GENE TECHNOLOGY (WESTERN AUSTRALIA) BILL 2014

Second Reading

Resumed from an earlier stage of the sitting.

HON KATE DOUST (South Metropolitan — Deputy Leader of the Opposition) [5.09 pm]: Before question time I think I was thanking Hon Ken Travers for canvassing the possibility of a change to the standing orders to allow the government to provide a written response to a Standing Committee on Uniform Legislation and Statutes Review report. I thought it was an eminently sensible idea, and one that might assist the committee with its work.

As a former member of the Standing Committee on Environment and Public Affairs, it does not seem all that long ago that we held an inquiry into gene technology in this state and dealt with a number of other bills. A substantial report was tabled in this place. When, in due course, we deal with the other genetically modified free crops areas legislation, which we look forward to, that report may be referenced from time to time.

On page 5 of its report, the Standing Committee on Uniform Legislation and Statutes Review referred to a number of differences between the commonwealth and state legislation. These matters have been outstanding for quite some time and no amendments have been made to the state legislation to update it. Further into the report—I am sure I will come to the appropriate section—the standing committee queried why the state legislation could not have simply been amended rather than the Parliament having to deal with a new and separate Gene Technology (Western Australia) Bill. I do not know that Hon Lynn MacLaren said she was entirely convinced about state sovereignty being impacted. I refer her to page 8 of the standing committee's report. Section 6 refers to the intergovernmental agreement. The committee highlighted a number of sections of the IGA where it is concerned about the impact on the state's capacity to make laws under these arrangements. Section 6(h) of the IGA states —

> *Unless the Council otherwise determines in accordance with Part 5 of this Agreement, the Commonwealth will use its best endeavours to ensure that the Commonwealth Act, among other things, continues:*

The report quotes the IGA further. Basically, the Standing Committee on Uniform Legislation and Statutes Review decided that it has been left to the states and territories to decide on the type of uniform legislation they will use to pick up the commonwealth legislation. That is why we see the difference between those states that have adopted mirror legislation and those that have adopted applied legislation. We note also that the states that have adopted mirror legislation, which I think are Queensland, South Australia and at least two others, have been able to update their own legislation from time to time, as required, by taking those amendments through their own Parliament as opposed to states such as WA, which, if this bill is passed, will have applied legislation, and will not be able to do so. There is a distinct difference there.

The next part of the IGA that the committee considered would have an impact on this area was section 6.4, which states —

> *Each State and Territory will submit to its Parliament as soon as possible a Bill or Bills to form part of the Scheme,*

I think there was a time frame for that to occur. We now know that that has happened.

Hon Adele Farina interjected.

Hon KATE DOUST: I think we did blow the time frame. Section 40 of the IGA states —

> *Any Party —*

I imagine that would be any state or territory —

> *that proposes to amend its legislation forming part of the Scheme will submit the proposed amendments to the Council —*

That is the commonwealth council that is managing gene technology. To continue —

> *for consideration before introduction of the amendments.*

The standing committee commented at section 6.6 as follows —

> … should Western Australia wish to amend its legislation, it may not obtain the necessary approval in the Legislative and Governance Forum on Gene Technology. Also, any amendment proposed by another jurisdiction to its legislation and opposed by Western Australia which may impact on gene technology in the State may be approved.

In the committee's view, that would very clearly have an impact on the sovereignty of this state and this Parliament. In the first instance, we might put forward an amendment, but under the IGA, it could be rejected. But if another state moved an amendment, in theory, WA may have to just cop it, without being able to apply any scrutiny or possibility of rejecting that change here in Western Australia.

The Department of Agriculture and Food informed the committee that the Legislative and Governance Forum on Gene Technology had not given approval for the bill because it repeals, rather than amends, a state act. The committee was of the view that this appeared to be a gap in the IGA as the repealing of legislation and replacing it with another act can have the same effect as an amendment.

Another area the committee highlighted in the IGA was in relation to review. We note that there is an amendment on the notice paper about a review. I might talk about that a little bit later. We noted that there is no capacity to table a review in our state Parliament, and that will prevent any opportunity to scrutinise any changes. That then led us to that first recommendation that has been canvassed by a number of members. The first and second recommendations simply ask the minister to provide additional information to clarify the committee's concerns about the lack of scrutiny that can be applied in a review. There was another issue around the notice period that has to be given for Western Australia to withdraw from the IGA, and that is a 12-month notice period. The committee was of the view, as set out under paragraph 6.15 on page 11, that perhaps this period was too long in the circumstances whereby the Parliament of WA has to be notified of withdrawal from the IGA by WA or any other party to the IGA. We asked the minister to explain the reason for this notification period and how the Parliament has to have that explained.

The committee then looked at clause 6 of the bill, continuing the theme of the impact on sovereignty and lawmaking powers. There is a lot of discussion on these few pages about mirror versus applied legislation. It refers also to the different approaches to the legislation. This is quite an interesting area because we took up these matters with the Department of Agriculture and Food. On page 14 of its report, the committee includes a quote from the department in response. The discussion was around why one versus the other model was picked up on and how the applied model, which has been chosen, will impact upon our decision-making capacity or our capacity to scrutinise the legislation. On page 14 the department has provided, in the committee's words, an interesting perspective on the applied versus mirror legislation approach. The quote from the department states —

> *The only reason for continuing with the approach that has so far failed to ensure consistency is the misconceived notion that spending valuable Parliamentary and Executive time copying Commonwealth legislation somehow makes the Parliament more 'sovereign' than it is in adopting the far more rational approach. It is not expected that WA will be the last of the currently copying States to change to this approach.*

The committee was of the view that —

> To regard the mirror approach to uniform legislation as no more than 'spending valuable Parliamentary and Executive time copying Commonwealth legislation' … displays a lack of understanding of the role Parliament plays in considering whether legislation developed and passed in another jurisdiction (in this case, by the Commonwealth Parliament) should apply in Western Australia and the nature of an effective democracy.

We deliberately included these quotes to demonstrate our concern with some of the commentary we had to deal with from a range of departments about their attitude to this Parliament and the way it deals with legislation. We are sending out a signal that perhaps the minister needs to reinforce the valuable role this Parliament plays in drafting, debating and passing legislation, and not just going through the motions, as the departmental advisers seem to think.

There was reference in the tabling statement and in the executive summary of the report to the fact that this bill contains a Henry VIII clause. When I began my comments I made reference to a pattern that seems to be emerging in a number of these Council of Australian Governments uniform bills, that we find at least one and possibly more of these Henry VIII clauses. Again the concern is that, because the laws can be amended by regulation, that excludes Parliament from applying scrutiny. I am sure that some of my colleagues will spend more time on this. This specifically refers to clause 7 of the bill. Another area of concern that the committee discussed on a number of occasions when it put these reports together was that there is quite often no reference in the explanatory memorandum to these Henry VIII clauses. I want to spend a bit of time talking about explanatory memoranda, but I will come back to that when I have finished going through the report. There is a very useful piece of commentary about explanatory memoranda that I think we need to pursue, although maybe not in its entirety today. There certainly needs to be a discussion about the detail and the language used in explanatory memoranda, given that they are quite a valuable tool for committees working through bills.

The committee also received correspondence from the Information Commissioner. At least once a year, we receive correspondence from the Information Commissioner on a range of matters. He had made comments

about oversight arrangements in this bill, and he flagged some of these comments in an issues paper. The matter that he focused on in relation to this bill will be reflected again when members have an opportunity to look at the Rail Safety National Law (WA) Bill 2014, which is perhaps a slightly different area. His comments were about freedom of information access. Under the legislation we are dealing with today, because commonwealth law will be replacing state law, if people want to access documents through freedom of information they would have to go through the commonwealth arrangements rather than state arrangements. The commissioner thought that was quite a fragmented approach to dealing with FOI. I referred to the Rail Safety National Law (WA) Bill 2014, which we will be dealing with in the future, because there is a similar matter in that bill whereby people wanting to access documents through freedom of information must refer to the South Australian Freedom of Information Commissioner. Although there are some similarities, there are also some quite clear differences, and I think the same would apply in the Western Australian versus the commonwealth freedom of information legislation. That is another area of concern that was picked up by the committee, and flagged in the report. Again, it is a matter that people perhaps need to take note of.

It was also noted in our committee report, on page 25, that there is no reference in the commonwealth legislation to the state or commonwealth Parliaments or their committees. The view of the committee was —

> … this provision could be interpreted as a statutory secrecy provision and may adversely affect parliamentary privilege. This is because it may be interpreted as preventing the Parliament and its committees from performing their duties under their terms of reference should this require the receipt of the type of information referred to in subsection 187(1).

That, again, was an interesting area. The value of these reports and inquiries is that we can take these bills apart, if you like. Although on the surface the minister may have signed off on entering into these arrangements with the commonwealth, hopefully our committee has been able to highlight a reasonable number of areas that the minister should perhaps be concerned about, and demonstrate quite clearly that there are several clauses in the intergovernmental agreement that impact on our capacity as a state Parliament to review and apply appropriate scrutiny to the legislation in front of us, or to any future changes that the commonwealth seeks to make. The minister has a job ahead of him to clarify exactly how our state Parliament and he as a minister will be able to have direct input and a direct say, and how the Parliament will be able to cast its eye over those changes. Part of the concern is that if we are not able to apply that level of scrutiny, this gives more capacity to the executive to make decisions without having to explain those decisions to the Parliament or the public. That is of significant concern to the committee.

The committee was very consistent. The recommendations in the report are unanimous; there was no dissent. I think we were all very clear about our concerns that this bill would prevent this Parliament from being able to apply scrutiny to any changes. I do not think there is any deviation from that, and I was certainly very heartened to hear my Liberal colleagues on the committee reinforce that. Hon Mark Lewis said that the committee had to protect parliamentary sovereignty, but I do not think that is the committee's role. It is our job to identify the gaps. The minister, when he is involved in these processes, should be thinking about how this would work in reality to ensure that we will not be losing out in that regard. We have sought to highlight the repercussions of selecting this particular model of uniform legislation versus the mirror legislation model, and that is made very clear in the report on page 28, which states —

> 10.3 In the Committee's view, the mirror legislation approach should have been adopted and the *Gene Technology Act 2006* amended to ensure its consistency with the Commonwealth gene technology laws.

Given that there could have been very different views about the broader issues, I think a very good outcome of the committee was that it focused on the mechanics of the legislation. In due course, when the government finally gets around to introducing the other bill, we will have a—I do not want to say "volatile"—broad discussion around GM issues. I think it was Hon Darren West—or was it Hon Brian Ellis—who made an excellent point that this is not just about crops; gene technology legislation is much broader than that. Given the rapid change of information concerning various aspects of gene technology, in dealing with not only this bill but also any bill associated with gene technology, we need to think very carefully about how various parts of the legislation will impact upon the state in not only agriculture but also medical research, food safety issues and all those other areas. I think people often forget about broader issues and focus on agricultural issues, and although they are contentious, some of those other areas have the potential to work in the future.

I want to now talk about the explanatory memorandum, because we have talked about this matter in the house from time to time. That was certainly highlighted again for this committee, because the explanatory memorandum made no mention at all of the Henry VIII clause—clause 7 of the bill. I refer here to the spring 2014 edition of the *Australasian Parliamentary Review: Journal of the Australasian Study of Parliament Group* that contains an excellent article entitled "Explanatory memorandums: Are they fulfilling their purpose?", which, by just good luck, is written by Mr Alex Hickman, who happens to be the advisory officer to the

Standing Committee on Uniform Legislation and Statutes Review. Alex Hickman is an excellent advisory officer, and I would like to thank him, Sam Parsons and the other staff of the committee because they do outstanding work and we have been fortunate to have had such dedicated staff assist us.

Alex has written a very good article, which I encourage members to look at, because it makes salient points about some of the problems that have been surfacing in not only Western Australia but also a range of Parliaments about explanatory memorandums and the practice that has arisen in which explanatory memorandums are just replicating what is in the bill and not providing the necessary level of detail. If anyone wants to know the spirit behind the policy of a bill and the direction in which the government is going, they look to the second reading speech. Quite often down the track in history if somebody wants to refer back to why a bill was introduced, they can look at the second reading speech. But if someone wants to find out about the detail of a bill and wants to break down the language and know how a bill works, they will use the explanatory memorandum. Explanatory memorandums are sometimes certainly very good tools for committees and for members of the opposition when working through a piece of legislation. However, we find quite often that explanatory memorandums do not necessarily reflect what is in the legislation. For example, I refer the Criminal Code Amendment (Prevention of Lawful Activity) Bill 2015, a bill that is currently before this house. When I spoke during the second reading debate on that bill, I pointed out that the explanatory memorandum and the second reading speech certainly did not reflect that piece of legislation, and that it is like a staged approach to legislation.

