GENE TECHNOLOGY BILL 2001

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 32: Person not to deal with a GMO without a licence -

Debate was adjourned after an amendment had been moved

Mr MASTERS: Obviously I am having trouble getting my message across to the parliamentary secretary, and I am not sure whether it is his fault or mine. I will rephrase the question one last time, and pick one scene to summarise: a person commits an offence when he knows his dealing with the GMO is not notifiable low-risk dealing or is reckless as to whether it is a notifiable low-risk dealing. Can the parliamentary secretary explain, without quoting the legislation, what clause (1)(c) means in relation to "reckless" and whether the dealing is a notifiable low-risk dealing even though it is not a low-risk dealing as stated in the first part of paragraph (c)? If I can have a simple, plain English explanation I will die a happy man.

Mr LOGAN: I will try to put this as simply as I can. The structure of this clause is simple, and I have read it out for the member.

Mr Masters: I would like the parliamentary secretary to look at me and tell me what it means.

Mr LOGAN: I understand what the member is asking. For the purposes of explaining how this clause would be read by a regulator or by someone in a court of law when an offence has occurred, and not by the member for Vasse, it is structured in this way: a person commits an offence if he transgresses paragraphs (a), (b), (c), (d) or (e). The issue that the member raised about paragraph (c) is straightforward. A person commits an offence if that person knows that dealing with the GMO is not notifiable low-risk dealing or is reckless, which is defined in (b). A person is reckless in his behaviour as to whether the dealing is a notifiable low-risk dealing when either he knows it is not a low-risk dealing or he does not know and continues on recklessly manipulating that GMO material. That is the reason we defined "reckless".

Mr Masters: I refer to the definition of the word "reckless". Am I correct in my interpretation that a person is always reckless in his or her dealings?

Mr LOGAN: No. This clause does not say that. All it says is that if a person's behaviour in dealing with the GMO material is such that it comes under the definition of reckless, it becomes an offence. The member's amendment reverses the onus. He has said that every dealing with GMO is reckless unless it complies with those four paragraphs. The member has reversed the onus of the offence, which is the reason the Government cannot accept the amendment. If we applied this amendment in the way the member suggests, the matter would become utterly confusing and would make Western Australia a laughing stock.

Mr HOUSE: I listened with interest to the parliamentary secretary's explanation. I was happy to accept it until he tried to define the word "reckless". I am in favour of the Government's position, except that I am now confused about his definition. In answering a question from the member for Vasse, the parliamentary secretary said that reckless was defined in the Criminal Code.

Mr Logan: No; it is defined on page 12 of the Bill.

Mr HOUSE: Did I mishear the parliamentary secretary? Is he referring specifically to the definition on page 12 in this Bill?

Mr LOGAN: That is correct.

Mr MASTERS: Is the parliamentary secretary saying that paragraphs (b) to (e) each has two parts: one part that says that a person commits an offence if he does something that is not allowable and a second part that says that dealing is reckless in some way? Everyone is shaking their head. I have no problems in accepting that a person is committing an offence if in the case of paragraph (b) the person knows the dealing is not authorised. That is clear. I cannot understand what the rest of the clause means, and I refer to the wording "or is reckless as to whether or not the dealing is so authorised". If the dealing is not authorised as is stated in the first part of paragraph (b), is the Bill saying that dealing then becomes reckless if the dealing is authorised? I am sorry; I am confused. I have not had a clear answer, so I will not pursue it any further.

Mr LOGAN: It is an offence if it is done knowingly or simply recklessly though not knowingly. It is an offence if it is done knowingly in breach of the principles, directions and guidelines or simply straightforward recklessly; that is, the person knew it was a breach but was reckless as to the way in which he carried that out. The member for Vasse is right; there are two sections - knowingly and recklessly.

Mr MASTERS: I will paraphrase what the parliamentary secretary is saying: in paragraph (a) both parts relate to "knowingly" but the second part is "reckless" if the person is aware of a substantial risk that the circumstances exist or would exist. Is that right?

