Senate committee report—and certainly Senator Forshaw has put this on the record today—recognise the value in having a three-person body as the regulator. The Senate inquiry heard from the Interim Office of the Gene Technology Regulator, the IOGTR. Its own evidence said that the regulator had quite extraordinary power. The committee report states:

The Committee believes, however, that the need for all decisions made by the Regulator to be not only scientifically based but entirely independent is crucial to ensuring public confidence in the regulatory system. The fact that under the current proposal the final decision rests with one person is of concern in terms of the level of responsibility and pressure this one person will have and perceptions that one person may not be able to resist pressure from outside influences, industry or Government. This being the case the Committee recommends that the independence and impartiality of the office will be enhanced by the establishment of the Regulator as a statutory authority, where a board of three people will take ultimate responsibility for decision-making.

The role of the regulator is fundamental to the legislation that we are discussing. The report states that the interim office:
noted that the proposed option of a statutory office holder will provide a high level of independence, transparency and accountability.

It also said that the interim office:
noted that the Bill provides that Regulator as a statutory office-holder with a high level of autonomy in administering the legislation, and in financial and staffing matters.

The interim office are acknowledging that this one person would have quite a deal of autonomy, particularly in relation to those financial and staffing issues. This report not only delves into the very issues of public confidence and whether or not people will have confidence in this system; it also asks whether this one person not only could but should, in the face of the pressures, undertake those responsibilities by themselves. The report clearly recommends that it should be three people, for a whole range of issues: public confidence, impartiality, independence, accountability. All of these words related to this recommendation cannot be easily overlooked. This is a fundamental point in the debate and in the legislation.

I did not expect that we would be debating it here; I assumed that it would be signed off on and approved by a majority of senators. People say things like ‘You can’t win them all the time,’ and, Senator Forshaw, we recognise that as Democrats. We can’t win them all the time, but do you know what? If you support this principle and you vote for it, we will win this one. We have the numbers: the opposition, the Democrats, One Nation and the Greens. People will say, ‘That’s not Realpolitik, because the government is going to reject it.’ Well, if the government rejects it in the House, it will come back here and we will insist. We will insist for all of the reasons that Senator Brown outlined, which are that this is fundamental to the health and wellbeing of Australians. It not only has economic impacts; it has environmental impacts. This stuff is huge. We know that from studying overseas examples. We know, from looking at media examples internationally, the potential backlash you have when public confidence is not assured. Public confidence, as this report spells out, would be enhanced—I quote—by this recommendation. So let us enhance it. Let us make sure that the pressures, the responsibility, the autonomy et cetera are not too much for one person. Let us go that extra little step in the context of this debate and make a big difference to the legislation before us and the public trust that comes with it.

I am surprised that we are debating this, because I thought that this would be a laydown misere. Given the committee felt so strongly about it, the evidence supported it, even by the interim office’s own admission—that this one person, this one regulator, was going to have so much work—I thought that you could only conclude that the three-person statutory authority was an appropriate amendment. We will win this one if people vote according to their views as they were at the time of the committee inquiry. As I have flagged, this amendment is perceived by the Democrats as fundamental in terms of the context of this legislation. This is an amendment that should pass if indeed this legislation is to pass at all.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (1.36 p.m.)—I appreciate this is an important issue and one that has taxed many senators and other people in the community. But there are many regulatory systems that are headed by individuals, as there are many other positions of importance in the government—for example, the Australian Tax Commissioner; the Ombudsman, or in fact the ombudsmen all around Australia in various discretions; the Australian Statistician; the CEO of the Australian Radiation Protection and Nuclear Safety Agency; and the operation of the Therapeutic Goods Administration. Another very important issue in this Gene Technology Bill 2000 that needs to be addressed is that, whilst the regulator is a single person, there are other levels of advice available to him. The interaction with the ministerial council and the functions of that ministerial council are very clear, as set out in clause 23. In clause 106, there is established the Gene Technology Community Consultative Group. Let me just remind senators of the functions of that group.
The function of the Consultative Group is to provide advice, on the request of the Regulator or the Ministerial Council, on the following:

(a) matters of general concern in relation to GMOs;
(b) the need for policy principles, policy guidelines, codes of practice and technical and procedural guidelines in relation to GMOs and GM products and the content of such principles, guidelines and codes.

At clause 111 of the bill, there is also established the Gene Technology Ethics Committee, a committee comprising 12 part-time members including a chair. The function of this committee is also important. It is:

to provide advice, on the request of the Regulator or the Ministerial Council, on the following:

(a) ethical issues relating to gene technology;
the development of:
codes of practice in relation to ethics in respect of conducting dealings with GMOs;
and the development of:
policy principles in relation to dealings with GMOs that should not be conducted for ethical reasons.

All of these bodies will interact and relate with the regulator in a way that assists him in making the appropriate decisions. As I said earlier, we do not want a system that is too cumbersome or too costly. We believe the appropriate way to go is as proposed by the bill.

Senator Harris (Queensland) (1.36 p.m.)—I would like to briefly encapsulate the essence of the amendments that have been moved. The amendments would introduce a new definition for the authority. The amendments set out how many people would be involved in the authority and also how that authority would reach its decision. Having said that, I would like to briefly canvass the issues that Senator Tambling just raised relating to the consultative group and the genes ethics committee. I foreshadow that I will be moving amendments to the bill that will have the effect of giving those committees more representation in the decision making process, because Senator Tambling is correct: these are very important committees, and they have very important functions to carry out. So it is equally important that they can represent those functions.

I take Senator Forshaw’s comments relating to reviewing the bill after three years. Senator Forshaw indicated that if the Labor Party were of the opinion that a single regulator was not operating efficiently, then the Labor Party would support amendments to change that situation. While I find it heartening that the issue is being listened to by the Labor Party, I believe that that is a little bit like shutting the gate after the stallion has bolted. We have the ability to make those changes now. South Australia in particular has raised the issue that it would like to see that extended so that the states have representation on that authority. I believe that, rather than restrict the function of the regulator to the individual person, we should look at a minimum of three. If, as Senator Forshaw has indicated, that is not operating, there may be a case to expand that to take in states representation. That would get over the constitutionality of the bill as well. In summing up those issues, I commend the amendments to the chamber.

Amendments not agreed to.

Senator Tambling (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (1.40 p.m.)—I move:

(1) Clause 10, page 7 (lines 18 to 22), omit the definition of ‘Gene Technology Agreement’, substitute:

Gene Technology Agreement means the Gene Technology Agreement made for the purposes of this Act between the Commonwealth and at least 4 States, as in force from time to time.

This amendment relates to the definition of ‘gene technology agreement’. The effect of this amendment is to improve consistency with the intergovernmental agreement on gene technology, referred to as the gene technology agreement. Since the introduction of the bill into parliament, the text of the gene technology agreement has been settled between officials from the Commonwealth and all states and territories, and the gene technology agreement will shortly be circulated to all governments for signature. The gene technology agreement is defined in this
bill as commencing on signature by the Commonwealth and all states or territories. By contrast, the gene technology amendment provides that the agreement commences on signature by the Commonwealth and at least four states, including territories. Amendments to the definition of gene technology agreement are therefore proposed to improve this consistency.

Senator BROWN (Tasmania) (1.41 p.m.)—If the government has indeed got unity of position on this legislation with the states and territories, why reduce the number to four?

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (1.41 p.m.)—I am advised that at this stage some of the states are still in the position of developing their complementary legislation, which they will enact according to their own timetables; therefore, obviously, their signatures will happen at different stages.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (1.42 p.m.)—I thank Senator Tambling for his explanation of the amendment, but I would like to clarify a point similar to that raised by Senator Brown; that is, have you agreement for this particular amendment from all the states and territories? I see Senator Tambling’s more than capable advisers nodding.

The TEMPORARY CHAIRMAN (Senator Hogg)—Nods cannot be recorded in Hansard, unfortunately, Senator Stott Despoja.

Senator STOTT DESPOJA—But they can when we refer to them, I suspect, Chair.

The TEMPORARY CHAIRMAN—Yes, but one does not know which way the nod is nodding.

Senator STOTT DESPOJA—Indeed. Can I, for the record, indicate up and down, indicating affirmation, I am concerned, Senator Tambling—and this is something that has been put to me by at least one organisation—that this indicates a watering down of the approval processes. For example, as the bill presently reads, the gene technology agreement means the gene technology intergovernmental agreement made between the Commonwealth, New South Wales, Victoria, Queensland, Western Australia, South Australia, Tasmania, the Australian Capital Territory and the Northern Territory as enforced from time to time. Now you are replacing that with at least four states. I just want clarification on record that that is not a watering down of the provisions or the amount of the approval that is required in order to undertake such an agreement.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (1.43 p.m.)—I am pleased to give that assurance. The states and territories and the Commonwealth have a unity of purpose with regard to this legislation that is indeed unique. I can confirm that all states and territories have agreed basically with most of this legislation, I think, that we have now got before us, but particularly with this clause. The purpose of seeking to proceed in this manner is to have a nationally consistent set of principles, and it is just a matter of transitional phasing in.

Senator HARRIS (Queensland) (1.44 p.m.)—I have a question for Senator Tambling. Would the change that the government is proposing here in fact make it easier for a state to actually opt out? The amendment the government is putting forward reads:

Gene Technology Agreement means the Gene Technology Agreement made for the purposes of this Act between the Commonwealth and at least 4 States, as in force from time to time.

Would this amendment actually facilitate a state opting out?

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (1.45 p.m.)—This amendment has nothing to do with the provisions with regard to opting out. That is covered elsewhere in this legislation and the debate before us, and that is also an issue on which all states and territories have agreed.

Senator HARRIS (Queensland) (1.45 p.m.)—Under the bill as it stands at this stage, could a state agree to sign up to the gene technology agreement and still then declare an area gene technology or GMO free?
Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (1.46 p.m.)—I am advised that the answer to that question is yes, with regard to the policy principles that will be acknowledged and endorsed by the ministerial council.

Amendment agreed to.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (1.46 p.m.)—by leave—I move Democrats amendments Nos 3 to 6 and 9:

(3) Clause 10, page 5 (lines 25 and 26), omit the definition of Consultative Group, substitute:

Consultative Committee means the Gene Technology Community Consultative Committee established by section 106.

(4) Clause 17, page 14 (line 27), omit “Consultative Group”, substitute “Consultative Committee”.

(5) Clause 22, page 17 (line 19), omit “Consultative Group”, substitute “Consultative Committee”.

(6) Clause 24, page 18 (line 16), omit “Consultative Group”, substitute “Consultative Committee”.

(9) Part 8, page 64 (line 2) to page 75 (line 5), omit “Consultative Group” (wherever occurring), substitute “Consultative Committee”.