I think that there is an art to the language that is used. Mr Hickman's article identifies a range of problems that are experienced in a number of Parliaments and talks about the role of Parliament and explanatory memorandums. He provides a couple of definitions of explanatory memorandums, which are quite useful. He then goes through some basic criticisms of the associated problems. In one of those examples he refers to the Standing Committee on Uniform Legislation and Statutes Review and lists a couple of bills. One is the Business Names (Commonwealth Powers) Bill 2011, in which two clauses were identified as being Henry VIII clauses but the EM of the bill identified only one. The other example he cites is the Education and Care Services National Law (WA) Bill 2011 in which the committee identified five Henry VIII clauses, but the explanatory memorandum mentioned none. I think that is interesting.

In his very good article, Mr Hickman also offers some suggestions for reform, and he talks about better quality control, if you like, by agencies to ensure that the content of draft explanatory memorandums are checked by staff with appropriate experience and qualifications. We have had a discussion in here before about what language is used and the lack of information. He also says that explanatory memorandums should comply with relevant requirements and fully disclose all potential issues that could be of interest to those who scrutinise proposed legislation. He suggests that perhaps a third party is needed to run their eye over the document before it comes into Parliament to make sure that everything that is meant to be there is actually there. He also says that a uniform legislation model could set out clear and detailed form and content requirements for explanatory memorandums for proposed primary and subsidiary legislation. He talks about other initiatives that could include the setting up of a specific committee to assess the adequacy of explanatory material, which is possibly something that our dearly loved Clerks might like to think about, and engage the Clerk or other parliamentary staff to undertake this assessment and make recommendations to the Presiding Officer, which could feed into the parliamentary process for making legislation and could result in preventing proposed legislation from proceeding until all shortcomings have been addressed. I think that is a really good article to work through because it makes some good suggestions about how we can try to resolve some of the gaps, if you like, that we have had to deal with in explanatory memorandums, particularly when, for example, Henry VIII clauses do not crack a mention at all. Sometimes it is only once we get into committee that we find them, and then once we find them, it is too late because they are brought back in and we all throw up our hands and ask, "How can you have this in a piece of legislation? How can you have this type of clause?" I remember when Labor government members used to throw their hands up in the air and Hon Peter Foss used to regularly break out fantastic arguments against Henry VIII clauses. If there was better clarity in explanatory memorandums and the government understood the difficulties around those types of clauses, it would think more carefully about whether to place them in legislation, and then we would not have to deal with the constant argy-bargy in this house about whether they stay in the legislation, and we could have other healthier debates.

The bill is a very interesting piece of legislation. I think the members of the Standing Committee on Uniform Legislation and Statutes Review has been able to demonstrate their capacity to work together and come up with unanimous responses and recommendations for dealing with legislation. The committee has not yet had a dissenting report; it has been able to work through those types of matters. I am not saying that it will not happen, but to date the committee has been able to manage that. I certainly look forward to the minister providing clarification on those first four recommendations, and it may require some detail. I hope that the government can give some consideration to including a review provision in this legislation, and I imagine that the minister will respond to that in due course.

I think the reasons clearly articulated in this report about the potential impacts upon the sovereignty of this chamber, the impact upon our ability to scrutinise legislative changes, our concern about the minister's capacity to have direct input into any change, the fact that the bill has Henry VIII clauses and the matters around, as the Information Commissioner called it, fragmentation in dealing with commonwealth legislation versus Western Australian legislation are quite valid reasons for opposing this bill and accepting the view of the committee that perhaps the state legislation should have been amended and should have incorporated the commonwealth changes. We have been waiting for quite some time. It could have been done over that period. With those few words, I wait to hear what the minister has to say in response to our report.

HON SALLY TALBOT (South West) [5.41 pm]: I have a few comments to make about the Gene Technology (Western Australia) Bill 2014. I think it is important from the outset to point out, as have other members on this side of the chamber, that the reason we oppose this bill is not that we want to change the fundamental structure of the statutes and the regulations that relate to gene technology in Australia. I was interested to see how far back this debate goes in its origin, knowing that gene technology is a fairly modern conception. I note that, in the statutory sense, we started talking about this at the end of the last century. It sounds strange to say that, but I think it was around 1998.

Before I talk about the way that those structures have evolved, I note that the Liberal and National Parties are a funny lot when it comes to this sort of legislation. It was not so very long ago that we had a ferocious argument when the then commonwealth Labor government put up the National Disability Insurance Scheme as a way of avoiding duplication and eliminating waste in the provision of services for people with disability. The Liberal–National government at that time jumped up and down in high dudgeon about the fact that we were ceding Western Australian powers to Canberra, as Canberra was that big ugly beast in the east that could not possibly know what was best for Western Australia. Decisions that were germane to the lives of ordinary Western Australians would be made thousands of kilometres away and Western Australians would therefore lose a fundamental part of their autonomy in regulating and providing those services. In the case of the NDIS, we on this side of the house argued that that was based on a mistaken set of assumptions about how the NDIS would operate and that, in fact, to eliminate duplication, it was eminently sensible to put in place a scheme that was regulated by the commonwealth government.

Then we come to this piece of legislation. We are talking about something that is contentious. Everybody in the community has a view; their view is not necessarily directly related to the amount of understanding they have about the science of gene technology, and I certainly do not pretend to be an expert. Everybody has a view about gene technology not just in agriculture and food, but also in medicine and the environment. In the case of a regulatory framework such as the one we are looking at now, it makes eminent sense to retain some kind of statutory control over those regulations in the Parliament of Western Australia. However, all of a sudden the situation is reversed. All of a sudden the Liberal–National government is quite happy to see all that decision-making authority fly back across the Nullarbor. Not once have we heard anybody from the government side of the house talk about the need to take account of the special circumstances in Western Australia. It simply does not make any sense to take those two seemingly quite contradictory positions on whether we need to retain certain types of control in this state. It seems to me to be eminently sensible that we on this side of the house continue to support the NDIS as a scheme that is fundamentally under commonwealth control, but to fight tooth and nail to keep some sort of Western Australian autonomy in place for the regulation of gene technology, and I will tell members why I think that is important.

I thank the Standing Committee on Uniform Legislation and Statutes Review for including at appendix 2 an overview of gene technology, which I think is very useful for those of us who are not experts. As various speakers who have preceded me in the debate have pointed out, we are in fact not just talking about genetically modified organisms and the current hotly contested debate that is going on in Western Australia about the legality of certain actions; we are of course also talking very importantly about health. On page 35 of the committee report, there is a section headed "Health". This is from the 2011 review of the commonwealth Gene Technology Act 2000. It states —

> In the area of health, gene technology has enabled:
>
> - the development of more effective therapies for diseases such as cancer and diabetes;
> - the production of vaccines for hepatitis B and insulin for diabetics;
> - the study of genes that cause genetic diseases that make certain persons prone to heart disease, motor neurone disease and some cancers; and
> - genetic testing to look for predisposition to disease or developing a particular condition such as some cancers.

On page 38, there are some more details about biotechnology, which I do not have time to go through in detail, but I refer people who are following this debate in *Hansard* to appendix 2 of the committee report, which I think is a very useful reference point.

In the area of agriculture and food, Western Australia has always had a particular interest in how these regulations have played out. Hon Kate Doust was, of course, absolutely correct when she made the point, as have a couple of other members who have spoken, that we are not debating the merits of gene technology in this case. We could say that we are merely talking about the regulation of those activities, but of course that in itself downplays the importance of regulations. In fact, a lot of the work that we do in this place is to ensure that the i's are dotted and the t's are crossed in working out how the statutes will be interpreted in this state and how the practice matches the theory—how the spirit of the law matches the letter of the law. Of course, that is why we on this side of the house are arguing that the government is going down the wrong path with the bill it has brought before us today.

It is not a question that we on this side of the chamber have considered directly, but it is probably reasonable to say that if a piece of legislation that in fact mirrored a commonwealth law and made us compliant and brought us into line with what clearly needs to be national regulation had been brought into this chamber tonight, we may not be opposing the bill. I cannot say that categorically because, without seeing the legislation, I cannot indicate that we should report it. I am getting signals.

Hon Mark Lewis: But Hon Darren West was going to reject it regardless of the regulations.

Hon SALLY TALBOT: Yes, I know. That is why I am making the point. Absolutely! That is why I am saying that, of course, there was no categorical undertaking from this side of the house that we would support legislation that we had not seen. I am simply making the point that our objection to this bill is about the approach that has been taken; an approach based on a decision to go down the path of adopting the applied legislation, as opposed to amending our existing legislation, which in the committee's words would be the "mirror legislation" approach. That is our fundamental problem with this bill. On my reading of the debate, going right back to 1998, I do not think anybody ever argued from either side of the chamber that we ought not to be going down the path of a national approach. Indeed, that was quite specifically articulated in a number of reports to which I will refer as I go through my comments. I will pick one almost at random. A previous standing committee report on this issue, which I will reference later, states —

> The Western Australian Government has committed Western Australia (WA) to participate in the national regulatory scheme for gene technology.

It was actually a Labor government that made that commitment in 2002, but going back as far as 1998, nobody ever talked about anything other than a national regulatory scheme. I therefore say to honourable members opposite, who are pointing out that perhaps there is some discrepancy between us: there is no discrepancy between anybody on this side of the house. We are saying that we have always supported a national approach but we believe that this bill the government has brought on for debate today is fundamentally misconceived.

Members will see on the second page of the second reading speech a reference to the need for this bill because we must ensure that there are no gaps, loopholes or inconsistencies between the Western Australian legislation and the commonwealth legislation. Clearly, that is the problem. Nobody on this side of the chamber is trying to whitewash that. We are not saying that there is not a problem that needs to be fixed. However, I went off to look for exactly what those gaps, loopholes and inconsistencies were. Thanks to the work done by the Standing Committee on Uniform Legislation and Statutes Review, I found them at paragraph 5.13 on page 5 of the committee's report. To my surprise, I found only four of them. This is how paragraph 5.13 reads —

> The following differences exist between the State Act and the Commonwealth Act (arising out of the amendments made to the Commonwealth Act in 2007 which have yet to apply in Western Australia).

The first difference is —

- Emergency dealings: Part 5A of the Commonwealth Act provides a system whereby the Commonwealth Minister can make determinations relating to dealings with GMOs in emergencies.

The second difference is —

- Inadvertent dealings: Section 40A of the Commonwealth Act allows the Regulator to treat a person as having made an 'inadvertent dealings application' if it is satisfied that person has come into possession of the GMO inadvertently.

The third difference is —

- Limited and controlled release applications: Section 50A of the Commonwealth Act allows the Regulator to be satisfied that the purpose of an application for a licence to deal with a GMO is to

conduct experiments and that satisfactory controls are in place that are appropriate for the Regulator not to seek advice on matters relevant to risk assessments.

The final difference is —

- Confidentiality: Section 185(3B) of the Commonwealth Act allows commercial information to be treated as confidential until the Regulator makes a decision on an application for it to be treated as such.

I was a little surprised to find that it is only those four differences, which look to me to be not beyond the wit and the power of this Parliament to deal with. Each of those four areas looks to me to be fairly self-contained. We could be considering this afternoon an amendment bill brought in by the government that simply looks at four different sections of the act. I understand—the minister can probably confirm this—that so cooperative were we when we introduced our act, which I think was in 2005 or 2006 —

Hon Ken Travers: The bill was 2005; the act was 2006.