Mr Logan: Yes, and goes ahead and does that dealing recklessly; then, in terms of the person's behaviour, page 12 defines reckless behaviour.

Mr MASTERS: The intention behind paragraphs (b) to (e) is to define simple offences of dealing when a person is not authorised by licence, not a low-risk dealing, and not an exempt dealing. However, there are four additional offences, each one linked to what I just read out, and those extra four are reckless dealing if there is knowledge on the part of the offender that there is a substantial or unjustifiable risk. Is that right?

Mr Logan: Yes, it can be seen that way.

Mr MASTERS: I apologise for taking up the time of the parliamentary secretary and the House. The fact that it has taken this long to achieve an understanding of the clause means that it is not good parliamentary drafting. My amendment would not achieve the desired goals. I seek leave to withdraw it.

Amendment, by leave, withdrawn.

Mr HOUSE: I move -

> Page 21, lines 11 to 16 - To delete the lines and substitute the following -
>
> (2) Penalties for any offence under this Act shall be contained in regulations pertaining to section 193.

Having dealt with legislation in the past, I know that it is very difficult to include in the legislative program Bills to update penalties when required. When time has elapsed in the enactment of legislation that has been through this Parliament in previous years, it has impeded the proper punishment of offenders. Regulations are a much better way of putting penalties into legislation. They can be updated quickly. The House still has the ability to move against regulations, if they are updated and the Parliament of the day does not like them. A committee process examines such legislation in this Parliament. A much better way of handling all legislation would be to include penalties in regulations, because we can deal quickly and easily with an increase in penalties and not have to bring the whole legislative process back to the House.

Mr LOGAN: I acknowledge the practicality of including penalties in regulations; I will not argue with the member for Stirling about that. The reality is that the penalties for the offences have been structured nationally. This is uniform legislation to comply with the commonwealth legislation. Each State that has adopted the provisions of the Gene Technology Bill has exactly the same penalties in its legislation. I would not argue with the practicality of amending penalties by way of regulation, if a State Government saw fit to do so. However, I imagine that to maintain consistency nationally when dealing with genetically modified organisms, the offences would be discussed at the intergovernmental committee, agreed to by the ministerial council and then applied to each State. I do not know the reasoning behind the minister's discussions. The member for Stirling might be able to inform us because he was involved in the process. I do not know why the penalties are included in an Act, rather than in regulations. Nevertheless, to ensure consistency between our state legislation, other state legislation and the commonwealth legislation - we have discussed this with the minister - we must continue to include the penalties for the offences in the Act.

Mr HOUSE: I am surprised that the parliamentary secretary said that he had discussed the matter with the minister. I did not realise he would have done that. I was about to say that it demonstrates the importance of having a minister in charge of legislation rather than a parliamentary secretary, because the minister has the authority of the Cabinet to make a decision quickly at the consideration in detail stage. I understand the parliamentary secretary's difficulty in not wanting to do that and, therefore, cause a problem with his ministerial boss. However, the argument he has given is a nonsense. As I understand it, we must comply with the federal legislation, which this legislation does, but there is no requirement for us to include penalties in the Bill rather than in regulations. Indeed, we could comply with the Act and still have lesser or greater penalties than those in other States. We do that in a range of areas. It is commonsense to put all penalties in regulations. I have always argued that. The legislation that I had carriage of reflected that towards the end of my term as minister. It makes good sense. I do not accept the argument that we need to do it because somebody in the Commonwealth said to do it. People drafting legislation tend to put it into the legislation because it occurs to them at the time. They might think it is the way to go. I do not intend to take the matter any further, except to say that perhaps the parliamentary secretary should talk to the minister between now and this legislation's being debated in the upper House. It makes procedural sense.

Amendment put and negatived.

Clause put and passed.

Clause 33 put and passed.

Clause 34: Person must not breach conditions of a GMO licence -

Mr MASTERS: I move -

Page 23, line 13 - To insert after "has" the following -

or can be reasonably expected to have

Subclause (2) states -

A person covered by a GMO licence commits an offence if . . .