These amendments are in relation to the formation of a consultative committee and the Democrat intention of replacing the consultative group. I am led to believe that there is some support from government for those amendments. There is up-and-down nodding, I hope. I have made clear throughout this debate that the Democrats are particularly concerned that any legislation, any regulatory framework, is underpinned by the notion of public confidence and thus public education and awareness.

Currently, of course, as we noted in our report to the Senate committee, the Gene Technology Technical Advisory Committee, the Gene Technology Community Consultative Committee and the Gene Technology Ethics Committee are the engines of this new regulatory authority. They are responsible for overseeing what public participation there is in the regulation of this technology. However, the Democrats felt that those committee still fell short of a public interest test, or more so a community confidence test, if you like. I acknowledge Senator Tambling’s earlier remarks in relation to a different amendment that there was a consultative group that was indeed designed to ensure some community involvement and public participation. What these amendments seek to do is to make sure that there is an equal footing for the consultative committee with those other committees that I described.

I think the only way we can ensure that the community will adopt these technologies, or at least feel that they have faith in the legislation designed to regulate these technologies, is to make sure that the public are informed and educated, that they feel aware of the choices—indeed, that they have choices. This morning’s debate has seen a number of choices in relation to states or territories and local governments removed. Nonetheless, I note that the consensus conference that was held at the beginning of last year demonstrated how important public awareness and participation are, and I think this is one way of furthering the particular process. I would like to quote from A. Gibbs’s submission that was made available to the committee. It stated:

It is, of course, impossible to neatly separate the technical, community, ethical and environmental aspects of new technology. This was eventually recognised even by the early biased GMAC, and specialists in most such issues were eventually appointed to GMAC. Thus the committee structure or the committee responsibilities proposed under the present bill must be changed. Either a single committee should be empowered to cover all aspects listed in the bill or all three committees should consider and report to the regulator on all applications for GM work.

I would also like to note those consensus convention recommendations, which included the suggestion that better processes to allow public access to information which includes varying perspectives should be established at many levels, including the establishment of a gene technology information office, government sponsored advertising campaigns, toll-free phone lines and a web site for consumer information, public notices on GM issues, information fact sheets, focused education information and CD-ROMs.
They also noted that increased consumer representation on existing and future decision making bodies is absolutely necessary.

A stringent selection process conducted by an independent body similar to that used to select consensus conference lay panel members should be applied in choosing representatives. Equal representation from public, industry and other key stakeholders should be established. In addition, resources should be identified and allocated to provide a follow-up report about the consensus conference process one year on that will evaluate and monitor its impact in relation to the issue of GM foods, given that that was specifically the area in which they were dealing. That lay panel, for example, and those debates that took place at that conference highlighted the significant role the community must play in this legislation and I believe will underpin any legislation that we want the community to adopt. I am still very concerned that some of the decisions we have made this morning will mean that there is a lack of public confidence in not only the technology but also the legislation designed to regulate it. So the committee I am proposing is simply to make sure that the consultative group is on an equal footing with those other committees to which I referred and to ensure that there is public participation and community consultation.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (1.51 p.m.)—I note and acknowledge the comments Senator Stott Despoja has made on this important issue and indicate that the government will agree to these amendments proposed by the Democrats—that is, specifically the change of name of the Gene Technology Community Consultative Group to the Gene Technology Community Consultative Committee.

Senator HARRIS (Queensland) (1.51 p.m.)—I rise to support the Democrats amendments. I believe the renaming of that group as the consultative committee gives it a far more acceptable name and, most importantly, gives people in the wider community a better understanding.

Amendments agreed to.

Senator BROWN (Tasmania) (1.52 p.m.)—I move Greens amendment No. 5:

(5) Clause 10, page 6 (lines 4 to 15), after “GMO” (wherever occurring), insert “or GM product”.

This amendment is self-explanatory. If you look at the definitions on page 6 of the bill, you come to the definition of ‘dealing with’. It says, in relation to GMO, ‘dealing with means the following’—for example, conducting experiments with a GMO. My amendment adds the words ‘or GM product’—that is, conduct experiments with a GMO or GM product’. Further down, it would become: use the GMO in the manufacture of a thing ‘that is not a GMO or GM product’. It simply clarifies what is inherently meant by this definition by ensuring that a GMO product is classified also as having a GMO component.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (1.53 p.m.)—I indicate that the government is opposed to this amendment. This amendment means that ‘GMO’ wherever occurring also includes GM products. It is not appropriate that this legislation regulate all non-viable, non-living GM products.

The majority of GM products are regulated by existing agencies, such as the Australia New Zealand Food Authority, the Therapeutic Goods Administration, the National Registration Authority and the National Industrial Chemicals Notification and Assessment Scheme. The legislation already ensures that, if there is any gap GM product that is not regulated by one of these agencies, the Gene Technology Regulator will regulate that gap GM product. This is a sensible arrangement that recognises the expertise and mandate of existing regulators, ensures that gaps are filled and creates a smooth interface between all regulators of GM products. It also ensures that all live, viable GMOs are subject to the same regulatory scheme under this bill. The government, the states and the territories are confident of these arrangements, and the government will not support the amendment.

Amendment not agreed to.
Senator BROWN (Tasmania) (1.55 p.m.)—I have a further amendment and, from what I have just heard, the government is not going to support this one either. I move:

(6) Clause 10, page 6 (line 19), after “parts”, insert “(including all organic and inorganic matter and all living organisms)”. This would further define the environment to include ‘all organic and inorganic matter and all living organisms’. That is a clarification of the definition that we see on page 6 of the bill at (a) on ecosystems and their constituent parts. The definition would then read:

   environment includes:
   
   (a) ecosystems and their constituent parts (including all organic and inorganic matter and all living organisms) ... 

   It just makes that clear, so that a narrow view cannot be taken of the matter and the real meaning of the word ‘environment’ is adopted by the act.

Senator HARRIS (Queensland) (1.56 p.m.)—I rise to support the Greens amendment to clarify the situation of organic and inorganic matter. I realise that the environment can be determined down to a one-centimetre cube and actually refer to the biomass that is contained within that. But I believe that this bill is of such importance and of such substance that it is incumbent on all of us to ensure that the environment is protected in its entirety and that there is clear understanding of and clear requirements for what will be a single person. It will not be a group of people making these decisions; it will be a single person having the final decision. I believe that this clearer that we can make this bill obviously the more assistance it is going to give that regulator in being able to actually implement it. I believe that using the terminology of ‘organic and inorganic matter and all living organisms’ would very clearly require the regulator, when making a decision to issue a licence, to see that those issues were taken into account. I support the amendment.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (1.58 p.m.)—I would just like to indicate that the government is opposed to this amendment. The definition provisions in the bill have been carefully drafted in full consultation with a very wide range of scientific and environmental experts. The experts have included those working within research facilities, universities, the CSIRO, the Genetic Manipulation Advisory Committee and state and territory authorities. The government has every confidence in the definitions in the bill. I note in particular that the definition of ‘environment’ is inclusive, rather than exclusive, and is particularly broadly cast. The amendment is therefore not supported.

Senator BROWN (Tasmania) (1.58 p.m.)—What is wrong with the words that I have added to that amendment?

Senator Tambling—In our view they are unnecessary.

Senator BROWN—That is about the level of incisive response that I would expect from the government. It does not know what is wrong with that amendment. Those words do enhance the definition. I will not continue to debate the matter, but I think there is a little bit of the government simply saying, ‘We will ignore any amendment that comes up here from the minor parties.’ However, it would have improved this definition.

Amendment not agreed to.

The TEMPORARY CHAIRMAN (Senator Watson)—We now move to clause 10. Senator Harradine, you have an amendment.

Senator HARRADINE (Tasmania) (1.59 p.m.)—Mr Temporary Chairman, there may be some confusion as to whether this is the appropriate place for this matter to be dealt with or whether it ought to be dealt with when we come to the proposed new section 62A. The proposed amendment to the definition that has been outlined is a simple definition of cloning. I notice the government has issued a proposed amendment before clause 192 which goes to the same matter. One way or another, in all events there needs to be a settlement on the meaning of human embryo cloning. Whether one goes one route or whether one goes the other route, there needs to be a clear understanding about the entity that we are talking about. That was the reason that I put forward this particular proposal in the definition area: so that we could agree,
one way or the other, on the definition of what human cloning means before we get into the discussion about how genetically modified organisms which are the result of human embryo cloning will be dealt with. It is a discussion for another time. At this stage, all I am doing is seeking an indication around the chamber as to whether the amendment that I am putting fits the description of human embryo cloning.

The TEMPORARY CHAIRMAN—Senator Harradine, I suggest you put your amendment now because we are dealing with the bill as a whole, and the government are prepared to put their amendment following your discussion.

Senator HARRADINE—The amendment that has been circulated goes to the question of whether or not this legislation should deal with the question of human embryo cloning. I think the government might be better advised not to go with its definition of cloning of whole human beings, because that is technically incorrect. It is taken from the Western Australian legislation, which does not ban human embryo cloning. Let me make it perfectly clear; I am happy to discuss the matter here, but I would have thought that the government might have been well advised to take further advice about this matter; otherwise, there may be some unfortunate embarrassment.

I am prepared to outline in general terms the definition I am proposing. According to my amendment, human embryo cloning means:

... any dealing that involves the production, or attempted production, of a human organism with the capacity to undergo development similar to a human zygote or a human embryo, other than by the union of a genetically unmodified human ovum with genetically unmodified human sperm.

Clearly, that is a definition to which anybody can subscribe.

One of the reasons that I have included the words ‘with the capacity to undergo development similar to a human zygote or a human embryo’ is to identify and tackle the problem of that cloning that I referred to last night—that is, the cloning which took place in Dr Trounson’s unit in Melbourne whereby they transferred the nucleus of a human somatic cell into a denuded pig’s ovum. That then developed in a similar way to a human embryo for 32 days, I think it was, by which time the little embryo was trying to attach to something and found it very difficult in the laboratory to do that.

We would not have known anything about that, except that we heard that the unit was trying to get a patent for the technique in Europe and in America. That is the whole point about this particular matter: we do not know what is going on at present. We now have the opportunity to take some action. We could have an exposure at some time—people in these laboratories are sometimes able to say what they know. I can see the Melbourne Age headlines now about that sort of human embryo cloning.

You might say that that being is not human, but it has a human genome, so it is human. In this particular case, the pig’s egg was denuded. I am not suggesting that we have the full-blown discussion at this point on my amendments and additional section 62A, et cetera. It may well be that this matter could be left until we debate that matter. I am not in a position—and I would have thought that the government is not in a position—to pursue that. I reiterate that the definition of cloning of a whole human being is taken from the Western Australian legislation. I emphasise the fact that the Western Australian legislation does not prohibit human cloning. I do not think that that is the road...
the government would be wanting to go down. So I would move postponement of this amendment.