Hon SALLY TALBOT: That is right. The bill was dated 2005 and the act was dated 2006. When Western Australia introduced its own legislation, we actually numbered our clauses in synchronicity with the commonwealth act to maximise ease of cross-reference. I therefore find it hard to believe that amendments to part 5A and sections 40A, 50A and 185(3B) of the commonwealth legislation would result in an immensely complicated amendment bill. It just does not make sense that that would be so. What would be the advantage of doing that? Clearly, the advantage is that we as legislators in Western Australia would retain the authority to amend our own legislation as it applies to Western Australians. That is fundamentally what we will cede if we end up agreeing to implement applied legislation rather than mirror legislation. I think that, in itself, clearly indicates that this bill we are looking at today could be made redundant by the end of the night. The minister could walk out of here and say, "Look, I've had a closer look at it. It makes sense to simply amend our bill and then we will retain all our autonomy." The point referred to by Hon Kate Doust near the end of her contribution to the debate, about how the standing orders under which the Standing Committee on Uniform Legislation and Statutes Review works, is that committee members are charged with examining legislation—essentially bills and reports—and must determine whether such a document will impact upon the sovereignty and lawmaking powers of the Parliament of Western Australia. I double-checked this with colleagues on my side of the house, who are more familiar than I am with the operations of the uniform legislation committee, and I am pretty confident that I am indeed correct to say that what Parliament said to the uniform legislation committee is not that any impact on the sovereignty and lawmaking powers of the Western Australian Parliament are to be rejected by the committee; clearly, that is a decision, as Hon Kate Doust said, left to the minister. I would like to suggest that it actually be left to Parliament to decide whether it is appropriate to cede the sovereignty and lawmaking powers. I cannot see why in the case of gene technology we would want to give that the thumbs up. Why would we want to say that this is one of a very few areas of law on which we are happy to cede the sovereignty and lawmaking powers of the Parliament of Western Australia? It simply does not make sense to do that for this issue.

A number of specific questions arose about the effect of moving to an applied legislation framework rather than to mirror legislation. Of course, one of the things we are dealing with here is the issuing of licences. It therefore looks to me as though this is another area about which we would genuinely furrow our brow in puzzlement and ask why we think it is appropriate to cede the authority to issue licences to another authority—indeed to Canberra.

I wonder whether the minister in his second reading summary would be prepared to talk a bit more about the independent review of the Western Australian act that was carried out in 2011. Although both legislative options were canvassed in that review, my understanding is that clear recommendations came from it and very specific consideration was given to mirror legislation. I have not been able to obtain a copy of that review to study myself, but I wonder whether the minister would be prepared to inform the house about the consideration given to each form and whether the minister's own decision was informed by the findings of the review.

Sitting suspended from 6.00 to 7.30 pm

Hon SALLY TALBOT: When I address schools and groups of young people who want to know how the Parliament works and what it is like to be a politician, the inevitable question always comes up—I am sure I am not the only one in this chamber who can report this kind of experience—about whether we really always fight. Do I actually hate the people on the other side? Is it always like this in question time? I always explain to them that while question time has its own particular kind of theatre, and I seriously doubt that is ever going to change—I must concede at this point that the numbers I am about to quote might be a little bit out of date because the first time I did this calculation was about 10 years ago—I always point out to people that of all the legislation that comes before us, we generally agree on about 85 per cent of it. Of the remaining 15 per cent, about 85 per cent of that gets negotiated out in the process. So we really only seriously disagree about a very

small proportion of the legislation and the business that comes before us. I make that point simply because I would like to think that by the end of the night this bill falls in that second category. Although we definitely do not agree on the merits of the bill that the government has brought before us tonight, I hope that by the end of the night the government will have paid sufficient attention—not necessarily to me, but to people like Hon Darren West who has had plenty of experience in the business of farming, and Hon Ken Travers who is the shadow minister—and changed their minds, and decided that we can, indeed, proceed with the imperatives that the government has quite rightly identified. I have pointed out that there are now only four areas of discrepancy between the commonwealth bill and the Western Australian bill. We can come back into this place without further delay with a bill that amends the state act on those four basic points. If that is not possible, I really need the minister to explain why because I cannot see why that would be so hard.

I now make my way back in time. As I pointed out at the beginning of my contribution tonight, the origins of this debate go back to 1998 when it was broadly agreed by the ministerial council—of which the Minister for Agriculture and Food is now part—that there would be a national approach to the regulation of gene technology. From going back through *Hansard*, my understanding is that there was a bill introduced originally around 2000, maybe very early 2001, although I doubt that the Parliament actually sat in 2001, so I suspect it was a bill dated 2000 that reflected the commonwealth Gene Technology Act 2000. My understanding is that that came into operation on 21 June 2001. The idea was that Western Australia would come up with its own bill around 2000. To reflect the language now used by the Standing Committee on Uniform Legislation and Statutes Review, that was a mirror bill. That did not come to pass. There was some discussion and disagreement about why that was the case; probably just because it was not regarded as a particular priority at that time. The Labor government brought in the Western Australian legislation—I have already checked the date with the Minister for Agriculture and Food—that ended up being the act of 2006. The second reading speech was given by Hon Kim Chance, the then Minister for Agriculture and Food and Leader of the House. He was Minister for Agriculture and Food; I think that is when it changed because Forestry and Fisheries split away from that portfolio in 2005. I went back to Hon Kim Chance's second reading speech and I was very glad I did because I found a framework there for what we were trying to do in Western Australia with our own bill. I want to go through this list because I think that although the minister may not agree with me, I would at least appreciate him addressing these points. In our own act we reflected a number of things that were in the commonwealth act because, and I quote from the second reading speech —

> The commonwealth Act, which states that it is intended to form a component of a nationally consistent scheme, does a number of key things —
>
> > it establishes a statutory officer, to be known as the gene technology regulator, for the purposes of performing functions and exercising powers under the legislation;
> >
> > it establishes three committees—the gene technology technical advisory committee, the gene technology ethics committee and the gene technology community consultative committee—to provide scientific, ethical and policy advice respectively to the regulator and/or the ministerial council established under the intergovernmental agreement on gene technology;
> >
> > it prohibits persons from dealing with GMOs unless the dealing with the GMO is exempt, is a notifiable low-risk dealing, is on the register of GMOs or is licensed by the regulator;

There are only three more, so bear with me, minister —

> > it establishes a scheme for the assessment of risks to human health and the environment associated with various dealings with GMOs, which includes opportunities for extensive public input;
> >
> > it provides for the certification of facilities to certain containment levels and the accreditation of organisations assessed by the regulator to have a properly constituted and maintained institutional biosafety committee;
> >
> > it provides for a centralised, publicly available database of all GMO and GM product dealings in Australia;

I am sorry; there is one more over the page —

> > it establishes comprehensive auditing, monitoring, inspection and enforcement powers that can be adapted to individual circumstances on a case-by-case basis.

I quoted that at length because it occurred to me that if this bill that the government has brought before us tonight is passed, we are effectively putting ourselves out of the loop of any changes that are made to that very significant list of regulatory and statutory powers. I cannot see how a conservative government that trumpets states' rights and the sovereignty of the Western Australian Parliament, and the almost sacred right of the

Western Australian Parliament to make its own laws would want to cede that kind of power and authority to another government. It simply does not make sense. Those are extremely significant functions. Going through them, a couple of them are areas in which our local law—state law, to be technically correct—needs amendment. Why would it be so complicated, for example on the issue of privacy, to amend our own law so that we were in tune with the commonwealth, so that there were no loopholes and no areas of inconsistency, and anybody with dealings or business or research in this area finds that things are, once again, crystal clear for them? I wonder whether the minister, in his second reading summary, could talk about how the Gene Technology Ministerial Council is operating. If we do not have a Western Australian law, how does the minister see his role when he sits around that table? Remember that if this bill that we are considering tonight passes, we will be one of only two or three states that have ceded their power to the commonwealth. I think South Australia, the Australian Capital Territory and a couple of other states have introduced mirror legislation, so how does the minister foresee a situation in which he is sitting between two ministers who have mirror legislation and he has ceded his powers to the commonwealth?

Hon Ken Baston: I'll make sure that I sit next to the other two.

Hon SALLY TALBOT: That is fine that the minister says that. I can see that he would want to hang out with his friends who have made the same sort of decision, but he knows that I am making a very serious point here, and it is not a point that he would want to see as a frivolous point in any other circumstance. I do not know why he would want to do it over the regulation of an issue that is as hotly contested as is the area of gene technology.

I have one other point that I would like to raise with the minister, having gone through the second reading debate for the Western Australian legislation as it stands as of tonight. The point was made that two bills were being considered. There was the Gene Technology Bill, and the other bill, which I have here, was the Gene Technology Amendment Bill 2005. There were two bills. That sparked my interest, because we all remember, of course, that of a number of bills with which we are very familiar, one in particular, which I know will bring a glitter of delight to the eyes of Hon Donna Faragher, was the Waste Avoidance and Resource Recovery Bill, which we debated alongside, as Hon Donna Faragher will remember, the Waste Avoidance and Resource Recovery Levy Bill, because we needed a taxing bill along with the other bill. It seems to me that that was indeed the case in 2005 when that debate happened. I would like the minister to explain what the Gene Technology Amendment Bill was about, because my reading of the debate was that it was all about what we had to do to comply with the Constitution Acts Amendment Act. If the minister wants the precise reference, it is section 46(7), which states basically that a fee cannot be collected without a service being provided. If a fee is collected without providing a service, it is a tax. What are we doing in the case of the Gene Technology (Western Australia) Bill? We are charging a licence fee for people who are engaged in certain types of research. Therefore, I have two questions. Some further research that was brought to my attention indicated that when we are talking about this matter, we have to take into consideration the Gene Technology (Licence Charges) Act 2000, which is the commonwealth legislation. I would like the minister to tell us whether it is a fact that that act is a taxing act. That is a very important point. I am a little puzzled why we have got to the point that we are at now without having that explained to us by the government. I would have thought that was a fairly central consideration and might have been raised in the second reading.

Even in 2005, one of the reasons that the bill did not have an uninterrupted passage through this place was that around the same time that the Labor government brought the bill into this place, and it was then responded to by the Liberal shadow minister, the commonwealth had started a review. I believe it started the review around 2005, and that was the statutory review of the Gene Technology Agreement—the GTA. Along with the other things that I have raised, I would appreciate some comments by the minister on the following matters, because it will help us to know how we are going to proceed with this bill, certainly in committee. What happened to the commonwealth review? What did the commonwealth review recommend about the GTA? Did the commonwealth review state anything about a preferred mechanism for the states to be brought into the national agreement? Did it make any comment about whether mirror legislation was to be preferred to the sort of approach that we are presented with tonight of applied legislation?

One other document is very important. Hon Kate Doust and her committee deserve our thanks for the work they have done on the Standing Committee on Uniform Legislation and Statutes Review. Of course, it is not the first time that Hon Kate Doust has considered this issue, because she was a member of the Standing Committee on Environment and Public Affairs, which produced a massive report of nearly 400 pages in July 2003. There was a referral from the Legislative Council to that committee to have an inquiry and undertake the report, because the original legislation that led to the Western Australian legislation lapsed when the election was held in 2001. This 2003 report was the Legislative Council's attempt to get its collective head around what was obviously going to be a very big issue. Some very disrespectful comments were made in the second reading debate about the amount of travel that that committee undertook, all of which, of course, is not worth referring to, because we know that committees have to travel to get information. That committee was chaired by Hon Christine Sharp and

Hon Kate Doust was the deputy chair. It also included Hon Robyn McSweeney, Hon Jim Scott, Hon Bruce Donaldson, Hon Frank Hough and Hon Louise Pratt. They travelled to a number of other jurisdictions in Australia and overseas looking at these issues.

One of the things I noticed in perusing this report was that the relationship between the commonwealth legislation and the state legislation has never been particularly straightforward in the whole 17 years that this Parliament has been dealing with this matter. If members turn to the recommendations in the executive summary of that report, they will see the nature of the complexity of this relationship, because what that report does in its close to 400 pages is recommend amendments to the commonwealth legislation—a very, very unusual thing for a state government standing committee to do. The committee also recommended amendments to the bill that was before the house at that time. Without having gone through the 2001 and 2005 bills with a fine toothcomb, it is my understanding that many of those recommendations were taken on board by the Labor government, and the bill was subsequently amended. I thought it was quite interesting that those amendments were recommended by the committee. I have already referred to the fact that the foundational premise of this report is that WA needs to participate in a national regulatory scheme for gene technology. Labor has never resiled from that imperative. The thing I understood from reading this report that was not at all clear from the second reading speech, the legislation itself—the bill that we are considering tonight—or the explanatory memorandum was that the reason we needed state legislation was that there are areas in which the commonwealth simply does not have jurisdiction. I think it is referred to in the eighty-ninth report of the Standing Committee on Uniform Legislation and Statutes Review, but this 2003 report is couched as follows. Paragraph 7 of the "Executive Summary" states —

> The Committee accepts the regulation of gene technology on a national basis. However, during the process of inquiring into the Bills and related matters, the Committee came to the view that, whilst it supports the objectives of the Gene Technology Bill 2001 of protecting the environment and human health and safety through its identification and management of the risks associated with gene technology, there are important matters that are omitted or inadequately addressed by the Australian national regulatory scheme.