It is followed by paragraphs (a), (b) and - I emphasise "and" - (c), which states -

the person has knowledge of the conditions of the licence

If this were an either/or clause, people would be committing an offence if they intentionally took an action or omitted to take an action or if they knew that the action or omission contravened the licence. However, paragraph (c) contains the presumption that the person must have knowledge of the conditions of the licence. The proposition is fairly simple: a person can stand up in a court of law and say, "Your honour, I had no knowledge of the conditions of the licence. Yes, I may have been the licensee or I may have been the person covered by a GMO licence." A million and one different excuses could probably be provided by a person covered by this clause to explain why he or she did not have knowledge of the conditions of the licence. For that reason my amendment simply suggests that a person committing an offence under subclause (2)(a) and (b) cannot simply say that he did not know - remembering that ignorance is no defence in law - that he should have taken an action, omitted to take it or otherwise. If the amendment is passed, subclause (2) will read, in part -

A person covered by a GMO licence commits an offence if . . .

(c) the person has or can be reasonably expected to have knowledge of the conditions of the licence.

I believe that if the amendment is successful, it will put the onus very clearly back on the shoulders of the person who holds the GMO licence or anyone who is employed by or in a responsible position with the holder of a GMO licence. As I said, ignorance is no defence. We need to send a message to the wider community that all people who work and deal with GMOs have a significant responsibility. They should not accept whatever they may or may not have been told by the licence holder or the person in charge. All people who are covered by GMO licences should be held responsible. The onus is on them to clearly understand and know the conditions of their licences. Therefore, this amendment would convey that level of responsibility to the people covered by GMO licences. The amendment would also make it more difficult for someone to say that he had no knowledge of the conditions of the licence. If my memory services me correctly, other parts of this Bill state that a person must have knowledge of the conditions of the licence. However, without the wording of the amendment incorporated in clause 34(2)(c), we are making it unnecessarily difficult for the Gene Technology Regulator to do his or her job.

Mr LOGAN: I knew where the argument of the member for Vasse was leading until he said that the onus should be on the people covered by GMO licences to make themselves aware of the conditions. That is not the case; the onus is on the holder of the licence to ensure that the people who work under that licence are aware of the conditions. Clause 63 of the Bill requires that. It is not the case, as the member implied, that the onus is on the employee who works under the holder of the licence. The onus is on the holder of the licence, which, in many cases would be the employer. The employer must educate the people who work under that licence. Employees must be made aware of the dangers, the safety concerns and the necessary precautions to take when working with genetically modified material. The onus is on the holder of the licence. For example, an incident may occur involving GM material in which an offence takes place and the licence holder and the employee who works under the licence are taken to court by the Gene Technology Regulator. If, in his defence, the employee told the court that he was unaware of the conditions, the court would determine whether the employee had been educated and made aware of the dangers and precautions required when working with genetically modified material. The result would turn on the facts of the case. Either the employee was or was not made aware of those conditions. Subclause 34(2)(c) as it is written covers that issue. I understand the member's argument; however, I suggest that the member's amendment would add no benefit to clause 34(2)(c).

The inference drawn by the member is wrong. The onus is on the holder of the licence to ensure that the employees who work under that licence are made aware of the dangers and precautions required when working with genetically modified material. If the holder of the licence did not make the employees aware of those conditions, he would be committing an offence. If an employee working under the licence is aware of the

dangers and the precautions that must be taken when working with genetically modified material, yet still recklessly carries out a task that causes an incident, he will have committed an offence. The legislation is clear about that. If an employee's defence in a court of law is that he was not made aware of the dangers of a task and the holder of the licence did not make him aware of the conditions, the case would turn on the facts as to whether he was aware.