The TEMPORARY CHAIRMAN (Senator Watson)—Senator Harradine, you have not moved it. So there does not need to be a postponement.

Senator HARRADINE—Okay. Then I indicate that I will be moving that at the appropriate time, which in my view is when we debate the essence of the issue.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (2.11 p.m.)—The government agrees with Senator Harradine that human cloning raises many complex ethical and moral issues. Therefore, we believe it should be dealt with far more comprehensively than Senator Harradine’s proposed amendments. It would be quite wrong for the government to rush in and attempt to ban human cloning in the way suggested by Senator Harradine without a great deal more consideration and consultation with the Australian community.

Senator Harradine—I rise on a point of order, Mr Temporary Chairman. I have not advanced arguments for my amendments, on which Senator Tambling is commenting. They are going to come up in due course. The Parliamentary Secretary to the Minister for Health and Aged Care is not able, under standing orders, to foreshadow and debate an amendment that will be coming forward at a later stage.

The TEMPORARY CHAIRMAN—Senator Harradine, Senator Tambling is entitled to discuss the issue in the same manner as the committee allowed you to discuss the issue. I think that is what Senator Tambling proposes to do.

Senator Harradine—Could I raise another point? I did not discuss and advance arguments for my amendments which will be coming forward at a later stage.

The TEMPORARY CHAIRMAN—Senator Tambling is free to range in relation to the same subject because we are discussing the bill as a whole.

Senator TAMBLING—Thank you, Mr Chairman. I do intend to raise the general points in the manner that you have indicated, just as Senator Harradine has done prior to this point. Despite the fact that we would oppose Senator Harradine’s amendment, if he subsequently chooses to move it, I am very aware of his concerns and would like to briefly outline some of the initiatives in place to address his concerns. All Australian governments have agreed that the cloning of human beings is unacceptable and that it should be banned. Each state and territory has undertaken to achieve this within its own jurisdiction, since this is a state and territory responsibility.

It is intended that this issue be covered by assisted reproductive technology or ART legislation. Three states—South Australia, Victoria and Western Australia—already have such legislation in place and this includes a ban on the cloning of human beings. On 27 July this year, all health ministers agreed to put in place a ban on the cloning of human beings through ART legislation and the NHMRC was asked to facilitate. The NHMRC has organised a roundtable meeting with representatives of each state to take place on 15 December. The objective of this meeting is to achieve agreement on legislative action that needs to be implemented in each jurisdiction and a time frame for this action. While the undertaking by Australian governments relates to banning the cloning of human beings, broader issues relating to this topic have been referred to the House of Representatives Standing Committee on Legal and Constitutional Affairs chaired by Mr Kevin Andrews.

In the interim, it is very unlikely that such activity will occur. Currently all research involving humans, including embryos, must first be approved by a human research ethics committee constituted and acting in accordance with the NHMRC National statement on ethical conduct in research involving humans. The national statement incorporates the NHMRC ethical guidelines on assisted reproductive technology, which declare as prohibited and unacceptable practices, ‘the intent to produce two or more genetically identical individuals, including the development of human embryonal stem cell lines, with the aim of producing a clone of indi-
viduals’. These NHMRC guidelines are nationally implemented, having been endorsed by the Australian Vice-Chancellors Committee, the Australia Research Council, the Australian Academy of Science and the Academy of Social Sciences in Australia. This covers practically all publicly and privately funded research in Australia. Additionally, the NHMRC ethical guidelines on assisted reproductive technology have been adopted by the Fertility Society of Australia and used for accreditation of all ART clinics in Australia.

Senator Harradine can be assured that we will continue to work on this issue and address it through, if necessary, purpose specific legislation, rather than through piecemeal amendments to this bill. The government appreciates that Senator Harradine’s concerns are extremely important, and we propose to address them by moving an amendment to clause 192 of the Gene Technology Bill 2000 and that foreshadowed amendment has already been circulated in the chamber. This amendment ensures that nothing in this act is taken to permit or to empower the regulator to issue a GMO licence permitting the cloning of a whole human being. The amendment also carefully defines ‘cloning of a whole human being’. The definition in the foreshadowed amendment reads:

\[ \ldots \text{cloning of a whole human being means the use of technology for the purpose of producing, from one original, a duplicate or descendant that is, or duplicates or descendants that are, genetically identical.} \]

This amendment is offered in good faith, given Senator Harradine’s strong concern. I should clarify that there is a clear difference between gene technology and human cloning. A genetically modified organism is, in summary, an organism that has been modified by gene technology. Gene technology is defined ‘as any technique for the modification of genes or other genetic material’. Cloning does not involve the modification of genes or other genetic material; rather, it involves the replication or duplication of an organism by copying a cell. The new copied cell is then allowed to grow. There is no modification or change to genes. They are copied. This is why cloning does not fall within the scope of this legislation—because it is not modification or manipulation as defined in the bill. I am certainly not saying that cloning is okay or that cloning should not be regulated, but only that it does not fall within this legislation. The government is, however, prepared to put this beyond doubt by explicitly providing that this legislation can in no way approve cloning, and that is the purpose of the foreshadowed amendment which has been distributed in my name.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (2.18 p.m.)—I would like to comment on some of the issues raised by Senator Tambling. I will happily address Senator Harradine’s amendments when they are moved and debated, but I think it is appropriate, within the context of the general debate about this revolutionising area of genetics and, indeed, as we have been discussing molecular biology, that we acknowledge that these areas do throw up interesting, difficult and quite complex questions. That is why I put on record again the fact that the Democrats have pursued these issues, whether it has been in relation to human reproductive cloning, whether it has been in relation to genetic modification generally, or whether it has been in relation to information issues and the issues of genetic privacy and discrimination. We acknowledge, and have acknowledged for many years, some of the ethical and pressing social and other issues that are raised as a consequence of these technologies.

The Democrats also—like, I imagine, all in this place—are opposed to human reproductive cloning. We believe that that is an issue too that raises some fundamental questions and queries, such as what it is to be a human being; and that of course forms the basis of the Universal Declaration on the Human Genome and Human Rights objections. Reproductive cloning also has identity and information consequences for any children that may be produced through this new technology. Like DNA information, such technology would have wide-ranging implications for insurance and family law. Again, I put on record that the Democrats have tried
on a number of occasions to address these issues, specifically in relation to genetic privacy and discrimination. We have done so by the tabling of a private member’s bill back in 1998, long before cases of genetic discrimination were actually identified in Australia, but not before cases were evident in places like the United States. So we have been aware of some of these issues.

I take on board Senator Tambling’s reference to human reproductive cloning falling outside the parameters of this legislation. I hear a baby crying in the public gallery. It is not often that someone cries when I am giving a speech, but I hope it is not a reflection on the issues before us today. It is a couple of years since the world was introduced to Dolly, the cloned sheep. However, since that time, the issue of cloning has advanced in light years. We now know that Dolly’s cells have prematurely aged and that we can make large numbers of embryonic stem cells and turn them into differing cell types in mice. This raises the possibility of human cell transplantation therapies, restoring damaged or diseased organs. It may be possible that, one day, good liver cells will be able to be injected into a cirrhosis damaged liver as therapy. Through you, Mr Temporary Chairman, to Senator Brown: maybe those rats that have their livers increased by 16 per cent as a result of some of those Monsanto trials might benefit from such technologies; but I do not mean to make light of those issues. As a result of these discoveries, several companies and some hospitals and government agencies are vigorously attempting to make therapeutic human cell cloning a useful and commonly used procedure. The science, again, is moving at a rapid rate and will not slow down for our parliamentary or our regulatory systems to catch up. I acknowledge the government’s amendment in this area. On a slight tangent in this debate, it is a reminder that we do need to get not only guidelines—which we have—but legislation in place in Australia that outlaws that human reproductive cloning.

I too acknowledge Senator Harradine’s comments. I think Senator Tambling referred to this, but currently three states have introduced legislation addressing cloning and embryo experimentation. In 1983 Victoria was the first in Australia—and the world, I believe—to introduce legislation banning cloning. In Western Australia, embryo research must have therapeutic intentions to be approved whereas in South Australia, my home state, experimentation with human reproductive material is prohibited. All other states and territories require experiments to be approved by institutional ethics committees, so currently we have a crazy situation whereby Alan Trounson, from the Monash Institute, to whom Senator Harradine referred, can enter into a joint initiative with the National University of Singapore, with the full approval of the NUS Research and Ethics Committee and the support of Singapore’s Medical Research Council, to use embryos not needed by IVF patients for research—a practice that would bring about imprisonment for up to four years under current Victorian legislation.

The international nature of science and technology and their communities poses great regulatory challenges. They are challenges faced not only in Australia in the Senate process today but all over the world. I look forward to debating in more detail the amendment put forward by the government, and I look forward indeed to progress from the government on the issue of cloning. I have already indicated to the parliament that I have a lot of sympathy with the position put forward by the Academy of Science in relation to the House of Representatives committee on the issue of scientific, ethical and regulatory aspects of human cloning. I tend to agree with most of the recommendations or statements that they have put forward.

Once again we are faced with these extraordinary ethical and other issues in relation to genetic engineering, molecular biology and a range of areas that probably this parliament has not really traversed before. I will make another comment. Apart from the fact that we have taken a long time to address some of these issues, it is sad that one component of those issues is being fast-tracked today in a way that I think is quite unforgivable. I think the public will agree.

The TEMPORARY CHAIRMAN (Senator Watson)—Senator Harradine, do
you wish to respond to the matters raised by Senator Tambling and to differentiate your issues from the matters that he has raised?

Senator HARRADINE (Tasmania) (2.25 p.m.)—As Senator Stott Despoja said, I will be interested when we come to debate these matters in some substance. This whole area of cloning is being determined not by the elected representatives of the people but by science technologists, some of whom are after patents and money. This is the motivation on a matter that will create grave problems for the whole of humankind. Senator Stott Despoja mentioned some of those problems. It is the parliament that should be dealing with this matter, and this is a golden opportunity for that to take place. The parliamentary secretary talks about the NHMRC, the AHEC and the states getting together. We have been waiting for that for years. I say to those particular states that they should get their act together and enact legislation. They have not done that. The parliamentary secretary says that an agreement might come about in July next year—or some time never—and that the states have put up their hands to introduce legislation to prevent cloning of whole human beings. What is meant by ‘cloning of whole human beings’? Insofar as Western Australia is concerned, that state’s legislation does not prohibit cloning, yet the federal government will be moving an amendment which gives the same definition as that of Western Australia. What does the government want? Does it want the cloning of human beings?