The Minister for Agriculture and Food presumably knows in much more detail than I do exactly what those are. I understand it refers to things such as sole traders in which the commonwealth does not have any jurisdiction. I am wondering now if we are effectively ceding our powers to the commonwealth. Does the commonwealth suddenly have the authority to cross those boundaries? Has the jurisdiction of the commonwealth been extended into those areas? I am certainly far from clear about that. I am sure that all members in this place would appreciate a more detailed explanation.

Having been through some of the history of this legislation, I am led to the conclusion that the uniform legislation committee's report just about nails it. It has got it absolutely right. It has picked the eyes out of the problems. It is very important that the minister addresses the recommendations that simply ask him for clarification. Something that is not clear to me and was not clear from the contributions to the debate made tonight by the Liberal members of the Standing Committee on Uniform Legislation and Statutes Review—having been a participant or a contributor to a report that made similar recommendations about asking the minister to clarify things—and I would like the minister to address is: what happens if the minister gives what is clearly perceived by the committee to be the "wrong" answer? For example, the committee has specifically asked whether changes made to the commonwealth act will be reported to the Western Australian Parliament. I hope the answer is yes. If the answer is no, I will be looking to the two Liberal members of the committee to ask what they are going to do. The minister does not have to interject; I have only a few minutes left. I am about to sit down and it will be his turn.

Hon Donna Faragher: You are so condescending!

Hon SALLY TALBOT: I was not being condescending at all.

Hon Donna Faragher: You are. Just listen to yourself.

Hon SALLY TALBOT: I could see that the minister was about to give me an answer. All I am saying is let me get through the last four minutes and then it is his turn.

I forgot that I had found this part of the committee's report when I was referring to the areas in which the commonwealth does not have jurisdiction. It is addressed at paragraph 5.6 of the eighty-ninth report of the Standing Committee on Uniform Legislation and Statutes Review. It states —

> Under the *Commonwealth Constitution*, the Commonwealth does not have power over sole traders who do not trade interstate or State or Territory based organisations, hence the cooperative state and federal approach of the national scheme.

I assume that the committee actually did the research into those points that I was far from clear about, and established to its satisfaction that the commonwealth does not have jurisdiction; yet they are areas to which the legislation and the regulations ought to be applied. That is a further point for the minister to consider.

I am left with unanswered questions that are basically the same as the committee's, including where are the review provisions? One of the things I noticed when going through the history of the debate is that both commonwealth and state statutes had reviews attached to them. Both jurisdictions had statutory reviews. That seems to be very important. I commend the committee on having moved that, as I think it is in the report as a statutory amendment, which saves the government the bother of drafting it. I would have thought that that was an easy one to adopt. I would also like to know, if this bill is passed, whether Western Australia will have access to things like records of compliance and breaches.

I go back again to the 2003 report. At recommendation 5 on page xv there are 16 clauses that the Standing Committee on Environment and Public Affairs identified as a preference or a requirement that details of all the decisions made by the regulator would be made available in Western Australia. The committee specifically recommended —

> **… that the Minister for Agriculture, Forestry and Fisheries make representations to the Gene Technology Ministerial Council to provide that the Record of GMO and GM product dealings established under clause 138 of the Gene Technology Bill 2001 be amended to also include …**

There is a long list of clauses. Will Western Australia be excluded from receiving information about breaches and records of compliance in those vital areas?

In the last couple of seconds available to me, if anybody is interested, it is worth looking at page 104 of the 2003 committee report. On that page there is a very extensive list of omissions and inadequacies of the national regulatory scheme. Those things have not been fixed as far as I can see from the debate around the bill we are considering tonight. Those omissions and inadequacies still exist. The Parliament clearly made its best attempt in 2005 to cover those inadequacies and omissions. We are now being asked to give all that away.

HON SUE ELLERY (South Metropolitan — Leader of the Opposition) [7.57 pm]: I rise to make a few comments in the context of what one member of the Standing Committee on Uniform Legislation and Statutes Review said. I will paraphrase here, but Hon Brian Ellis made the point that we should not be talking in this debate about gene technology itself, but we should focus on the regulatory framework because the Gene Technology (Western Australia) Bill 2014 is about the regulatory framework, not about gene technology itself. Although Hon Brian Ellis is correct in a sense, that of course the bill is about the regulatory framework and about how Western Australia fulfils its obligations to have uniform laws in respect of this, the controversy around gene technology means that we need to pay particular attention to the regulatory framework. I think it is a bit of a nonsense, if I could be so bold, to suggest that the subject of the regulatory framework is not something that we should be canvassing in our comments.

I want to touch a little on why the Labor Party thinks the regulatory framework needs to be in the mirror form and not in the applied law form. The nature of the technology, movements and changes in the technology is such that I think the Western Australian Parliament needs to be able to make amendments as it sees fit and does need to consider whether a particular set of regulations for example should be allowed or disallowed. I think those are decisions that Western Australia ought keep for itself because the very nature of what it is that we are seeking to regulate is changing so rapidly.

I want to add my thanks to the members of the Standing Committee on Uniform Legislation and Statutes Review for their report. Other members have canvassed the report so I do not propose to do that in detail. To start my comments, the committee report tells us that the bill proposes to repeal and replace the state act, to ensure that WA's gene technology legislation attains consistency with the national uniform scheme for the regulation of genetically modified organisms, and that the bill's explanatory memorandum tells us that will happen by applying commonwealth gene technology laws as though they were the laws of Western Australia. This will ensure ongoing uniformity without the need for specific amendments whenever the commonwealth gene technology laws are amended. The adoption of the applied law approach to uniform legislation in the bill would appear to have been undertaken with this in mind. At the very end of the report, the conclusion states —

> 10.1 The Committee considers there are a number of aspects of the Bill which have a significant impact upon the sovereignty and law-making powers of the Parliament of Western Australia.
>
> 10.2 The Committee has sought to highlight some of the repercussions of the applied laws approach, as reflected in the Bill, as well as the application of various Commonwealth laws to gene technology in Western Australia, for the information of the Legislative Council.

The final paragraph, the one that we should pay most attention to, states —

> 10.3 In the Committee's view, the mirror legislation approach should have been adopted and the *Gene Technology Act 2006* amended to ensure its consistency with the Commonwealth gene technology laws.

The committee, with its membership across the spectrum of the house, unanimously took the view that mirror legislation should have been adopted in this circumstance.

The other thing that was useful in the committee report is appendix 2, "Overview of Gene Technology". That is useful because it reminds us that we are not just talking about genetically modified crops, genetically modified organisms or the case in Kojonup that is going on right now and that was the subject of the second episode of *Australian Story* that aired last night. Gene technology is much broader. Appendix 2 is quite useful for people who think it is a narrow debate about the regulation of genetically modified crops and genetically modified food. That appendix states, in part —

> In the area of health, gene technology has enabled:
>
> - the development of more effective therapies for diseases such as cancer and diabetes;
> - the production of vaccines for hepatitis B and insulin for diabetics;
> - the study of genes that cause genetic diseases that make certain persons prone to heart disease, motor neurone disease and some cancers; and
> - genetic testing —

Which is controversial in itself —

> to look for predisposition to disease or developing a particular condition such as some cancers.

The appendix then goes on to set out the ones that more readily come to the forefront of the public's mind in respect of food and agriculture. It states —

> Gene technology has helped to realise insect resistant and herbicide tolerant crops, as well as improve the efficiency of animal production in Australia. CSIRO … has used gene technology to:
>
> - produce cotton varieties that are resistant to certain insect pests;
> - insert a particular gene from algae into crop plants so they can produce DHA, a 'healthy oil' essential for health brain and eye development in infants; and
> - investigate whether poultry immunity can be boosted to prevent avian influenza.

It goes on to talk about the environment, stating —

> By enabling the production of insect resistant and herbicide tolerant crops —

It then lists a range of things, including contributions to the sustainability of land management practices, enabling the biological control of pests or harmful species and a range of other areas where, in management of the environment, gene technology has, does now and will continue into the future to make a significant contribution. However, it remains an area of some contention. An increasing movement of people are interested in and committed to food labelling, food safety, food security, food miles and slow food. They are information hungry, if I can use that term, about the source and content of the food we buy. For those people, any debate about how we regulate gene technology is critically important.

Technology is moving very quickly. Some suggest that it would just move, as a virtue of how these things work, ahead of the regulators. When we were last in government and I was the Parliamentary Secretary to the Minister for Health for a time, I represented the Minister for Health on Food Standards Australia New Zealand, the body that regulates food safety, food labelling and all of those things between Australia and New Zealand. They were difficult meetings, mostly because we used to fight with New South Wales, from my recollection, which was outraged that a state with the population the size of Western Australia could hold up what it saw as critical policy developments. We argued that if it was going to be a case of trying to reach consensus, the difference in our population size was irrelevant but it did not see it that way.

Food Standards Australia New Zealand has done a lot of work in the area of genetically modified foods that are for sale in Australia and New Zealand. All foods that are for sale in Australia and New Zealand must undergo a safety evaluation before they enter the market. That applies to genetically modified foods as well. Despite a really tight set of protocols and procedures followed by FSANZ, it remains an area of serious contention. To regulate GM foods, for example, the Office of the Gene Technology Regulator oversees the development and environmental release of GM organisms under the Gene Technology Act 2000. Most dealings with GM organisms must be licensed. Licences will not be issued until the Office of the Gene Technology Regulator is satisfied that any risks posed can be managed in such a way as to protect the health and safety of people and to

protect the environment. GM foods are regulated under a particular standard about food produced using gene technology that is contained in the Australia New Zealand Food Standards Code. That standard, which is enforceable, has two provisions, one of which is mandatory pre-market approval, including a food safety assessment, and mandatory labelling requirements. This standard ensures that only assessed and approved genetically modified foods enter the food supply. Anyone seeking to amend the code to include a new GM food under that standard has to go through a very rigorous process.

FSANZ takes what it describes as a cautious approach when assessing GM foods for human consumption. One of the contentious issues around that is whether it should carry out animal testing as opposed to a desktop version of assessing the safety of GM foods. That again goes to the point of why I think we need to pay attention to what has been regulated in a debate about how we regulate gene technology. If it is a contentious area, we need to ensure that we are satisfied with that regulatory framework. By handing that framework over to the commonwealth and giving away our right, for example, to debate whether a set of regulations is allowable is a big step for us to take. We need to make a judgement call about whether the subject we are giving that power away to warrants doing that. In this case, our judgement is no, it does not. The way that FSANZ carries out safety assessments means that each new genetic modification is assessed individually for its potential impact on the safety of food. It compares GM food with similar commonly eaten conventional food from a molecular, toxicological, nutritional and compositional point of view. I thank Hon Robyn McSweeney for this information. The aim is to find out, on each of those criteria, the differences between the GM version and the conventional counterpart, knowing that the conventional counterpart is already safe to eat.

FSANZ says on its website —

> For example, a new GM corn variety will be compared to existing conventional (non-GM) corn varieties. Any differences that are detected are then examined to see if they will raise any safety concerns. If the genetic modification causes an unexpected effect in the food, such as increasing its allergenicity or toxicity, —

Yes, that is what FSANZ says. It used to do my head in back then, and it still does —

> it will not be approved. To date, we have identified no safety concerns with any of the GM foods that we have assessed.

Then it goes to the question that I raised before about whether FSANZ conducts animal feeding studies. Basically, the answer to that is no. It says —

> Not routinely, although we acknowledge there may be future GM foods where the results of animal feeding studies may be useful and, in those cases, we may require such studies.

That is, it may require that of the proponents or the developer of the particular crop. It continues —

> FSANZ considers that a scientifically-informed comparative assessment of GM foods with their conventional counterparts can generally —

I want to come back to that point —

> identify any potential adverse health effects or differences requiring further evaluation. For most GM foods, animal studies are unlikely to contribute any further useful information to the safety assessment and therefore are not warranted.