Mr MASTERS: I thank the parliamentary secretary for that information. Earlier, I mentioned that I had spent 17 years in the mining industry. For eight of those years I was employed in a role that required me to undertake induction courses for people who joined the mining company. I am trying to bring some real-world experience into the debate. For example, Fred Bloggs might have been told on a Monday that he was hired for a job and would be required to start work the following day. He may write himself off that night and get absolutely blotto. The next morning he would arrive for his first day of work knowing that it is not important because it is only an induction. I say that tongue-in-cheek, because I know induction courses are important; however, often people wrongly believe these courses inform them of things that they will learn on the job. In this example, Mr Bloggs has written himself off on the Monday night and has started work on Tuesday. An induction course was held on Tuesday morning and the first thing Mr Bloggs did was go to sleep. I have seen Woodside Petroleum's induction room, which can accommodate up to 50 or 60 people. It would be easy for someone in that situation to fall asleep or to not pay attention. The instructor would believe that he was passing on the knowledge of the conditions of the licence when in fact nothing had registered in Mr Bloggs' brain.

I will provide members with another example. Mr Bloggs might have been out on the grog the night before the induction. At the crucial moment during the induction course when the instructor is about to tell the inductees the most critical things they must or must not do during an experiment, Mr Bloggs feels sick and rushes outside for two minutes to empty his stomach before returning a refreshed person. If Mr Bloggs then did something wrong, he would need only two or three other inductees to provide witness statements in a court of law to the effect that they and Joe Bloggs were at the induction course, but that Mr Bloggs left during the crucial two minutes and that they had no knowledge of his having been made aware of the conditions of the licence. In other words, the Government is creating a window of opportunity for someone who should have knowledge of the conditions of the licence but who creatively, either honestly or dishonestly, makes an excuse to explain that he did not have such knowledge. I accept what the parliamentary secretary said earlier. In that situation the onus would then be on the holder of the licence and he would be in even more severe trouble than he might otherwise be. However, my point is not only must we catch those extra people who should know of the conditions of the licence, but also we must inform anyone who is covered by a GMO licence in any shape or form that they are playing with very serious stuff.

I will repeat this argument later during debate on other clauses in which I have the same concern. If a person did something wrong and a GMO escaped into the environment, it would be like, for example, kookaburras, weeds or dieback fungus; once it is gone, it will always be in the environment. The genie will be out of the bottle. In most instances, if a GMO is released into the wider environment, we will have to live with it forever. To add the words "or can be reasonably expected to have knowledge of the conditions of the licence" to this amendment would send a powerful but important message to everyone covered by GMO licences that this issue is profoundly serious. I just heard a rainbow lorikeet fly overhead, but I will not talk about that pest. The amendment would let employees who are covered by the GMO licence know that they must take their jobs and their responsibilities very seriously. If they did not take their jobs and their responsibilities very seriously, they would be covered by an amendment to the Bill that says that they should have or should be reasonably expected to have knowledge of the conditions under which they work.

Mr LOGAN: I am aware of the member's point. He must have been at some of the same induction courses I have attended. I was required to attend a significant number of induction courses in my former employment. The member is correct; one could probably walk into any induction course for engineering, oil and gas or construction projects and find that some people are not paying attention. They could be asleep or might not understand the information being provided. If an accident were to occur in the real-world example that the member cited, the onus still rests with the employer, not the employee. It rests with the employee only if it is proved that he knew that what he was about to do was unsafe and deliberately chose to do it anyway. At all other times, the onus is on the employer. If a person gives as an excuse that he was asleep during the induction course, the onus is still on the employer. The employer is obliged to ensure that those attending such an induction course are not asleep, that they are aware of what they are being told and that they are capable of passing a test designed to establish whether they have understood the instructions.

This legislation is even more specific, in that the onus is on the holder of the licence, but any person who knowingly deals recklessly with genetic material can also be held responsible. If that person was unaware of the precautions that had to be taken in that part of the process, that would be an acceptable argument to put in defence. Nevertheless, the holder of the licence is deemed to have committed the offence. In that case, the

holder of the licence would have to prove that he took all reasonable steps to ensure that the person involved understood what he was doing.

The member referred to the person asleep. If a person defends himself using that argument, and the holder of the licence argues and proves that he was unaware that the person was asleep during the induction course dealing with the processes to be used when handling genetically modified material, and the judge accepts that, so be it; nothing can be done. At the end of the day, the onus is not on the person working under the licence. That is no different in any other employment situation. The onus is on the holder of the licence. That person must ensure that people working under that licence are well aware of the processes to be used when working with that material. This legislation sets that out clearly.