Earlier in this debate, I referred to trans-species cloning. That occurred in Victoria. We heard about it later because they sought a patent. These things are going on at the present moment. We have the opportunity to do something—at least to put a moratorium on it until these other things have been considered. Interestingly enough, in Victoria that particular experiment did not require ethics committee approval because the ethics committee involved judged that a human embryo was not involved.

I would like to hear from the minister as to what is meant by ‘cloning of a whole human being’. Does that mean that all those other things, including the cloning of human embryos, can take place? In the fertilisation area and the IVF area, at least there are some people responsible for the human embryo that is derived from the fertilisation process. With this legislation, the cloned human beings—the cloned human embryos—are the property of the science technologists. There is no one to whom some sort of responsibility is given. That is the first thing I would like to hear from the parliamentary secretary about: what does he mean by, in his words, ‘the prevention of the cloning of whole human beings’?

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (2.30 p.m.)—The foreshadowed amendment, which I would like to proceed with this afternoon and which has been distributed in my name, is very clear. It will insert into the bill a section 192B, the second part of which states:

... cloning of a whole human being means the use of technology for the purpose of producing, from one original, a duplicate or descendant that is, or duplicates or descendants that are, genetically identical.

I think that is intended to clarify the matter that Senator Harradine has raised. Senator Harradine also commented on the processes that have been under way. I appreciate that these are important ethical issues that have been addressed by various appropriate groups and research. Importantly, there is also the fact that on 27 July this year all health ministers agreed to put in place a ban on the cloning of human beings through the ART legislation and that the NHMRC was asked to facilitate. So that is a reasonably recent commitment by all jurisdictions. My definition is as in the foreshadowed amendment, which I would propose to proceed with this afternoon.

Senator HARRADINE (Tasmania) (2.31 p.m.)—I ask the parliamentary secretary: what is meant by a ‘whole human being’?

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (2.32 p.m.)—It appears that Senator Harradine and I are going to be in a bit of a yoyo situation on this. All I can do is refer him to the words that are
very clearly set out in the proposed legislation where it states:

... cloning of a whole human being means the use of technology for the purpose of producing, from one original, a duplicate or descendant that is, or duplicates or descendants that are, genetically identical.

Senator BROWN (Tasmania) (2.32 p.m.)—Would the parliamentary secretary have problems with the cloning of a whole or any part of a human being?

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (2.32 p.m.)—Yes, I would.

Senator HARRIS (Queensland) (2.33 p.m.)—I would like to speak briefly, not on the amendments because I realise that no amendments have been moved, to foreshadow to the government that I will be asking some questions as to why it has chosen to put its proposed amendment relating to the cloning of whole human beings in what I call the back of the book? Why is it right at the back of the bill under a section that actually relates to false or misleading information or documentation? I believe it would be far more suitable to be up the front, to move it to section 27 of the bill, ‘Functions of the regulator’. Why not put that section at the front of the bill where it so very clearly will state that the regulator would not be able to issue a licence that permits cloning, and later on we will have the discussion on what a whole human being is?

To also support Senator Harradine’s concerns, particularly in relation to cross-species, I would like to quote from a background paper on the ‘Environmental Implications of Biotechnology’ for the National Conference on Science. Policy and the Environment to be held in Washington DC on 7-8 December 2000. The area of concern is, and I quote from the document:

The pace of breeding and selecting for improved traits is accelerating rapidly, aided by advances in gene mapping, DNA “fingerprinting”, and gene “knockout” techniques. With the added tool of recombinant DNA methods, the option of obtaining useful genes from any life form—viruses, bacteria, poultry, humans, plants, etc.—significantly widens the scope of strategies for commercial applications in agriculture, aquaculture, and bioremediation.

And the following is the important part of this paper:

In addition, molecular biologists routinely create artificial genes that do not occur in nature. Further advances in molecular biology and biotechnology are on the horizon.

So what Senator Harradine is saying is a possibility and something that we will have to address in the future becomes even more realistic when you look at the government’s intended amendments. I will comment on them when they are put forward. I forewarn the government that I will be looking for an explanation as to why they intend to put their amendment at the back of the book.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (2.36 p.m.)—It is not a matter of putting something at the back of the book; it is a matter of putting it in the appropriate place within the legislation. We would argue that the important aspect of this legislation is about gene technology, and cloning is not gene technology and therefore not part of that. The other issues that are related in some way to the legislation should therefore be addressed in division 6, which is other issues. You will notice that there are a couple of other items already there in the legislation. So it is appropriate to add it to the appropriate section of the legislation rather than complicate and clutter in an area where there is no synergy or appropriate area in the earlier part of the bill.

Senator HARRADINE (Tasmania) (2.37 p.m.)—If that is the case, we should be dealing with this at the appropriate time when the debate takes place. Specifically, I ask: what is a whole human being? I say to the parliamentary secretary that it is very ambiguous as to what is meant. Is a whole human being meant to include a human embryo? Regarding cloning, the definition of cloning focuses on identicality. Does that mean that this would allow cloning a human being provided that some minor genetic change occurs? This happens even with so-called identical twins.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minis-
Senator Harradine has raised two issues with me which are definitional in character—one relating to a whole human being and the other relating to cloning. I will deal with the whole human being issue first. Put simply, what is meant by ‘whole human being’ is just that—we want to prevent the development of a whole human being using cloning technology. That in turn leads to the second definitional issue that Senator Harradine raises with regard to cloning. Again, I have to reiterate and restate the proposed government amendment in which cloning is taken to mean:

—the use of technology for the purpose of producing, from one original, a duplicate or descendant that is, or duplicates or descendants that are, genetically identical.

Senator Harradine (Tasmania) (2.40 p.m.)—Is it, or is it not, a fact that no form of human cloning actually produces beings who are genetically identical?

The Academy considers that reproductive cloning to produce human fetuses is unethical and unsafe and should be prohibited.

I agree with that. To continue:

However, human cells, whether derived from cloning techniques, from embryonic stem cell lines, or from primordial germ cells should not be precluded from use in approved research activities in cellular and developmental biology.

I am curious as to the minister’s response to that recommendation. I recognise that ES cell lines may be an area for further debate. Again, I think we are a little surprised that we are having it today but, now that we are dealing with amendments in relation to cloning, I am trying to establish—and I know it has been asked of the minister—the very fundamental distinction between human reproductive cloning and therapeutic cloning. That is an area of the debate that is of concern. I am also curious about the definitions employed by Senator Harradine. I think he stated that the definition used in his amendments was derived from the Western Australian legislation.

Senator Harradine—No.

Senator STOTT DESPOJA—No. I am not sure where I got that from.

Senator Harradine interjecting—

Senator STOTT DESPOJA—that was Senator Tambling’s. I am curious to explore the consequences, or the implications, of Senator Harradine’s definition. I have advice from at least one person that there is a possibility that it might be a defective definition.

To substantiate this, we know post-Dolly—and I referred to Dolly earlier—that any cell in the human body has the ‘capacity to undergo development similar to a human embryo’ if treated in a particular way. The potential problem, therefore, with that is that it could block the very change that Senator Harradine, in moving this amendment, favours, and that is a move towards the use of the patient’s own stem cells for these studies. I think that in a number of months some of these debates will probably be superseded, especially the stem cell debate, but while it is an issue it is one with which legislators as well as ethicists and others should grapple.
I should acknowledge that one of the people I have relied on for advice is Professor Bob Williamson from the Murdoch Children’s Research Institute. Certainly, as many of you will know, Professor Williamson is on record at times as critiquing, not always in a positive way, legislation that I have put forward to the parliament—specifically, a private member’s bill in relation to genetic privacy and non-discrimination. I think he agrees with the concept; I do not know if he necessarily agrees entirely with my bill. I say that as a means of explaining that I value his advice and his views on this matter. I should also put on record that he does not believe in and support human reproductive cloning, as I am sure no-one in this chamber does. I quote from him:

The appropriate act, in my view, should ban the implantation of any group of cells with the potential to undergo development as an embryo into the uterus of a woman or any equivalent use with the intention to allow development into a living foetus and live-born individual. However, this proposal is hasty and the definition could cause difficulty two to three years hence without identifying the key step in human cloning which is associated with implantation and development rather than potential.

Does the parliamentary secretary recognise a distinction between human reproductive cloning and therapeutic cloning? I am trying to think whether or not the government has a position on stem cells in terms of the ethics guidelines. Given that we have not got legislation that deals with some of these issues on a federal level, the government might only be in a position to offer a preliminary view on that issue unless you talk about the NHMRC’s work in that area. Is it possible to amend the government’s amendment in a way that makes it clear that we are talking about human reproductive cloning?

The TEMPORARY CHAIRMAN (Senator Watson)—Senator Tambling, I think it might be a good idea to either put your amendment or continue on to the next amendment, because we really do not have an amendment to discuss at the moment.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (2.47 p.m.)—I appreciate the issue you raised, Mr Temporary Chairman. Would you give me the licence, perhaps, to answer the questions that have just been raised, and then I will either invite Senator Harradine to put his amendment or move mine. I will quickly respond to those issues that Senator Stott Despoja has just addressed. What she has illustrated is the inappropriateness of this debate attached to this piece of legislation. That has been our argument: that it complicates the issue of setting up what the gene technology regulator is all about and what the Gene Technology Bill sets out to achieve. The issues relating to cloning and the associated issues really are for other legislation and a different place. I illustrated in my previous comments that there are a series of things, from ministerial councils down, that are currently addressing these issues, and it will be taxed not only by the federal parliament but also by state parliaments. I think it is an issue that is appropriate for those particular areas.

Senator Stott Despoja specifically asked me if I saw a difference between human reproductive and therapeutic cloning. Yes, certainly, there is a very distinctive difference, and I agree with her comments with regard to human reproductive cloning. In relation to therapeutic cloning, there is a need to look at things such as, very simply, skin grafts and other areas where there is important work being done. Similarly, there is very important basic research being done into diseases such as cerebral palsy et cetera. We have to be careful that any definitions do not prevent some of that very important research continuing. I am advised that the definition that I have used in my foreshadowed amendment is that which is adopted by the World Health Organisation and, as such, has international recognition. As far as proceeding, Mr Temporary Chairman, I would invite Senator Harradine to move his amendment if he wishes to do so. Otherwise, I would certainly move the one circulated in my name.

Senator HARRADINE (Tasmania) (2.49 p.m.)—I find that totally unsatisfactory. The parliamentary secretary comes in here with an amendment dumped on the table not half an hour ago and expects people to debate that now. ‘I demand that to be debated,’ is what he is saying to the chamber, and he is abso-
olutely refusing to answer the key questions. We are here as legislators. We are entitled to certainty, and those who are affected by the legislation that passes through this parliament are entitled to certainty in the law. This is shabby treatment of the chamber, of the parliament and of the people of Australia. You won’t even get up and answer simple questions as to what is meant by whole human beings. You won’t even answer that. You won’t even answer whether it includes the development of human embryos. You won’t even answer questions as to whether or not any human cloning resulted in beings being identical. You won’t even answer that. Why won’t you answer that? Does your government want uncertainty before the law?