Then it asks whether FSANZ commissions its own scientific study, and FSANZ says that it does not and that it requires that the companies conduct the studies and provide that information for assessment by FSANZ. So, the companies are required to provide FSANZ with the raw data from scientific studies to prove their cases. The reason I referred to what FSANZ does is that it is debatable, and it is currently being debated in public health circles whether in fact we have got the regulation right. An article in the Public Health Association of Australia journal in 2013 describes a piece of work that has been done by Dr Judy Carman from the Institute of Health and Environmental Research and adjunct associate professor at Flinders University. She makes the point that, in fact, we are not necessarily keeping up with the effect of genetically modified crops and that our regulation is way behind other countries, and is perhaps dangerously behind. The piece of research that she did was described in *intouch* magazine in 2013. I think it was April, but I do not have the date in front of me. She says —

> To date, most genetically modified (GM) plants have been made by inserting a new piece of DNA into a plant so that the plant makes a new protein. Most of these new proteins are designed to either kill insects that try to eat the plant or to make the plant resistant to a herbicide. However, there is a new type of GM plant now being made. These are not designed to make a new protein, but to make a special type of RNA molecule; —

Do not ask me to say the long version of RNA, because I cannot. I give up! The article continues —

> special because it is either double-stranded … or it is designed to find another single-stranded RNA molecule and bind to it to create a dsRNA molecule. These molecules can silence or activate genes.

A number of GM plants have now been made using this technology. She refers to the CSIRO developing wheat and barley varieties that change the type of starch made by the plant. She says —

> … the dsRNA in the plant survives digestion in the insect, travels into the tissues to silence a gene so that the insect dies as a result. Furthermore, there is massive, on-going investment occurring to develop products that directly transfer dsRNA into the living cells of plants, animals and microbes via their food or by being absorbed through their 'skin'. This allows dsRNA molecules to be sprayed onto fields of crops to kill insects.

However, in 2012 a high-profile scientific paper was published that showed that double-stranded RNA molecules produced in non-GM plants can be taken into the bodies of people who eat the plant. It was found in blood, indicating that it survives cooking and digestion. That double-stranded molecule was able to change the expression of genes in mice and a gene in human cells growing in tissue culture.

The point of all of that is there is a real risk that the double-stranded RNA produced by these new GM crops would survive digestion in people and change how those people's genes are expressed. Dr Judy Carman and two of her colleagues published a paper to look at the safety of plants that are designed to produce those molecules that have been determined to be safe by government safety regulators in three different countries. She wanted to look at the regulatory framework. They found that the safety of those double-stranded RNA molecules was usually not considered at all, and if it was considered in any way, the regulator assumed that double-stranded RNA molecules were safe rather than requiring scientific evidence that they could cause no harm. They found that many scientific studies showed that their assumptions were incorrect. As a result of that the regulators did not assess whether the double-stranded RNA could cause adverse effects in people—for example, by silencing or activating genes of people who come into contact with the plant.

The point of telling that story that I know had members enthralled in double-stranded versus single-stranded RNA was to say that technology is moving so fast and in whatever field we talk about it always moves ahead of the regulatory framework so we need to stop and think. The government is saying that it is okay for Canberra to deal with the regulatory framework and it is okay for Western Australia not to have the right to deal with the regulations as a disallowable matter and to adopt all the amendments made by the commonwealth. That is a dangerous path to go down when the community is still divided about the value, particularly in relation to food, and when the research shows that there are potentially dangerous implications. Now, all those things might be entirely manageable; however, the WA Parliament will no longer be managing those things. We are giving that responsibility to Canberra. That is what the bill before us does. Although Hon Brian Ellis made the point earlier in his contribution that it was not right for Hon Darren West—I think he was referring to him—to talk about the substance of what it was that we are regulating, in fact, it is absolutely critical that we look at what it is we are regulating so that we can make the judgement call about whether this is something that the WA public would want us to give away to Canberra. I think the answer to that question is that it would not.

My electorate office is in the suburb of Willetton, which is a classic suburb. I am amazed at the number of people who are engaged and talk about the issue of food safety and food labelling. It is something that resonates with people. It is something that they feel they do not have complete control over and they want control over. They feel a bit anxious about the things that are being done to their food and about the source of their food, and they want to be assured that government is doing everything that government can to protect them. Many of them—like me until I started to look at the work that had been done in this area—will not have any notion of the research around double-stranded RNA, but they are worried that something like that could happen and that they and the people they elect to protect them are not able to act quickly.

This legislation means that we will need to lobby our federal colleagues, we will need to speak up at places like the Food Standards Australia New Zealand and other forums and we will need to try to exercise influence as opposed to exercising legislation. That is a significant difference and unfortunately it does not matter which party is in government in Canberra, there is a big desert between us and Canberra and what Western Australians have to say is not always listened to. The question raised in this report about why the government prefers the applied law approach rather than the mirror approach of adopting uniform legislation is important. There is a view that the technology can, does and is moving ahead of the regulators. It is not about the case before the court, Kojonup or the story on *Australian Story* last night. In that story I think the mum of the family with the GM crop —

Hon Jim Chown: Baxter.

Hon SUE ELLERY: Yes, the mum of the Baxters was trying to say that neither party really understood the implications once the farm next door went GM-free. She did not say it in these words, but they had just been

talking about the fact that there was a farm, a fence, a road and the crops, so the crops were not that far apart. I think she was basically saying that regulators did not envisage the situation we find ourselves in. I do not think the landowners in that story envisaged the situation they found themselves in either. It is an area of some contention in the community, so why adopt a method that adopts uniform legislation that does not allow the WA Parliament to consider amendments and regulations? It is a serious issue. The committee has made the point that it believes we should err on the side of being cautious and do this by mirror legislation, not by applied law. The minister has a job in convincing us that the committee is wrong. It is disappointing that the minister or the department or whoever was not able to provide information to the committee to demonstrate why the final paragraph of its report is inaccurate or wrong—I am not sure why that could not have happened. It is now for the minister to convince us that there was sound reasoning. There is not always in these cases; sometimes things happen because they just happen, not because there is a sound, considered policy position taken. But what is it? If there is a sound policy position for why applied law rather than the mirror approach is being used, it is for the minister to convince us of it. I think the public of Western Australia would want us to be cautious on this issue. I hope the minister is able to demonstrate that there was a sound policy reason for this as opposed to simply convenience. I conclude my contribution with those comments.

HON ADELE FARINA (South West) [8.24 pm]: I rise to oppose the Gene Technology (Western Australia) Bill 2014 in its current form and I thank the government for providing me with an opportunity to talk about parliamentary sovereignty and the lawmaking powers of Western Australia, which are subjects I love to talk about.

Members will recall that when the Legislative Council considered the review of its standing orders, it reviewed the terms of reference of the Standing Committee on Uniform Legislation and Statutes Review. The Legislative Council considered the scrutiny of parliamentary sovereignty and the lawmaking powers of Western Australia to be so important that it tasked that committee with almost the sole function of reviewing uniform legislation to ensure that we did not unnecessarily hand over any of this Parliament's sovereignty to another jurisdiction and that we retained our lawmaking powers in this state. In view of that decision by the members in this house, it is really important that when we consider uniform legislation, we consider recommendations made by that committee and we implement those recommendations. After all, we tasked that committee with providing us, as members of Parliament, with that very important advice because we consider it vital and critical that we retain our parliamentary sovereignty.

In Australia there exists a divided sovereignty with the people in each state linked to two independent levels of government with whom they have formed an agreement and in which the government is the agent of the people—in this case the government being the state and federal tiers of government. The roles of each tier of government—the state and commonwealth—are set out in the respective Constitutions of those jurisdictions. In essence, parliamentary sovereignty is a legislative power that the states and the commonwealth exercise on behalf of the people. In acting as agents of the people entrusted to act in their best interests, the commonwealth and the state should not be able to give this legislative power away. If the government does delegate it to another jurisdiction, it needs to be justified that it is necessary for good governance and it should be exercised rarely. Also, the government must be able to get it back and retain some degree of its exercise. The states and the commonwealth must remain accountable within the democratic process and importantly they must be able to maintain institutional integrity. It is one of the things we swore to undertake when we became members of Parliament. They must not take steps that would destroy themselves or other jurisdictions.

Intergovernmental agreements and uniform schemes create conflict between those who want to emphasise the need to cooperate and harmonise and those who want to emphasise the need to safeguard and foster distinctiveness to preserve the separate systems of the democratic process of government that we have and the accountability that we have embodied in our federal system of government, and also to be able to service the regional needs of that jurisdiction. Through intergovernmental agreements and uniform schemes there is a loss of autonomy to other governments that have greater functional capacity. In the federal system of government this lies in the commonwealth largely due to the vertical fiscal imbalance created by the commonwealth, courtesy of the states, holding the greater taxing power and the reliance of the states on commonwealth grants. Commonwealth supremacy usually manifests itself at the Council of Australian Governments and ministerial councils through a fiscal imperative to pass the uniform bill, with considerable pressure placed on state Parliaments to enact uniform legislation by making funding contingent on compliance with the intergovernmental agreement.

Through my experience attending ministerial council meetings in a support position and as a parliamentary secretary, I see that the commonwealth is very experienced in getting the more populous state to come on board through the offering of carrots and once secured, the other states are presented with what appears to be a position of having no option but to agree. Especially for those states needing financial assistance, it becomes very difficult for them to resist falling into line with the intergovernmental agreement and the uniform legislation. As members of Parliament we have a sworn duty to make laws for the peace, order and good government of the people of Western

Australia, and we are duty-bound to remind ourselves of that undertaking we made in taking our seats in this place. The process for enacting uniform legislation schemes begins long before the bill is presented in this place and it excludes the Parliament in that process. The process is handled exclusively by the executive. At the time the executive considers and enters into an intergovernmental agreement to establish a uniform scheme, there is little, if any, information available to members of Parliament and the people of Western Australia.

In this state, the terms of reference of the Standing Committee on Uniform Legislation and Statutes Review in one of its previous incarnations included the power of the committee to consider draft intergovernmental agreements and draft uniform schemes on a referral by the relevant minister to the committee. This provided some opportunity for parliamentary scrutiny in that process at an early stage. Because it was done at the instigation of the minister, it was a term of reference that was rarely used, sadly, and my preference would have been for that to be a requirement that ministers make a referral to those parliamentary committees to get some parliamentary scrutiny happening at a very early stage of the process. However, the Parliament in its wisdom determined to delete that term of reference. I make no negative reflection on that; I accept the decision of the Parliament and simply offer commentary that we had a position where there was some limited capacity for parliamentary scrutiny, but the process that we have in place now provides no parliamentary scrutiny at that very early and critical phase of the process. There is little capacity for Parliament to scrutinise the process of entering into a uniform scheme and holding the government to account at those very early stages. The doctrines of ministerial responsibility hold a minister responsible to Parliament for his or her portfolios and departments, which by extension covers their participation in ministerial councils.

Despite the Parliament's order of business providing for ministerial statements, it is very rare indeed for ministers to report on their participation on ministerial councils to the Parliament. It is my view that ministers should be required to report to the Parliament on their participation on ministerial councils as the Parliament's role is to hold government and ministers to account; we cannot do that if we do not have access to information, a position in which we constantly find ourselves. It is true that ministers rarely even report to cabinet on their participation on ministerial councils and often do not have the authority to commit their governments to uniform schemes, yet they do so nevertheless. It should concern every Western Australian that these schemes are being entered into with very little scrutiny at any level through the process and at any level in government or in Parliament. Although in this Parliament we refer legislation bills to the uniform legislation committee for scrutiny, it is too late in the process because the key critical decisions have already been made and the intergovernmental agreement has been entered into. Committees are often told that all these decisions have been made and that they cannot vary anything because that is the agreement that was reached through the intergovernmental agreement.

In addition, the committee struggles with a lack of information, restrictive terms of reference, fiscal constraints and time limits, which greatly impacts on the committee's ability to fully scrutinise the intergovernmental agreement, the scheme and the bill. The result is a process of developing and passing uniform schemes that largely excludes Parliament from its role, with the sovereignty of the states being diminished as a result. Where Parliaments adopt uniform schemes by way of applied laws as opposed to mirror legislation, parliamentary sovereignty is further diminished. With mirror legislation, when an amendment is sought, an amendment bill is introduced into the Parliament and the Parliament has an opportunity to consider the amendment bill, scrutinise it and determine whether it is in the best interests of the people of Western Australia to pass the amendment bill. Usually this also extends to amendments to regulations or making new regulations. With the applied laws approach, once the amendment bill is enacted by the enabling state jurisdiction or the commonwealth jurisdiction, it automatically applies as a law of Western Australia, and similarly with regulations. There is no capacity for the WA Parliament to perform its important scrutiny role and that is a big issue that we must give careful consideration to whenever we consider uniform legislation in this place.

I endorse the comments of the Leader of the Opposition and her arguments that gene technology is a fast-developing area that is very dynamic and at each stage throwing up new issues with which governments have to grapple. By employing the applied laws method of uniform legislation, we are denying the WA Parliament, entrusted by the people of Western Australia to act in their best interests, with an opportunity to consider these issues and decide what is in the best interests of the people of Western Australia. We should not do this. The people of Western Australia expect the WA Parliament to retain its role in the democratic process on this important issue, which has divided the community with strong views expressed in favour and against gene technology. The Leader of the Opposition put the argument very succinctly that people in the community are generally very concerned and anxious about where their food comes from and what is in the food that they are eating. They want better laws that govern these processes and they expect governments and Parliaments to be protecting their best interests at every step of the way in the process. We cannot do that if we have given our role as a Parliament to scrutinise legislation and to make laws in this area to another jurisdiction. We are betraying the people of Western Australia because they have entrusted us with the power to make those decisions. In the absence of the government providing a very sound justification for using the applied laws method, we should not

be going down that path at all. The uniform legislation committee, through all its incarnations over decades, has been very firm and very clear in its view that the preferred method if uniform legislation to be adopted is the mirror legislation approach, because it retains some capacity for the Parliament of Western Australia to continue its role in that democratic process of making laws for the good governance of the people of Western Australia.

On that note, I will comment on the committee's report on this matter. I congratulate Hon Kate Doust and the members of that committee for providing a very good report to Parliament, which succinctly puts the issues and identifies the concerns with parliamentary sovereignty and the impact on the lawmaking powers of the Western Australian Parliament. I find it interesting, as I always do, that the decision to enter into a uniform scheme was made in 2001, and in 2015 the state is yet to enable uniform legislation to apply in this state. It is quite an extraordinary period but some processes intervened such as the prorogation of the thirty-sixth Parliament. I noted with interest at page 4 of the committee report that the committee identified that —

> … as the State Act has not been declared corresponding to the Commonwealth Act, no functions or powers have yet been conferred on the Regulator with respect to gene technology in Western Australia.

I am very curious to understand why the 2006 state act was not declared corresponding to the commonwealth act. I would be interested in the minister commenting on that in his reply to the second reading contributions because it may enlighten members on that history, which is very unclear. The committee then goes on to identify four key differences between the state and the commonwealth act, and it may be that those differences prevented the state act from being declared corresponding to the commonwealth act; however, it would be useful to know that for sure.

Western Australia is the last jurisdiction to adopt the national scheme. We note that New South Wales and Tasmania have adopted the applied laws approach, and other jurisdictions—Queensland, Victoria, South Australia and the Australian Capital Territory—have adopted the mirror approach. It would be interesting to know why the state government has decided not to go with the majority of jurisdictions in implementing this national scheme by adopting the mirror legislation approach. Four other jurisdictions have opted to take the mirror legislation approach. Therefore, it is clearly not the case that all the other jurisdictions have used the applied laws approach and Western Australia is the exception to the case. Therefore, I think the government needs to justify its decision so that we can better understand why it has made this decision, what benefits it will deliver to the people of Western Australia and whether the interests of the people of Western Australia will be better safeguarded than they would be under a mirror legislation scheme. I think the government will struggle to make that argument.

I find it interesting that Mr Greg Calcutt recommended in the state act review that an applied laws approach be taken to this piece of legislation. However, he did acknowledge that the favoured approach by this state has been mirror legislation, and the committee notes that. Again, no explanation has been provided as to why Mr Greg Calcutt suggested that the applied laws approach was the preferable way to go, other than the view that I have heard, as a previous member of the committee, explained by numerous public servants. That view is, "Having to put an amendment bill through Parliament is an awful amount of work and takes an awful amount of time, and, quite frankly, we have better things to do with our time, and we would prefer that you just leave the decision-making to us and let us get on with it." That is an appalling justification for not taking the mirror legislation approach. We are the elected members of Parliament, and we are entrusted by the people of Western Australia to make the decisions. That is not something new. The introduction of amending legislation is a method of legislating that has been tried and proved over centuries. The fact that public servants find the process a little tiresome is something that they will have to find a way to deal with, quite frankly. The role of Parliament in our democratic system is to scrutinise the government and hold the government to account. To simply push aside that role and responsibility because it is easier for public servants not to have to deal with the process through Parliament is not an adequate justification. In fact, I am sure most people would argue that the role of Parliament is critically important, because there needs to be scrutiny of what the executive is doing. Public servants are not elected to their positions; therefore, they need to be accountable. So I think we need a better explanation than the one that we have been provided with to date.

The uniform legislation committee has done an excellent analysis of this intergovernmental agreement. As is usual with intergovernmental agreements, we often find upon review that they impact on the sovereignty and law-making powers of the Parliament of Western Australia. The committee noted a number of provisions in the IGA that impact on the sovereignty and law-making powers of the Parliament of Western Australia. The first is section 6(h), which requires that any state-enacted legislation as part of a uniform scheme operate currently with the commonwealth act. The committee states that that limits the ability of the state to exercise its independent law-making power. The second is section 9, which states in part —

> *Each State and Territory will submit to its Parliament as soon as possible a Bill or Bills to form part of the Scheme, for the purpose of ensuring that the Scheme applies consistently to all persons, things and*

> *activities within Australia. Each State and Territory will use its best endeavours to secure the passage of:*
>
> *(a) the Bill … to obtain consistency with the Gene Technology Act 2000 … and the Gene Technology Amendment Act 2000 … as introduced, and …*
>
> *(b) any other State or Territory Bill that is subsequently required to ensure the Scheme remains nationally consistent. The State or Territory will use its best endeavours to ensure each such Bill is enacted in the form in which it was introduced.*

That states that if a Parliament introduces its own piece of legislation, it needs to make sure that it falls in line with the commonwealth legislation. It also needs to make sure that it is considered and passed in the form of the commonwealth legislation. That is an extraordinary thing for any intergovernmental agreement to state. However, that is not unique. Intergovernmental agreements frequently state that. They are basically saying to the Parliament of Western Australia, "You need to do as you are told. The executive has already made this decision for you. Your job is simply to rubberstamp this bill. You do not get a say." The people of Western Australia have elected us to have a say, and we have a sworn duty to make laws in the best interests of the people of Western Australia. If we are to genuinely hold the government to account and ensure that we provide the best laws for the interests of the people of Western Australia, Parliament needs to have the ability to ensure that any regional issues that apply in Western Australia and that may be unique to the Western Australian jurisdiction can be considered and incorporated in our legislation.

Section 40 of the IGA, which again is a regular provision in intergovernmental agreements, provides in part —

> *Any Party that proposes to amend its legislation forming part of the Scheme will submit the proposed amendments to the Council for consideration before introduction of the amendments.*

So not only is the IGA trying to usurp the role of Parliament; it is now trying to usurp the role of the executive government, because the executive government cannot make a decision without going through the ministerial council and getting the ministerial council's approval. That is an extraordinary requirement in any piece of legislation. It states also —

> *Each Party agrees that it will not introduce such an amendment unless the Council has by special majority resolved to approve the proposed amendment.*

Unfortunately, there is not a provision in the IGA that defines "special majority". I have found it quite interesting, in looking at and reviewing IGAs over a number of years, to see what the definition of "special majority" is. In fact, in the consideration of one particular bill, I was told by an adviser from the commonwealth government that a majority decision did not require the majority of members of the ministerial council to agree. I found that statement quite extraordinary, and I asked him to repeat that three times, just to make sure that I did not misunderstand what he was saying. We have some extraordinary issues here. We are looking at not only handing over the role of the Western Australian Parliament to the commonwealth in this very important area of decision-making, but also providing the ministerial council with the capacity to usurp the role of our executive government. It is extraordinary, and I do not know how any member of this place could think that that is an acceptable way to make laws for the good governance of the people of Western Australia. On any reasonable assessment, a person cannot come to that conclusion.

I also found interesting clause 44 of the intergovernmental agreement, which states —

> The Parties will review this Agreement and the Scheme no later than four years after the commencement of this Agreement. Further reviews will be conducted at intervals of no more than five years.

The committee struggles to make comment on that provision because it has not been provided with any information on any four-year review. The IGA came into effect in 2001, and we are now in 2015, so there would have to have been at least a couple of reviews of that IGA. In the absence of that information being provided to the committee, the committee cannot provide any comment to the Parliament on that. If that is one of the provisions in the intergovernmental agreement, and it is, and it has not been adhered to, that is further reason for my concern in adopting applied laws legislation, because the terms that the executive government entered into in deciding to go down this path are not being implemented. That raises very serious concerns with me. Perhaps if there had been a review, there may have been an assessment that some amendments to the intergovernmental agreement were necessary or appropriate. But, of course, if a government does not ask, it does not know and does not have to act. Therefore, this government and, it appears, the ministerial council prefer simply not to know—to be ignorant—rather than ensuring that at every opportunity we make good laws and that we review the decisions that we make on a regular basis, as per our agreement, to make sure that at every point in time this is the best outcome for the people of Western Australia and the people of Australia. It is an absolutely critical function of members of Parliament, and it has just been ignored.

The committee makes a number of very important recommendations. The first recommendation is —

> … **that the Minister for Agriculture and Food explain to the Legislative Council the process by which the Intergovernmental Agreement on Gene Technology will be reviewed and table any future review of the Intergovernmental Agreement on Gene Technology in the Legislative Council.**

I am hoping that we will hear from the minister an assurance that he will implement recommendation 1 of the committee's report, because I think it is absolutely critical that this Parliament knows whether that provision of the intergovernmental agreement has been implemented, what reviews have been undertaken and what the outcomes of those reviews have been. Were any concerns identified; and, if so, how were they dealt with? I certainly want to know that when I am explaining to members of my communities that this legislation was passed and yes, we made sure that all the provisions of the intergovernmental agreement were being implemented, as we committed to.

The other aspect of the intergovernmental agreement that concerns me is about a party who wants to withdraw from that agreement. It is a critical aspect of entering into any national scheme that, at the very least, a party has to retain the ability to change their mind about being part of that scheme, and be able to withdraw from that scheme and take back the state's jurisdiction in that area. Under this intergovernmental agreement, a party has to give 12 months' notice of any intention to withdraw from the agreement. My question is: why? I have seen intergovernmental agreements that require three months, and I suppose there is an argument that that would be a reasonable time. But 12 months? I would really appreciate an explanation from the minister of why the government felt it was appropriate to enter into an intergovernmental agreement under which, at the point in time when the government decides that the agreement is no longer working for the people of Western Australia, we then have to wait a further 12 months before that decision can be enacted. I think the people of Western Australia are entitled to know why this executive government cannot move a bit faster than that when it realises that the legislation and the scheme are no longer in the best interests of the people of Western Australia.

The committee report then deals with various clauses of the bill and explains the difference between the applied laws versus mirror legislation approaches to uniform legislation, which I will not go through. However, I have to draw attention to the fundamental legislative principles—again, issues that I am particularly fond of. It is absolutely critical when making laws that we have fundamental legislative principles that guide us in making those laws. The committee has kindly listed those, as they relate to this bill, at pages 14 and 15 of the report. I really encourage members to read and consider those principles, and consider whether they can in all genuineness and in all good conscience support this bill once they have asked themselves those fundamental questions about legislative principles.