There are a number of other questions that I have for the minister, but I am not prepared to accept this situation on this matter which goes to the heart of humankind. I am not prepared to be in this chamber and listen to this minister who, when he is asked a question, gets the paper out and says it means: ... the use of technology for the purpose of producing, from one original, a duplicate or descendant that is, or duplicates or descendants that are, genetically identical.

He read that out in answer to my question: what constitutes a whole human being? I ask anybody in the chamber or outside who may be listening to this debate: is that good enough? Does that make for certainty before the law? Are we betraying our trust to the people of Australia because of the sort of treatment that this committee is given?

I have been here longer than anybody else—25 years—and I have heard a few miserable attempts to explain policies by responsible ministers, not too often but you do get it now and again. We have it here today. Mostly the ministers are well over the subject matter and are able to give clear advice to the parliament about what constitutes their particular proposal. But we are not getting that now. We are actually seeing an attempt at this point to hijack the debate which should be taking place when we reach my amendments to proposed section 62 on the running sheet. But, no, that is not good enough for the minister. He wants to debate that issue now, when it should be debated when it comes up on the running sheet. That is a reasonable suggestion and a reasonable case to make. I said that it may well be that my amendment to the definition ought to be considered at that stage of the debate. I appeal to all sides of the Senate to allow that to occur and not to deal with these matters away from the real issues involved, which again will come up later on the running sheet. This is an attempt by the minister to pre-empt that debate. That will be a very important debate. If necessary, I will move that the amendment standing in my name and the amendment in the name of the government—

The TEMPORARY CHAIRMAN (Senator Watson)—Order! Senator Harradine, you cannot postpone something that has not been moved.

Senator HARRADINE—Mr Temporary Chairman, I seek your advice. Is it not possible in the committee stage of the debate to move that certain amendments which have been circulated should occur when they are set down on the running sheet?

The TEMPORARY CHAIRMAN—Not until they are moved, Senator Harradine. They have to be moved first and then you can take that course of action.

Senator HARRADINE—I see. I therefore move:

(1) Clause 10, page 8 (after line 18), after the definition of higher education institution, insert:

human embryo cloning means any dealing that involves the production, or attempted production, of a human organism with the capacity to undergo development similar to a human zygote or a human embryo, other than by the union of a genetically unmodified human ovum with genetically unmodified human sperm.

I also move:
That further consideration of the amendment be postponed.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (2.58 p.m.)—I want to seek the opinions of the other parties in the committee at this point in time. We are dealing with a very important piece of legislation with regard to gene technology and the issues being addressed are, we have argued, peripheral—whilst being very important and very fundamental moral issues. I feel that the debate has been reasonably mature. We have been going for about an hour now on this issue, and I feel that if other senators were inclined to proceed with the debate this afternoon there would be no need for postponement, but I have not heard a view other than that expressed by me that perhaps we should proceed and the view of Senator Harradine. I think it would probably be incumbent on other senators to indicate their positions as to whether Senator Harradine’s amendment No. 1 to clause 10, which is the amendment we have reached, and subsequently my supplementary amendment to that should be proceeded with this afternoon.

Senator FORSHAW (New South Wales) (2.59 p.m.)—I will take the opportunity at this point to indicate the position of the opposition. The last hour of debate demonstrates that this is, firstly, an extremely important issue and, secondly, a complex one. The Gene Technology Bill 2000 has been the subject of a very detailed, extensive inquiry by the Senate Community Affairs Committee. I have read the committee’s report and read the evidence. I attended one of the hearings, though not all. But I am advised that this issue was not extensively canvassed during that inquiry. Indeed, it would be fair to say this issue was not identified by the committee nor indeed by the overwhelming number of witnesses from the public and other organisations as under consideration in this legislation.

We are of the view, as expressed by the parliamentary secretary, that this is not the appropriate legislation in which to deal with the issues of human cloning that Senator Harradine has raised. I recognise that he agrees with us on that. But we have listened intently to the debate and particularly to the reasons that were outlined by the government in response to Senator Harradine’s first series of comments. We know that there is an extensive amount of work being done in various areas—the National Health and Medical Research Council, the states, and the Senate Legal and Constitutional Committee which is due to report next year. On that basis we have not been supportive of amending this legislation in the manner sought by Senator Harradine.

We have also made it abundantly clear, like everybody else has made it abundantly clear, that we do not support human cloning in terms of what everybody has talked about. Indeed, we support what, as I understand it, the states have all signed up to: a ban on it. Our position, after consideration, was that we would not support the amendment from Senator Harradine. I understood that was the position of the government, initially. They have now come back with an amendment which seeks to clarify—if that is the right word—what this bill will not permit. The danger when you seek to clarify is that people will then argue that the mere fact of clarifying in one area, if it is a prohibition, means that everything else is permitted. This I think is the reason why the initial position was probably the correct one—that is, that this legislation should have been seen to stand alone in respect of gene technology and the areas that are regulated under it; and that, as we all expect, legislation will in due course be coming forward to deal with the issues of human cloning and the related areas that have been spoken about earlier. The opposition’s position at this stage is that we would support the amendment moved by the government. I think I can leave my remarks at that.

Senator BROWN (Tasmania) (3.04 p.m.)—I would support the government’s amendment as well, but I am also inclined to support Senator Harradine’s—and there is the difficulty. I think Senator Harradine’s suggestion that his amendment be delayed until a little later gives us until Monday to think about it. It is going to be dealt with and so I think it would be good to have a little bit
more time to deal with that while we move on to the rest of this legislation.

I understand the government thinks that, if we can get this decided now, it gets a major matter disposed of. Let me say this, though: having this matter dealt with at some future time does not satisfy me. As Senator Harradine says, experimentation has been proceeding involving human bits with pig bits and so on, and the public out there is very alarmed about it—and has a right to be. It has a right to see us engaging in the very difficult business of regulating that. I think instinctively many of us do not want to. It is complicated and it has huge ethical as well as scientific components to it. But legislate we must, and putting it off because it is too hard is not the right thing to do.

To some degree, Senator Harradine’s motion here has been opportunistic, but that is what you are left with when the government has not acted, when there is no other legislation put forward—and it is legitimate. I think therefore Senator Harradine is doing us all a great favour by putting the pressure on to see that we come up with legislation which does do the job. I hope the Prime Minister is listening, because that primarily is a job for the government. I would like to think about the matter over the weekend and get some more advice on voting with Senator Harradine’s motion, even though the indication now is that his motion would not be upheld because the opposition would not support it.

Senator FORSHAW (New South Wales) (3.06 p.m.)—I want to respond to a comment made by Senator Brown. I do not think anyone is suggesting this be put off because it is too hard. I remember that one of the criticisms that was raised about the gene technology legislation was that there needed to be a period of extensive public consultation. Indeed, the Senate referred this bill not to the legislation committee—which normally has a short, sharp hearing, as you might appreciate, on the bill itself—but to the references committee. There was participation from all the parties and an extensive inquiry. That was done in order to enable everybody to look at the legislation and try to get it right rather than just push it through.

Senator Brown, you might say that in your view that is happening now anyway. But that is the key reason why we are taking this view: there are other inquiries going on. There is an inquiry by the House of Representatives Standing Committee on Legal and Constitutional Affairs into human cloning. I understand it is due to bring its report down mid-2001. There is the work that is being done through the National Health and Medical Research Council and by the states. I understand Senator Harradine is not happy with that. He says that it has been going on and on and nothing has been achieved. But the approach we adopt is that that is the best course to follow. We are not in any way seeking to knock this amendment off or defeat it simply because it is too hard; rather, it would be far better dealt with as an issue in its entirety through detailed legislation that will come before the parliament—encompassing all the states as well—in the not too distant future, one would hope.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (3.08 p.m.)—I certainly do not want to be accused of putting off this debate because it is too hard. That is not to say that I do not believe it is complex, because I do believe it is complex. Belonging to possibly the only party that has a formal biotechnology spokesperson, I do not think anyone would dare doubt the Democrat interest in this issue. I agree with Senator Forshaw that this is a complex debate. But that is not why some people want to defer it, debate it or what have you. I certainly do not want to be accused of not being able to deal with this issue because it is too complex, because the Democrats have been calling for resolution of this issue for as long as I can remember. We were there through the 1998 discussions when the Commonwealth Minister for Health and Aged Care referred the matter of human cloning to the NHRMC Australian Health Ethics Committee. We read the 1997 United Nations declaration on the human genome and human rights.

We have been attempting to grapple with these issues. When the amendments came before us today—both the government’s and the set of amendments put forward by Sena-
tor Harradine—there were either calls for more time to analyse them or calls to deal with them now in a speedy fashion because we did not think it appropriate that we should spend so much time on them in the context of this bill. I do not think those claims are fair. We have been calling for some legislative resolution on the issue of human reproductive cloning for as long as I can remember, in much the same way as we have been calling for a resolution of the issue of patenting of genes and gene sequences. Perhaps that is another debate that the Senate would like to get into at some time. When I raise those concerns I do not get an amendment proffered immediately by the government suggesting, ‘Yes, we’ll make sure that we outlaw the patenting of genes and gene sequences.’ I cannot tell you the number of members from every party in this place to whom I have spoken who have said to me, ‘We actually agree with you about that.’ But no-one is prepared to back legislation. If you are, let me know because I have got a private member’s bill on that one as well.

I do not want to be accused of not wanting to deal with this issue in this context because I do not understand it or because I do not appreciate the complexity. But I do have concerns that we are dealing with this issue in the context of the debate on the Gene Technology Bill 2000. I am quite happy to debate a separate piece of legislation, and at this stage I am quite happy to support the government’s amendment using the World Health Organisation definition. But I have to put on record that I am saddened that this is the context in which we are debating this issue which deserves broader examination and which deserves legislative backing. I have already asked the government about their definition: from where it came and what it seeks to achieve. I have also asked the minister about making sure the government make a distinction between human reproductive and therapeutic cloning, just as I have put on record my concern—and I do so again—about the definition put forward by Senator Harradine.