We then come to another issue that we discuss frequently in this place, and that is Henry VIII clauses. The committee identifies clause 7 of the bill, which provides for modification of commonwealth gene technology laws and states —

> *The regulations may set out modifications for the purposes of section 6(1) but only to the extent to which they are necessary or convenient for the purpose of enabling the effective operation of the provisions of the Commonwealth gene technology laws as laws of the State.*

This enables the applied commonwealth gene technology laws to be amended by regulations passed through the commonwealth Parliament without an opportunity for this Parliament to consider them. As a general proposition, the Standing Committee on Uniform Legislation and Statutes Review, the Standing Committee on Legislation and other committees of this Parliament have consistently over decades raised genuine concerns about Henry VIII clauses. Legislation is not changed by regulation and through a regulation-making power. The whole purpose of the role of the Parliament is to consider and scrutinise legislation. That means that if a member has an amendment to legislation, they should bring an amendment bill before the Parliament. That enables members of Parliament to consider all aspects of that amendment bill, to scrutinise the detail and to make an informed decision about whether that amendment bill is in the best interests of the people of Western Australia. We do that by way of regulation. What we are doing is enabling the executive government to amend the law before it is even considered by the Joint Standing Committee on Delegated Legislation, which is an extraordinary thing. We then find ourselves, as we have on numerous occasions during my time as a member of Parliament, having realised that mistakes were made, undoing regulations that have actually been enacted, because once the Joint Standing Committee on Delegated Legislation has had a look at those regulations and we realise that there are problems with them, or a short period after their enactment the community makes clear to us that there are problems with the regulations, we have to un-enact them through the disallowance process. That often means that people who were caught in the middle can find themselves facing legal action in courts because they were caught in that intervening period. It is a real issue with that regulation-making power and it is the reason why it should be very, very limited, as was intended when we initially set up that subsidiary legislation process. It is not supposed to be used for amending legislation.

Henry VIII clauses have been strongly opposed by committees of this Parliament for decades, and the Parliaments of other jurisdictions around the country. When we attend scrutiny legislation conferences, it is one of the issues that comes up with regular frequency. It is extraordinary that parliamentary counsel and the executive government, despite all the experience, all the literature and all the assessment that has been done on Henry VIII clauses, continue to present them in bills to Parliament. It is completely unnecessary. The whole purpose of Henry VIII clauses is public servants telling Parliament, "Listen, we don't want you involved in the process. It's a lot easier if you just leave it to us. Let us sort out the regulations that apply to the people of Western Australia. In fact, let us, by regulation, amend the laws that you have made." In our democratic Westminster system of government there is the supremacy of Parliament. Henry VIII clauses ride completely against that principle of the supremacy of Parliament. Parliaments make the decisions in terms of the lawmaking of a state or the jurisdiction, whether it is at a state or commonwealth level. It is not left to the executive government and it is not left to public servants. If it takes a little time to go through that process to ensure that governments are held to account and legislation is scrutinised so that we have good, effective legislation, that is not a bad thing at all.

When one looks at the process of legislation from go to whoa, I can assure every public servant in Western Australia and across Australia that the shortest period taken at each stage in that process is with the Parliaments. Getting a decent briefing presented to parliamentary counsel from departments takes an extraordinary length of time. Parliamentary counsel, because they are under pressure and they are usually very small units in most jurisdictions, also face difficulties in drafting legislation in a timely manner because it is a very complicated and complex process that requires cross-referencing and also a level of corporate knowledge and a good understanding of the law. Although there are lots of lawyers, there are very few people with the capacity to draft legislation. It is a unique skill. There are long hold-ups in that process. The process of getting any draft piece of legislation considered by the department, by the minister and by the cabinet also takes a great deal of time. The shortest period in the whole process is usually when the legislation is before Parliament, particularly when the government is managing its business in Parliament well. For governments to opt for methods or approaches that avoid Parliament is absolutely disgraceful. Although I accept that ministers, in taking up their position as ministers, swear to act in the best interests of the government and the executive, they do not forgo their sworn commitment to the people of Western Australia to enact good laws for the good governance of the people of Western Australia and to make sure that those laws are subjected to the full processes of our democratic system of government, and to respect that process.

It is not always easy. A minister or parliamentary secretary has to come to this chamber or the other place with a bill and pass it through the process. Sometimes the legislation that ministers are given to pass through Parliament should never, quite frankly, have got here because it is drafted so poorly. I do not know why it is that governments resist the opportunity for legislation to be scrutinised so that it is improved and so that all those errors are picked up and we actually deliver legislation that does what it intended.

Those members who have been here a while will recall the dog's breakfast that was the Perry Lakes Redevelopment Bill. The wrong maps were attached and all the referencing was wrong; it was a dog's breakfast. When it came to this place, I had the unfortunate role of being the parliamentary secretary to the minister and having to deal with it —

Hon Peter Collier: I remember it very well.

Hon ADELE FARINA: Hon Norman Moore pulled me aside and said, "Do you realise?" and went through a list of all the problems with the bill. This was before I had even been briefed on it. I thanked him very kindly for taking the time to point these deficiencies out to me. I spent the next weeks redrafting the bill and making sure that it actually did what the government intended it to do. I would have been happy for that to have gone to a committee so I did not have to do all the work myself. A committee, with the expertise of its staff, could have done that. That would have been great. I do not understand why ministers and governments are so opposed to putting legislation through that process. At the end of the day we want to be remembered for passing good legislation, making good laws, not for making crappy laws that cannot be implemented and do not do what they intended to do.

Hon Darren West: What if that bill went to Canberra? They probably would have just passed it.

Hon ADELE FARINA: I will not comment on that.

Members have to stop trying to take personal ownership of things and feel they have to fight for things to the nth degree. We have to remember that our role in this place is to make laws for the good governance of the people of Western Australia to act in their best interests. We should support the committee process. In my view every piece of legislation should be referred to a committee for consideration before it comes to this place. The processes of this place simply cannot give the bill the level of attention and scrutiny that it needs. It could get that through the committee process. A committee could avail itself of the professional expertise of committee

staff to guide members through that consideration. It is absolutely critically important. At the end of the day we end up with better legislation.

In my last minute I ask the government to really consider what it is doing with this bill. It flies against all the principles that have been enunciated in this place time and again about the preference of mirror legislation over applied laws. It really begs the question: when dealing with an issue such as gene technology, which is changing at a fast rate and we cannot even begin to imagine where it will be in five years' time, why are we handing over our jurisdiction to make gene technology laws to the commonwealth? It did not work so well for us on the biodiversity legislation or the legislation that dealt with importing fruit and vegetables from other countries. It has not worked well for us there. Western Australia was promised that regional differences would be considered. All the concerns that were raised by the industry have become reality. Once the legislation is passed, those commitments fall by the wayside as different people move into those positions. Seriously, if the government wants to pass this legislation through this house, it needs to provide justification for why this state should delegate its powers to make laws on gene technology to the commonwealth and why we have to do it by way of applied laws rather than mirror legislation, which is the preferred model that has been enunciated by this chamber time and again.

HON KEN BASTON (Mining and Pastoral — Minister for Agriculture and Food) [9.09 pm] — in reply: Since the second reading speech on the Gene Technology (Western Australia) Bill 2014 was delivered last year, I would like to refresh the memory of members. Then I will go through the report of the Standing Committee on Uniform Legislation and Statutes Review and give the government's opinion on that. I would like to touch on a couple of things. Hon Ken Travers, and I think another member as well, touched on this and I agree with him, saying it is a pity that a report such as this is made and we do not have the opportunity to discuss the government's response to it prior to the bill being brought on for debate in this place and then my delivering a response tonight.

I would like to return to the debate on the gene technology bill. Many members said that we are moving so fast—that is correct—with technology, full stop, let alone gene technology. The states have taken the position that they all agree that they want uniform gene technology so that they are the regulators of it and they set the standards, not the commonwealth. We can argue whether that is wrong or right but that decision was made. The Gene Technology Act 2000 is a commonwealth act that protects the health and safety of people—that is paramount—and the environment in terms of genetically modified food. It identifies and manages the risk by regulating certain dealings with genetically modified food. Any dealing with a genetically modified organism, including research, manufacture, production, release, transport and disposal requires a licence from the regulator. There are exceptions, such as if it has been identified over a long period to be of low risk—for example, some genetically modified carnation lines able to produce a purple flower or if fast approvals are needed in an emergency. That was touched on as well.

This act does not just govern crops such as GM canola, as Brian Ellis alluded. GM has also been used to create vaccines. Insulin is one of them, which I think somebody mentioned, that unfortunately many people have to use, and help researchers develop and target medical therapies. The Gene Technology Act governs this. Genetic modification has also been used to increase the nutritional content of food to assist in areas in which malnutrition is common. There is a very good book out on biotechnology. I do not have a copy of it with me now. It explains some of these things that are happening—for example, putting vitamin A and omega 3 in foods. That deals with the food side of it. The commonwealth act has several key components, including establishing the Office of the Gene Technology Regulator, establishing an advisory committee to provide expert advice and creating a process to assess risks associated with various dealings with GMOs. It also contains extensive monitoring, compliance and enforcement powers.

As I alluded, the states and territories signed the Gene Technology Agreement in 2001, recognising the need to ensure a consistent national scheme for the regulation of gene technology. The states and territories agreed to introduce legislation to ensure that commonwealth gene technology laws applied consistency across Australia. The Western Australian legislation, the Gene Technology Act 2006, mirrors the original commonwealth legislation and therefore needs amendment every time the commonwealth legislation is amended. There was an amendment to the commonwealth legislation in 2007, which we have not picked up, and in 2001. Both sides of government have been guilty of not bringing that forward and amending the act to bring it up to speed.

Hon Ken Travers: In 2007, you do realise we lost a year later. You've been in for six years.

Hon KEN BASTON: I have not been in for six years. I came in in 2005, in opposition.

Hon Ken Travers: As a minister. You were in government.

Hon KEN BASTON: I have been a minister for only two years.

In 2000, an independent review found that over the time the commonwealth act was updated and amended, the Western Australian act had become inconsistent, as I said. The effect of this is that the same researcher or company could have different requirements depending on whether it is the state or the federal government undertaking the dealing. The result is confusion and uncertainty, creating potential compliance issues.

The effect of this bill is to replace the current WA Gene Technology Act 2006 with a new act, applying the commonwealth act as a law of the state. This will ensure that there are no gaps or loopholes in the legislation and there is consistency with the national approach. This approach has already been adopted in New South Wales, the Northern Territory and Tasmania.

To ensure that this Parliament is fully informed of any changes to the commonwealth legislation that take effect in Western Australia, the bill includes a provision requiring all changes to be tabled in both houses of Parliament. If, following this consultation process, amendments were made that were not supported by WA, the WA Parliament would amend the state act to exclude that provision from applying to WA.

I would now like to go through each recommendation in the report. Having sat on many committees myself, I hold the committee in high regard. I read this report, and it is an excellent report. I will endeavour to answer any questions raised. Any questions that I cannot answer, members can ask me in committee. I would like to thank the Standing Committee on Uniform Legislation and Statutes Review for its report on the Gene Technology (Western Australia) Bill 2014. For the benefit of the house, I would like to address the recommendations and some of the issues raised. Recommendation 1 states —

> **The Committee recommends that the Minister for Agriculture and Food explain to the Legislative Council the process by which the Intergovernmental Agreement on Gene Technology will be reviewed and table any future review of the Intergovernmental Agreement on Gene Technology in the Legislative Council.**

Any review of the agreement would involve the Gene Technology Standing Committee and the Legislative and Governance Forum on Food Regulation. Western Australia has representatives on both bodies. The director general of the Department of Agriculture and Food is a member of the standing committee and I am on the forum, so any review process, once announced, would have input from Western Australia. At this stage a review of the agreement is being considered as part of the next review of the commonwealth Gene Technology Act but details have not been announced. I will table any report resulting from a future review of the agreement.

Recommendation 2 states —

> **The Committee recommends that the Minister for Agriculture and Food notify the Parliament of any withdrawal by Western Australia or any other party from the Intergovernmental Agreement on Gene Technology in the Legislative Council.**

This recommendation is accepted. Notice of withdrawal of any party from the Intergovernmental Agreement on Gene Technology will be tabled in the Parliament.

Hon Ken Travers: But that's only your commitment. That's not guaranteed by the legislation, is it? It is the same for recommendation 1.

Hon KEN BASTON: That is a good question. One, I understand, is correct.

Recommendation 3 states —

> **The Committee recommends that the Minister for Agriculture and Food, during the Second Reading debate on the Gene Technology (Western Australia) Bill 2014, advise the Legislative Council why the mirror legislation approach cannot be adopted in the Bill as has been utilised in the *Gene Technology Act 2006*.**

In its report, the committee expressed the view that the mirror approach affords greater protection to the sovereignty of the Parliament of Western Australia than the proposed "applied laws" approach. With respect to the committee, the government believes the concern about the bill's impact on parliamentary sovereignty is misplaced. The bill does not represent any limitation on the state Parliament's legislative powers. The bill does not, in a legal or constitutional sense, restrict the legislative capacity of the Western Australian Parliament or affect the sovereignty of the Western Australian Parliament.

Hon Ken Travers: You should be thankful Norman Moore and Peter Foss aren't here to hear this.

Hon KEN BASTON: Peter Foss was well before me. He was a prefect at school. I remember him well.

Hon Ken Travers: Which one?

Hon KEN BASTON: Peter Foss.

While section 6 of the proposed act will apply the gene technology laws to the commonwealth in a running form, there will be no legal or constitutional restriction on the Western Australian Parliament's capacity to modify the applied law or to repeal the act. It is correct that the Western Australian Parliament cannot amend a commonwealth law, but the WA Parliament retains the ability to amend the WA act to exclude the operation of any part of the commonwealth law with which it disagrees. The state retains full power to allow its laws to diverge from the commonwealth laws. The difference between this bill and the mirror legislation approach is that under the proposed new act, the applicable laws will remain consistent unless and until any desired change is made by the state laws. Under the current arrangements, when an amendment is made to the commonwealth laws, the state's laws become inconsistent with the commonwealth until the required amendment is made to the state laws. This is despite there being no parliamentary intention that that should be so. The applied law approach has successfully been adopted in Western Australia already; for example, the Agricultural and Veterinary Chemicals (Western Australia) Act 1995 applies laws of the commonwealth relating to agricultural and veterinary chemical products as laws of Western Australia. The mirror legislation approach to gene technology has been tried in Western Australia and the result has been continuing inconsistency in what should be a nationally consistent scheme. It is true that previous governments of both persuasions can be criticised for not ensuring that required amendments were made, but the fact is that a mirror approach will always result in a period of inconsistency of some length due to the nature of the parliamentary process and the inherent timelines in passing new legislation. The potential impact of this was noted in the 2012 review of the Gene Technology Act 2006. This situation can and should be avoided. The bill represents the exercise of the Western Australian Parliament's powers to achieve legislative purpose in the most effective and efficient way possible without limiting the legislative capacity or sovereignty of WA.

I refer to recommendation 4 of the committee report that during the second reading debate the Minister for Agriculture and Food inform the Legislative Council whether the Parliament of Western Australia will be notified pursuant to clause 20(1)(c) of the Gene Technology (Western Australia) Bill 2014 whenever the regulations under the commonwealth Gene Technology Act 2000 and the Gene Technology (Licence Charges) Act 2000 are disallowed by the commonwealth Parliament. Clause 20(1) of the bill requires that a copy of any amendment to the commonwealth gene technology laws and regulations be laid before each house of Parliament within 10 sitting days of when the amendment comes into operation. A disallowance of a regulation by the commonwealth Parliament would be an amendment of the regulations and the Parliament would be notified pursuant to clause 20(1)(c).

This part of the report also discusses the operation of clause 7 of the bill, noting at paragraph 7.19 that it is a Henry VIII clause as it enables the applied commonwealth gene technology laws to be amended by regulation rather than an act of Parliament. The essence of a Henry VIII clause is that it allows the executive, by way of subordinate legislation, to affect the scope and content of an act of Parliament. Clause 7 allows that regulations may set out modifications only to the extent to which they are necessary or convenient for the purpose of enabling effective operation of provisions of the commonwealth gene technology laws as laws of the state. These sorts of clauses are often necessary and useful for good administration, but particularly for the combined purpose for which the power of clause 7 may be used which makes it an appropriate delegation of such power. The necessary modifications, if any, are to be made by a regulation rather than the act because they would be dealing with issues that did not become apparent until after the act had commenced operation.

Recommendation 5 states that the Gene Technology (Western Australia) Bill 2014 be amended by providing for a review. I understand that the committee chair will move an amendment to include the review clause, as appearing on the notice paper. The clause is the same as that appearing in the commonwealth act and the current WA Gene Technology Act and will be supported. I understand that the Parliamentary Counsel's Office has advised that the reference in proposed subclause (1) to the "commencement of this act" should be to the "commencement of this section", but that is a minor issue.

Again, I thank the committee for the time and effort it put in. I think that the other issue that was raised by Hon Sally Talbot related to section 72A of the 2006 act, which provides that the holder of a licence must pay an annual fee. If that fee is characterised as a tax, it must be imposed by the act that deals only with a tax, hence, the need for a separate act, the Gene Technology Act 2006, to which the member alluded. I commend the bill to the house.

Division

Question put and a division taken, the Acting President (Hon Brian Ellis) casting his vote with the ayes, with the following result —

Ayes (20)

Hon Ken Baston	Hon Brian Ellis	Hon Alyssa Hayden	Hon Robyn McSweeney
Hon Jacqui Boydell	Hon Donna Faragher	Hon Col Holt	Hon Michael Mischin
Hon Paul Brown	Hon Nick Goiran	Hon Peter Katsambanis	Hon Helen Morton
Hon Jim Chown	Hon Dave Grills	Hon Mark Lewis	Hon Simon O'Brien
Hon Peter Collier	Hon Nigel Hallett	Hon Rick Mazza	Hon Phil Edman *(Teller)*

Noes (10)

Hon Robin Chapple	Hon Adele Farina	Hon Sally Talbot	Hon Samantha Rowe *(Teller)*
Hon Kate Doust	Hon Lynn MacLaren	Hon Ken Travers	
Hon Sue Ellery	Hon Amber-Jade Sanderson	Hon Darren West	

Pairs

Hon Martin Aldridge	Hon Alanna Clohesy
Hon Liz Behjat	Hon Stephen Dawson

Question thus passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Simon O'Brien) in the chair; Hon Ken Baston (Minister for Agriculture and Food) in charge of the bill.

Clause 1: Short title —

Hon KEN TRAVERS: It is worth recording the dramatic change in Liberal Party policy on to Henry VIII clauses and mirror versus applied laws. Let this be the day that the Liberal Party changed and let it hold that position when it goes into opposition in 2017, because I guarantee that the Liberal Party will not. What a disgrace! What an absolute disgrace of a performance by the minister to come out with the rubbish he did without in any way attempting to give a proper explanation other than it was all too hard and the government did not want to do the work that it was supposed to do that applied to the mirror legislation. If the logic that the minister applied this evening is applied when we get to the rail safety bill, we will move a simple amendment, Hon Jim Chown, to make it applied law to apply the national rail safety regulator as passed by the South Australian Parliament and we will not have to worry about it forevermore. To suggest that this does not remove the sovereignty of the state Parliament is a nonsense. I put those things because they go to the detail of the bill, despite the policy of the bill we have decided upon tonight.

Let us go through and understand fully the detail of this bill and what it means. Can the minister tell me what the limitations now are on the commonwealth to changes it can make to the commonwealth Gene Technology Act 2000? Are there any limitations on changes the commonwealth can make to the Gene Technology Act 2000?

Hon KEN BASTON: There will be none and there are none now.

Hon KEN TRAVERS: There were limitations because while we had our own mirror legislation, if the commonwealth made changes, we had the capacity in this Parliament not to pass those changes, which acted as a brake on what the commonwealth could do. Let us understand that.

The other thing I want to ask is how this legislation will operate in regards to the Genetically Modified Crops Free Areas Act 2003. Which will take priority—this legislation or the Genetically Modified Crops Free Areas Act 2003?

Hon KEN BASTON: They are entirely different and they do not affect each other.

Hon Ken Travers: Are you sure?

Hon KEN BASTON: Yes.

Hon KEN TRAVERS: We might come back to that a bit later on and the minister might want to think about his answer to my question about whether this legislation has any relationship with the Genetically Modified Crops Free Areas Act.

Is the commonwealth Gene Technology (Licence Charges) Act 2000 a taxing act?

Hon KEN BASTON: No.

Hon KEN TRAVERS: The current Gene Technology Act, which will be repealed as a result of the passage of this legislation, had taxing powers in terms of charges. Is the charging regime at the federal level different from the charging regime at the state level?

Hon KEN BASTON: No, it is not. Here is the answer I gave to Hon Sally Talbot that deals with section 72A. It provides that the holder of the licence must pay an annual fee. If that fee is characterised as a tax, it must be imposed by an act dealing only with a tax, hence the need to separate the act that is the amendment act of 2005.

Hon KEN TRAVERS: That is my point. That is why I asked the question. Currently under the state legislation, the 2006 act, there was a separate act that had taxing powers with respect to charges that could be made for the licensing of GM. That is why I am asking whether the charging regime at the state level is different from the charges applied at that commonwealth level. We do have a taxing power at state level and earlier the minister suggested that the commonwealth legislation does not provide for taxing powers.

Hon KEN BASTON: I was talking about the state legislation.

Hon KEN TRAVERS: That is why I am asking about how the charges relate at a state level compared with the commonwealth legislation.

Hon KEN BASTON: There are no fees and charges applied at either level at this time.

Hon KEN TRAVERS: In the commonwealth legislation there are a number of references to the ministerial council. What is the current ministerial council responsible for this legislation?

Hon KEN BASTON: It is the forum.

Hon KEN TRAVERS: Is there a ministerial council responsible for this legislation now or not?

Hon KEN BASTON: The Legislative Governance Forum on Gene Technology was formerly known as the Gene Technology Ministerial Council, which is now the GT Forum as established by the government's Gene Technology Amendment Agreement 2001. The role of the GT Forum also includes reviewing and consulting on any changes to the GT act and overseeing the operation of GT act and associated regulations. Membership on the GT Forum includes one ministerial member from the commonwealth and all states and territories. Currently, WA is represented by me. As well as the forum, the membership of the Gene Technology Standing Committee reflects the membership of the GT Forum and consists of senior officials from each jurisdiction. At this stage, Western Australia is obviously represented by the director general of the Department of Agriculture and Food, Rob Delane.

Hon KEN TRAVERS: One of the complexities of this bill, and one of the interesting issues about it, is that the nature of it is that we are applying commonwealth legislation to the state of Western Australia. To fully understand the impacts of all of these clauses as they operate together one needs at the same time to understand the commonwealth act. Once this bill is passed, is there anything to prevent the commonwealth from amending its Gene Technology Act 2000 to override the provisions in the state legislation that give people the right to plant genetically modified crops across Australia? What would prevent the commonwealth from amending its act to override the Genetically Modified Crops Free Areas Act 2003?

Hon KEN BASTON: The commonwealth does not have the constitutional powers to override the state act, which is effectively a marketing act.

Hon KEN TRAVERS: Without the passage of this bill, the commonwealth does not have the power to override the state legislation. I see no limitation on us giving it the power to legislate on gene technology matters. This bill will override earlier state legislation, so where is the limitation in this bill that stops the commonwealth from amending its legislation? This bill makes it very clear that once we amend the state law, the commonwealth legislation, as amended from time to time—this is made very clear in the definitions in clause 4 of this bill—has absolute coverage, which then allows the commonwealth to amend anything to do with gene technology and its regulation.

Hon KEN BASTON: Where has the honourable member got the idea from that the commonwealth can override the Western Australian legislation?

Hon KEN TRAVERS: I want the minister to give us an assurance that as a result of the passage of this bill, the commonwealth does not have the capacity to amend its legislation dealing with gene technology to override this state legislation. This bill will override earlier legislation from the Parliament. I cannot see where the protection is. Can the minister explain to the house where the protection is to stop the commonwealth legislation from overriding state legislation?

Hon KEN BASTON: The bill does not override the state legislation. It applies commonwealth laws as state legislation. It has those powers to opt out of it. The WA Parliament retains the right to change the Western Australian act and exclude any change to the commonwealth act it does not support.

Hon KEN TRAVERS: Is the minister saying that the commonwealth has the capacity to do that and that we would need to amend the Western Australian act to stop it if it did so, which is handing over sovereignty?

Hon KEN BASTON: The commonwealth does not have the power to override the state act.

Hon KEN TRAVERS: No, but this bill gives it the power to legislate on matters related to gene technology in Western Australia. This bill says that from now on we will not have a state act to deal with those matters that are covered by the state, that they are now covered by —

Progress reported and leave granted to sit again, on motion by Hon Ken Baston (Minister for Agriculture and Food).