I echo the concerns of people like Professor Williamson, in that I—and people like me and, I suspect, Senator Harradine and others—look forward to the day when we use patients’ own stem cells for the various studies for the medical purposes that we have referred to in this debate. My concern is that, if these patient derived stem cells are considered functionally equivalent to embryonic stem cells, they could be deemed to be the same in law. They could be deemed to be the same as a consequence of the legislation or the amendments we are debating, and therefore it may be illegal for scientists to work on them. I do not think anyone is in a position to give me a clear-cut legal perspective on that. Maybe the government has a view, maybe Senator Harradine has a view, but I am not sure if I am going to get that clear-cut definition. But, again, this goes to the heart of the complexity of this debate and the ethical, scientific and legal issues it throws up.

I do understand why the government wants to proceed on the gene tech bill, because that is what we are supposed to be debating—not that I deny that there are inter-related issues. But I think the issue of human reproductive cloning—to which I am fundamentally opposed, and I have made that clear in Democrat policy for many years—should be reserved for a comprehensive debate at a different time. I am not suggesting the government should put it off, because I think it is high time the government introduced legislation. I remember making the same call back in 1999, in 1998, and I think as early as 1997 when the Universal Declaration on the Human Genome and Human Rights appeared. So I would like us to deal with the Gene Technology Bill. I would like to deal with these issues in a different context at a different time. Believe me, I can see the irony in that, as one of the few people in this place who has tried to push a legislative debate and the need for regulatory frameworks in relation to genetic engineering. When finally we have got to the stage when we are debating it, the last thing I want to do is stop us debating it. I just want to do it in a proper context.

So I look forward to the legislation coming forward from government in relation to the outlawing of human reproductive cloning. I also look forward to the House of Representatives committee report, the Andrews
report, although I have already put on record last night my concerns about the lack of scientific input to that committee. As I recall, and I am willing to be corrected if it is not the case, there was only one scientist consulted in the context of that committee discussion when dealing with the scientific, legal and regulatory issues surrounding human reproductive cloning. Once again, I put very much on the record that the Democrats are opposed to human reproductive cloning, but we want some clarification on those definitional and legal issues to which I referred in my committee stage comments just now.

Senator HARRADINE (Tasmania) (3.15 p.m.)—Could I reassure Senator Stott Despoja that one of the reasons I wanted to have this delayed is to attend to your questions. On that particular question, there is nothing in my definition which would prohibit the use of a cell from the patient themselves, extracting the stem cells and utilising those for whatever purpose, because that does not fit within my definition that is before you. It does not fit and it cannot fit. I was at pains to explain during my speech last night that the amendment I am putting forward would not exclude cloning research involving human somatic cells, ordinary body cells, as distinct from germ cells, which you would be against the cloning of, and sperm, ova and embryos. That is one of the reasons that I wanted to see this matter dealt with when the issues will be before us on the running sheet. That was a reasonable approach and I thought that that would be attractive to the government, so that we can deal with all the matters there. Now you get the parliamentary secretary coming in here and dumping on the table an amendment which tries to head my amendments off at the post—

Senator Crowley—At the pass.

Senator HARRADINE—Of course, at the pass. That is not hijacking; it is bushranging. It is a tactic by a parliamentary secretary who is not across the subject. He could not even answer my simple questions. Well, I am going to ask and ask until he gives a proper answer. He has not even answered the question I asked in respect of the definition. He has not answered the questions I asked in respect of identicality. One would have expected that he should have done that. Now he says that something is the World Health Organisation definition when he previously said that it was the Western Australian legislative definition. I inform the chamber that it is not the complete Western Australian legislation definition at all. I want a bit of a delay so that I can look at the World Health Organisation. If he says it is the Western Australian definition and it is not the complete Western Australian definition, I want to see what the World Health Organisation is doing and what definition is there. I know he is being advised about this thing, but he had better be careful about what advice he is getting. Senator Forshaw is not here—

Senator Crowley—He has been consulting with Senator Campbell. He is now coming back in.

Senator HARRADINE—Senator Forshaw was committing the Labor Party to something that I think maybe they should not be committed to. He seemed to suggest that I am using this legislation to tack on something else that was not in the legislation. I hope he has read the document that I have circulated, and I circulated it four or five days ago. I pointed out there that the very section we are dealing with now, section 10 of the bill, defines a genetically modified organism as an organism that is being modified by gene technology. That would include an embryo formed by transfer of a somatic cell nucleus to an ovum or to an embryo and in that process the ovum is modified by genetic technology to form an entity capable of development as an embryo et cetera. It is the very thing that we are talking about. We are talking about the genetically modified organisms, despite the fact that there is an exclusion at (d) of section 10 of the bill which excludes those human beings who have undergone somatic cell gene therapy. What happens in cloning does not fit that description because at the time that the transfer takes place what is in existence is an unfertilised ovum, and of course an unfertilised ovum is not a human being, is not a human
embryo. So I had no alternative but to do what I did.

Senator Forshaw says, ‘We have the National Health and Medical Research Council.’ As far back as 1996 there was a recommendation from the NHMRC that action be taken by the states that had not already taken action. Nothing has happened; nothing at all. You say the House of Representatives committee is examining it. Fine, but who is to say anything will come out of that? What do we do? Do we require stringent examination of the production of genetically modified organisms if they are of the plant variety or if they are of the animal variety, but they can do what they like to develop a genetically modified organism if it is a human? Now where are we? This is what this legislation is doing unless we deal with it and put a ban on the cloning of human beings.

You have a point about the House of Representatives, and maybe the states will do something; maybe they will not. We do not even know, as the parliamentary secretary will not tell us, what a whole human being means when it comes to cloning. He will not tell us that; he will not tell us whether that means a human embryo, so it is all in the never-never. All right, if you are concerned about the fact that you have to take all those other considerations into it, why not now put a moratorium and a time limit, a sunset clause, on the amendments that I am proposing? Bear in mind that, when we come to those amendments, I will be proposing them simply in a way that will allow the cloning that I mentioned previously but not the cloning of a human embryo. Why not put into my amendments a sunset clause, for example, which says that ‘these amendments will cease to have effect when legislation is enacted following the report of the House of Representatives standing committee’ or ‘following the meeting of the health ministers’?

Frankly, this is about the future of human beings. I believe this should be more in the area of the attorneys-general than the health ministers, and I take this opportunity to suggest that we defer my amendments so that it can come up when it is listed on the running sheet. I think that is a reasonable suggestion. In the meantime we can all have a discussion about some of the matters that have been raised here.

Could I just make a further point, and perhaps you would think about this: what happens with the states at the moment? There is really only one state where there would effectively be a ban on the cloning of human embryos, and that is the state of South Australia. I can explain that in more detail when the time comes. There are two other states that attempted it, but when you see the definitions you see there are problems. But they all rely on the criminal law, criminal sanctions—rozzers going into the laboratories, if you like. That is not the way to deal with this.

This particular piece of legislation before us now is based on the licensing procedure and the administrative procedures—that is the beauty of it—and I again repeat: what are we as a parliament doing when we have strict controls over the development of genetically modified organisms, plants and animals but anything goes when it comes to human beings? It would be a shameful day if we did not take the opportunity that is provided to us here to prevent the continuation of cloning of human beings, human embryos. Otherwise we would not be discharging our responsibilities and we would get—if only people would come out and speak—further examples of what is happening in the dark laboratories in certain areas of Australia, because there is cloning going on and there is trans-species cloning going on similar to that which occurred in Victoria.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (3.29 p.m.)—Earlier today I spoke to Senator Harris with regard to time-wasting in the debate. Whilst I appreciate the very important and fundamental issues that Senator Harradine has raised in the last hour and a half, we are dealing with a bill on gene technology. Surprisingly, we are now debating what ought to be raised in other places, at other stages and in other legislation. I would hope that Senator Harradine is making his very passionate and proper presentations equally to other committees of this parliament. I am not
aware that these issues were canvassed with the Senate committee when it looked at this detailed legislation. Senator Harradine, a very experienced senator who has been here for a long time, ought to have taken the opportunity as part of that Senate committee process to canvass these issues at that time. The committee certainly took a lot of time under Senator Crowley’s chairmanship, and it really did address very fundamentally so many aspects of this legislation. I am not aware that Senator Harradine made any submissions to that committee in the development of the legislation to this point. Similarly, I would hope that he is also making submissions to the legal and constitutional committee that is currently addressing so many of these fundamental issues as well.

Looking at the clock, it is clear that, unfortunately, we will not make the progress today that we had expected. We were hoping to process the 70 or 80 amendments that have been put forward by many parties, but the progress has been disappointing because we have gone back to many speeches on the second reading and many other issues of sidetrack detail. I do not deny Senator Harradine’s passion and particular interest in this area, but its relevancy to the Gene Technology Bill 2000 is certainly what has been most frustrating in that it is an appropriate issue for debate—on which there is quite considerable consensus—but we have to focus on this particular legislation. We have in effect got away from the legislation, its purposes and its intents. I draw to your attention the object of the proposed act:

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

Those are the very fundamental objects of the proposed act, but we have been sidetracked for the last hour or so into other important issues of moral, ethical and medical considerations. I am sure we will be revisiting many of these issues, if not with private member’s bills from Senator Harradine then by other legislation coming through in appropriate ways or by government initiative. However, I am mindful of the time. In the few minutes remaining to us this afternoon, it would probably be much more fruitful to proceed with other amendments. In that sense, I accede to the postponement motion of Senator Harradine.

Question resolved in the affirmative.

Senator BROWN (Tasmania) (3.33 p.m.)—by leave—I move Australian Greens amendments Nos 17 and 18:

(17) Clause 12, page 11 (line 5), omit “includes”, substitute “does not include”.

(18) Clause 12, page 11 (line 9), omit “includes”, substitute “does not include”.

Senator Harris is listening carefully to this because I almost omitted these amendments. The amendments refer to a corresponding state law that is mentioned in the bill:

(2) The Minister may revoke a Gazette notice under subsection (1) in relation to a State law only if:

... ... ...

(b) the State law has been amended otherwise than as agreed by a majority of the members of the Ministerial Council (being a majority that includes the Commonwealth) under the Gene Technology Agreement ...

The amendment would make it ‘being a majority that does not include the Commonwealth’. Amendment (18) similarly alters subclause (c) from ‘being a majority that includes the Commonwealth’ to ‘being a majority that does not include the Commonwealth’.

Senator HARRIS (Queensland) (3.34 p.m.)—For one moment, I thought that Senator Brown was not going to move what I believe are substantial amendments. I place on record that One Nation will support the Greens amendments because they go to the heart of what I was speaking about earlier on—that is, the sovereign rights of the states. This bill is going to set up the situation where the Commonwealth has to be a part of the majority of a group of people who are making a decision that will very clearly affect the outcomes of a state. I believe it is totally inappropriate for the Commonwealth to have the ability to do this, and I support the Greens amendments that will make it so that it is only a majority of the ministerial
Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (3.36 p.m.)—I should indicate that the government is opposed to these amendments. The amendments are entirely unworkable. The amendments seek to enable states to unilaterally amend corresponding state laws made as part of the national scheme, provided the Commonwealth is not included as part of the majority decision made by the ministerial council. As everybody in this place knows, we are very pleased that this bill has been agreed to by all states and territories and that each jurisdiction will shortly be introducing complementary legislation into their parliaments to ensure that the legislation is able to cover all peoples dealing with GMOs. It is critical to the effectiveness of the national scheme that the Commonwealth and state legislation remains consistent over time. As such, we have worked with the states to negotiate arrangements for agreeing to any amendments to the national scheme which are necessary over time. Such amendments must be agreed to by a majority of the ministerial council, including the Commonwealth. I believe that therefore the argument presented by Senator Harris is entirely fallacious in this regard. These amendments seek to undermine that agreement and will lead to an unworkable scheme. Therefore, they are strongly opposed.

Senator FORSHAW (New South Wales) (3.37 p.m.)—On behalf of the opposition, I indicate that we will also oppose the amendments moved by Senator Harris.

The TEMPORARY CHAIRMAN (Senator Hogg)—They were moved by Senator Brown.

Senator FORSHAW—I apologise, Senator Brown. I noted that it was Senator Harris who put forward the reasons as to why these amendments should be carried. I have some slight confusion in how this amendment could be moved by a senator who represents a party called ‘One Nation’.

Amendments not agreed to.

Senator BROWN (Tasmania) (3.38 p.m.)—I move Green amendment (19):

(19) Clause 14, page 13 (lines 3 to 11), omit subclause (2), substitute:

(2) This Act applies as a law of the Commonwealth in the notifying State as if paragraph 13(1)(c) (which deals with the spread of pests and diseases) had not been enacted.

This amends clause 14 of division 3, which is the wind-back clause. It says:

This Act applies as a law of the Commonwealth in the notifying State with the following modifications:

(a) this Act applies ... with the spread of pests and diseases—

Then my amendment would remove subsection (b) which says:

(b) this Act does not apply to a dealing with a GMO undertaken:

(i) by a higher education institution or a State agency; or

(ii) by a person authorised to undertake the dealing by a licence held under the corresponding State law by a higher education institution or a State agency.

We believe it should apply to higher education institutions and state agencies.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (3.39 p.m.)—Again, this amendment seeks to change the nature of the national legislative scheme by changing the way that the Commonwealth and state legislation interacts, despite the full agreement of the states and territories for the scheme as it is currently proposed to operate in the bill. Therefore, I strongly oppose the amendment.

Amendment not agreed to.

Senator FORSHAW (New South Wales) (3.40 p.m.)—I move opposition amendment (4):

(4) Clause 21, page 16 (after line 27), after paragraph (a), insert:

(aa) recognising areas, if any, designated under State law for the purpose of preserving the identity of one or both of the following:

(i) GM crops;
(ii) non-GM crops;
for marketing purposes;
This amendment relates to the ability of states to declare GM-free zones. This was an issue of significance before the Senate inquiry. No doubt everyone is aware that it has been of particular significance in the state of Tasmania.

Progress reported.

ANSWERS TO QUESTIONS WITHOUT NOTICE

Detention Centres: Detainee Treatment
Correctional Facilities: Privatisation

Senator KEMP (Victoria—Assistant Treasurer) (3.42 p.m.)—On behalf of Senator Vanstone, I wish to incorporate in Hansard answers to questions without notice that were put to her in question time on 30 November.

Leave granted.

The answers read as follows—

Senator Bartlett asked the Minister representing the Minister for Immigration and Multicultural Affairs a question on 30 November 2000.

The Minister has provided the following answer.

The Minister for Immigration and Multicultural Affairs has advised that in late August a detainee with an intellectual impairment, not a mental illness, was initially charged by police in relation to the Woomera riots where a number of buildings were destroyed by fire. He was taken to the Woomera lockup and bailed back to the IRPC on the same day. He did not stay in the lock up over night. The Minister’s department has advised that in view of this man’s intellectual impairment, special arrangements were put in place to address his specific needs. He was also treated sensitively by the police and he was not placed in solitary confinement.

The allegation that tear gas was used on female prisoners relates, I understand, to events that occurred in a Victorian correctional facility, not an Immigration Detention Centre. This is not a matter on which I can comment.

In relation to the allegation that detainees are not allowed family contact and to have photographs of loved ones. The Minister has advised that on arrival in a detention centre, detainees are able to fax a message to family advising they are safe, their whereabouts and providing an address to which letters can be sent. Once initial processing is concluded, detainees have access to telephones, mail and visits. To reduce the anxiety of detention and enable them to keep a sense of personal identity, detainees are able to keep most personal possessions, although dangerous items, and identification documents and other material relevant to establishing identity is kept in safe-keeping.

Mandatory detention is a matter of law for all non-citizens who enter Australia without authority. Detaining unauthorised arrivals allows the government to establish any claims they may have to remain in Australia, and to determine their identity, health and security status and to ensure they are readily available to assist with the processing of applications for protection or for removal in appropriate cases.

It is not necessary for Australians to have to rely on anonymous allegations made through the media. There are mechanisms available to everyone who has information about serious issues. They are able to contact State police or other relevant authorities and pursue their concerns appropriately. In some circumstances they have a statutory obligation to do so.

The Joint Standing Committee on Migration, also has an important role in monitoring the immigration and multicultural affairs portfolio. This responsibility extends to the examination of detention centres and the Joint Standing Committee has recently tabled a report “Not the Hilton—Immigration Detention Centres: Inspection Report”, which was endorsed by all members of the committee.

Senator Bartlett asks why the government continues to refuse to allow a judicial inquiry into actions and conditions at detention centres.

Let me refer to the number of inquiries currently being undertaken:

• Flood Inquiry
• Commonwealth Ombudsman’s own motion inquiry into incident reporting
• Commonwealth Ombudsman’s ongoing investigation into the administration of detention centres
• HREOC visits

Clearly there are a number of options available to any person who has serious concerns to raise.

Senator McKiernan asked the Minister representing the Minister for immigration and Multicultural Affairs a question on 30 November 2000. The Minister has provided the following response.

I am advised by the Minister for Immigration and Multicultural Affairs that his department was not aware of the allegations of mistreatment of juveniles in the care of WCC until they surfaced in the
Australian media recently and that his department subsequently sought information regarding these matters.

The Minister for Immigration and Multicultural Affairs advises that while Australasian Correctional Management is a wholly owned subsidiary of Wackenhut Corrections Corporation it is an Australian company operating in the Australian environment according to Australian laws. Furthermore, it operates according to Australian management principles and practices, and in a contractual framework that includes the Immigration Detention Standards developed by his department in conjunction with the Commonwealth Ombudsman.

The Minister for Immigration and Multicultural Affairs advises that his department has been advised that in relation to the Jena facility in Louisiana, it ceased to operate as a juvenile facility on 17 May 2000. Mr Ruddock has been informed that no criminal charges or prosecutions of the company or any of its present or former employees have taken place in connection with WCC’s operation at the Jena facility from the time it opened in 1998 until it ceased operations in May 2000.

The Minister for Immigration and Multicultural Affairs has advised that his department is aware that there have been prosecutions of former Wackenhut Corrections Corporation employees in Texas in 2000. The Minister for Immigration and Multicultural Affairs has advised that at this stage he does not have information about the outcome of the prosecutions. The Minister for Immigration and Multicultural Affairs has been advised it was senior management of WCC that took the initiative of reporting information about sexual harassment and assault to the proper authorities immediately the allegations came to light.

TAXATION

Return to Order

Senator KEMP (Victoria—Assistant Treasurer) (3.42 p.m.)—by leave—I wish to make a short statement in relation to an order made on 4 October following a notice of motion moved by Senator Cook that, as Minister representing the Treasurer, I table certain documents within 19 sitting days. The documents sought in the order are all documents of the Australian Taxation Office. I understand that today is the date for responding to the Senate’s order. Senator Murray wrote to me on the day of the order and advised that the Democrats support the motion but believe that no information should be released which affects the strategic pursuit of tax avoidance and tax minimisation, which names individual taxpayers and, finally, which impedes or harms the recovery of substantial tax amounts that are due. We are working through the documents to see what the government might be able to make public. Given the task at hand, the government is not in a position to comply with the order today. I hope to be in a position to respond to the order in the near future, possibly by the end of next week.

Senator CONROY (Victoria) (3.44 p.m.)—by leave—We thank you for that, Minister. We note that this was a return to order agreed on 4 October. We also would like noted that Senator Cook made an FOI request on these documents back in September and we are aware that there are 1,916 relevant pages. We know this because the ATO wanted to charge Senator Cook $19,147 for the privilege of this information. We accept Senator Murray’s points, but we would find it very disappointing, in the light of current public debate, if some of the matters that Senator Murray outlines are used to hide documents. We want to put on notice that we are aware that there are so many documents, but we would be very disappointed if the government chose to use that as an excuse.

ADJOURNMENT

The PRESIDENT—Order! It being 3.45 p.m., I propose the question:

That the Senate do now adjourn.

World AIDS Day

Senator DENMAN (Tasmania) (3.45 p.m.)—I wish to acknowledge World AIDS Day. The theme for World AIDS Day this year is ‘Men make a difference’. This is the book they have published. It is not a statement of gender disempowerment on behalf of women; it recognises that, in many cultures throughout the world, the power relationships inherent in relationships mean that men must take more responsibility for their behaviour, especially if they have sex outside their marriages.

As most of the global infection occurs in heterosexual relationships, the message ‘Men make a difference’ is not particularly aimed at homosexual men, as may be deemed nec-
necessary by the more puritan in our culture. As stated, it simply acknowledges the dominant role men play in sexual relationships in most cultures in the world. This is not to say that women in some cases do not play the dominant role, but, in general, it is men who have power and who are more willing and able to exercise their power in heterosexual relationships.

Additionally, war, poverty and unemployment all contribute to the likelihood of risk taking behaviour. In war, you can die at any moment, so why worry about AIDS. Also, rape often occurs in war, and events in Bosnia and Rwanda and other trouble spots in the world seem to suggest that rape and physical torture were used as despicable strategies of war, and both these can spread the HIV virus. Men in poverty who are unemployed are less likely to have a sense of manliness and, as sex and sexuality are indelibly linked to humans’ sense of themselves, they need to give themselves a feeling of power in a world where they may feel unable to participate on equal terms. This often expresses itself in risk taking behaviours—unsafe sex being one of them.

This is further exacerbated by the culture of ‘real men don’t get sick’, which means that, due to a reluctance to seek medical advice inherent in most male cultures, many men are unlikely to know that they are HIV positive and can spread the virus widely before they have any symptoms at all. There are still 16,000 HIV transmissions every day across the world. In 13 African countries, more than 10 per cent of adults are HIV positive, and, in sub-Saharan Africa, 90 per cent of those infected do not know they carry the virus. Cited in the Sydney Morning Herald on 30 November this year, ING Barings Bank forecasts that in South Africa the real gross domestic product will be 17 per cent lower in 2010 than it would have been in the absence of HIV.

Many people may ask, ‘What has Africa got to do with us?’ Apart from the sheer tragedy of it in human terms, it may give us a window into the future of our near neighbour Papua New Guinea, which in some way mirrors the patriarchal society of Africa. It also has similar problems with education, poverty, unemployment and tribal war—all preconditions for a major epidemic. The geographical proximity of Papua New Guinea should shake us out of any complacency we may feel about the HIV threat, if we are in danger of becoming ‘relaxed and comfortable’, to use the phrase of our current Prime Minister. I was recently at a fundraiser in Tasmania for the AIDS Council at which Chris Puplick, a former Liberal senator, and Alex Wodak, the Director of Drug and Alcohol Services at St Vincent’s Hospital, spoke. They both pointed out that Papua New Guinea is probably going to be the country with the next major outbreak of the HIV virus.

Men are also overrepresented as substance users, whether that be drinking fermented plants, such as alcohol, or the use of juice plants, such as opiates. As some of these mood changing substances are injected, there is an association between unsafe drug use and the HIV virus and other viruses. I feel I must emphasis that there is no virus in any of these drugs; the only link there is as a result of our own stupidity when it applies to our laws pertaining to drug use. Alcohol use is also a contributing factor to the HIV virus, as alcohol leads to uninhibited behaviour and that can cause aggression. It can also lead to risk taking behaviour or increase the likelihood of dominant behaviour, thus compromising a woman’s ability to negotiate safe sex.

As men are overrepresented in prisons, this also translates into a higher risk for men. Men in prisons are more likely to engage in risk behaviours—sexual, substance and violence. The increased risk potential was unfortunately illustrated by a recent occurrence at the Metropolitan Remand and Reception Centre at Silverwater in Sydney. An HIV positive man was incarcerated. He was also hepatitis B and C. Before he told the prison clinic, he was moved to G block where he shared needles with two people, and then he was moved to D block where he shared needles with three more people. A call was put out for inmates from G and D blocks who had shared needles in the last week. By that time, the number of five that had originally shared needles with him had turned, in just
one week, into 145—that is, 145 inmates had been involved in sharing needles shared with the original HIV positive and hep C and B man.

This should vividly highlight to the community the value of needle exchange. In just one week, a HIV positive inmate could have passed on to 145 people not just the HIV but the hepatitis B and C viruses. As yet, many countries have not seen fit to provide the means of reducing the risk behaviours in prisons by providing access to condoms and clean needles. In some ways, this means that people in prison get punished twice—that is, by the withdrawal of their liberties and by a high exposure to viruses.

There has been some recent news regarding a possible vaccine for HIV. This is a welcome development but must be viewed with a cautionary eye—not that a vaccine would not be welcome, rather that the development of a vaccine is still a long way off. Additionally, there is a danger that rumours of an imminent vaccine could create a false confidence in the population, possibly leading to greater risk taking. It is worth remembering that safe sexual behaviour messages and safe drug using messages protect the population against the spread of many viruses, not just HIV, and may protect us against the viruses we do not know about yet. A vivid illustration of this is hepatitis C virus, which was unknown for 20 years.

Germane to stopping the spread of HIV, the use of condoms can stop the spread of other sexually contagious illnesses. These illnesses can increase the chances of acquiring HIV by up to 10 times. The prevention of sexually transmitted illnesses other than HIV must not be understated. No-one is denying that abstaining from certain behaviours or committing to monogamy will reduce substantially your chance of catching the HIV. However, history teaches us from the beginnings of time that men and women have behaved in variant ways, often to the chagrin of the self-appointed moral guardians who, apart from a few, seldom practise what they preach. Thus, dealing with the HIV means we have to engage in discourse concerning issues pertaining to sex, sexuality and drug use—something that many people would rather not discuss or even acknowledge. However uncomfortable this may be, we have no alternative if we want to reduce our species’ exposure to the threat of socially transmitted diseases. I think I am running out of time, so I seek leave to have these headings incorporated in Hansard.

Leave granted.

The document read as follows—
The Joint United Nations Program on HIV/AIDS has recommended some points for action. I will list them under their subheadings:

**Gender awareness**
Promote understanding of the ways in which gender stereotypes and expectations affect women and men, and support work to enhance gender equality and equity.
Challenge harmful and divisive concepts of masculinity and other gender stereotypes.
Encourage discussion about the ways which boys are brought up and men are expected to behave.

**Sexual communication and negotiations**
Encourage men to talk about sex, drug use and AIDS, with each other and with their partners.
Enhance women’s capacity to determine when, where and whether sex takes place.
Enhance men’s access to appropriate sources of information, counselling and support.
Promote greater understanding and acceptance of men who have sex with men.

**Violence and sexual violence**
Support government and non-government actions to reduce male violence and sexual violence.

**Support and care**
Help men in their role as fathers and providers of care and support both within the family and in the community.

In Tasmania our health minister, Judy Jackson was presented with an award this week that symbolised the importance of partnerships between stakeholders. On the north west coast an AIDS Memorial Quilt will be launched and ribbons are being sold across the state.

I hope you will join me on World Aids Day in extending your hand to those that may be different from you, in the partnership that the success of World Aids Day represents, not just for those that have the HIV virus but in the interests of humanity as a whole.
Welfare Reform

Senator BARTLETT (Queensland) (3.55 p.m.)—I rise to speak about a very significant issue which is an inadequately acknowledged component of the important broader debate around welfare reform issues. I speak specifically to the need for the views and experiences of people who are on welfare to be taken into consideration. Those people, for whom the whole debate is supposed to be for the benefit of, are those who have little input—and certainly inadequate input—into that ongoing debate.

Whilst I very much applaud, support and acknowledge the contribution made by advocacy groups—whether they be a large group like ACOSS or a smaller localised group around specific issues such as housing and welfare rights—they are nevertheless advocating on behalf of others. The groups are effectively a conduit for the views and experiences of individual people but, as far as humanly possible, they should not be seen as a substitute for the views of those people, particularly on issues like welfare reform. It is crucial that the people who will be affected by the changes have the greatest opportunity to make their views known. As legislators, it is crucial that we are aware of their views and their experiences. Obviously we have some idea of their views through our contacts with people and through organisations that speak with us, but there is still a lot more to be done to give those people a voice so their views and experiences can be heard.

I attended a very important and valuable conference in Brisbane a few weeks ago, which was organised by an unemployment advocacy organisation and was also sponsored by the Brisbane Institute, whose support for initiatives such as this should be acknowledged. The event was a day-long conference featuring unemployed people and organisations from all states in Australia, including regional areas. There was a specific speech from the Secretary of the Unemployed Workers Union in Ireland, who spoke about the organisation’s work for and on behalf of unemployed people specifically. It is an interesting model for us to look at when we consider this issue and whether we can do things better by allowing input by unemployed people into the ongoing operations and decisions of government overall. Whilst the speaker from Ireland certainly did not say everything was rosy and fabulous over there, he nonetheless was able to point to some significant advances by that organisation of unemployed people with day-to-day experiences of being unemployed and the hurdles and obstacles that the unemployed face. That organisation now has direct input into the formulation and adoption of significant policy proposals of the Irish government. They would prefer many further improvements but have made significant advances, and I think we should look more at the work of that group. They have a web site of their activities for people who want to search for such things.

I would also like to speak more about the views put forward by people in Australia, as they are obviously more crucial for the current debate on welfare reform. The work is particularly from the unemployed people’s advocacy group in Brisbane. They have worked tirelessly not just to get their views heard but to assist in networking and linking unemployed people together. One of the most unrecognised problems of being unemployed and of not having a lot of resources is not just that you are struggling financially and that you have to go without things that other people take for granted; it is also the incredible disempowerment that occurs. In that circumstance, day-to-day living not unreasonably takes priority but also tends to isolate people and disconnect them from the broader community and from opportunities to plug in to some of the consultative processes and those sorts of things in place within Australia.

What is so important about this conference and the work of the organisations and people who attended it is the continuing efforts they make to increase links and networks. Linking, networking and gaining greater awareness of the differing experiences and hurdles in different areas for different people increases the chances of getting their voices heard. One of the examples of this presented at the conference came from a person from Tasmania who was talking about a specific project undertaken there in 1999. It was set
up by church and welfare groups but it was specifically aimed at finding out the views of people in the community. Consultations were held throughout different communities in Tasmania. They interviewed over 140 individuals and families directly, describing the impact of poverty on their lives, on their relationships with their families, on their sense of self and on their ability to gain access to even the essentials of life.

These are things about which, on an intellectual level, all of us can say, ‘Yes, that is not unreasonable.’ But it is important to dig more deeply into it and to think more about what poverty is actually like, because the stories these people tell show us the failures in the way we are handling public policy at the moment in this country. It is not always possible to get things perfect, but we should never rest on our laurels and say: ‘We’re doing okay. We’ve done as much as we need to. This problem is pretty well fixed.’ We must always strive to tackle poverty above almost all other issues because poverty has such a huge impact on people’s lives.

There is a lot more to tackling poverty than giving money to people. The whole problem with some of the rhetoric about trying to prevent welfare dependency is that it can be put in a positive light of trying to empower people but it can also be put in a negative light—that is, giving people money is bad for them. Giving people money is a lot better than not giving people money if they have no other opportunity to get money themselves. Obviously it is better to provide people with chances to get money themselves, but I think we need to fight very hard against even allowing a subtext to develop in the debate that somehow it is bad for people to be given money. I think all of us would agree that money comes in pretty handy.

Part of the report from this particular consultation in Tasmania contains a lot of stories from various participants that reinforce individual details. Some of the problems that I have mentioned are experienced in a more generic or collective sense. The value of hearing from an individual what poverty means to them and what the impact is on them as a person brings the debate back down from an academic, intellectual level to a human one—to the impact on humans. The work, proceedings and information on the organisations that came out of that conference—unfortunately, I was able to stay only half the day, but one of my staff was able to be there for the other period of time to get as much information as possible—should be applauded and encouraged as much as possible by all political parties. The message they give needs to get out more into the general community. I would make a plea to all parties and parliamentarians, myself and the Democrats included, that we work harder to hear and recognise the reality and to give more of a voice directly to the people for whom, at the end of the day, we are doing all this welfare reform and other social policy development. If we did not hear from them how it is going, we would have no idea how we are going at the job we’re trying to do.

Senate adjourned at 4.05 p.m.