Mr MASTERS: Some years ago a friend of mine was picked up while driving very drunk. He appeared to be sober and he was picked up for speeding. He was told he could opt to attend a session on how to drive responsibly or pay a fine. Of course, he attended the education session. He arrived at the venue as drunk as a skunk and, as soon as the lights went out so that participants could watch a video, he climbed out the window and went home. I am not suggesting that people involved with GMOs will behave with that degree of irresponsibility. I will explain my point using a fictitious example. If I were driving a car with a defective speedometer at 70 kilometres an hour in a 60 kilometres an hour zone and I was booked for speeding, it would not be a defence that the speedo was wrong or that a mechanic failed to repair it. The fact is that I was doing 70 kilometres an hour in a 60 kilometres an hour zone. Accordingly, I would be required to pay a fine and incur a demerit point. In a similar situation, a person working under a GMO licence not only should have knowledge but also should strive to obtain it. These workers should have that responsibility imposed on them by this legislation. They should be required to obtain that knowledge if they are dealing in any way with a GMO or working under a GMO licence.

The parliamentary secretary has made an interesting point about someone standing in a court of law and saying that he did not have knowledge of the conditions of the licence, so the onus should revert to the licensee. The licensee may well be subject to prosecution anyway. If two people are responsible, two people should be found guilty and be required to pay the appropriate penalty. The holder of a GMO licence cannot plead ignorance of the conditions of the licence. He must know those conditions. It is almost inconceivable that someone would be granted a licence and then plead that he did not know the conditions of that licence. That will not happen.

If the licence conditions are breached, the buck always stops with the licence holder. However, I will provide the parliamentary secretary with a realistic example of what might happen in a laboratory in which a range of people are dealing with GMOs. I am referring to a laboratory rather than a field trial. The GMO licence might contain a condition that two doors must always be closed between the laboratory and the greenhouse, cage or enclosure holding the GMO. That might have been made very clear at the induction course or a copy of the licence conditions might have been provided by the licence holder. However, if a person were to hold open the two doors separating the natural environment from the laboratory environment, he would be breaching a GMO condition. There may have been many reasons for doing it; for example, another laboratory worker might have wanted to pass through the doors with an armload of boxes. Doing the gentlemanly thing, the worker might have opened the doors and, in the process, inadvertently or otherwise contravened the licence. The onus must be on everyone covered by the licence, not only the licence holder, so that they take reasonable steps to become knowledgable about the conditions of the licence. It is very simple.

Mr LOGAN: Working backwards from the points made by the member for Vasse, I firstly suggest that he visit one of the laboratories dealing with GM material, because doors being held open, letting genetic material waft off into the atmosphere simply does not occur. Getting into a laboratory dealing with GM material, for a start involves going through an airlock. It is like entering a spacecraft. A series of sealed doors form an airlock to ensure that the very thing the member for Vasse was talking about does not occur. Cross-pollination from one piece of GMO to another is also impossible, because all GMOs are kept in temperature-controlled, airlocked cupboards and sealed shelving.

The example given by the member for Vasse of the person who accidentally exceeds the speed limit, not knowing that the car's speedometer is faulty, and then tries to use that an excuse, has nothing to do with knowledge. People either know or do not know how to deal with genetic material and any incident that occurs as a result of that. In the example given by the member for Vasse, the driver may not be aware that a technical fault exists with the speedometer. The speeding is not a direct result of either knowing or not knowing, so that cannot be used as an analogy. The member for Vasse's argument that, if an incident occurs, a penalty should apply equally to both the holder of the licence and the person working under that licence, does not take into account the benefits of holding a licence. A fee is paid for the licence, the licence confers benefits, and profit can be made from holding that licence. With those benefits comes responsibility, and that is what the Bill sets out. The holder of the licence has responsibilities, and should he fail to meet those responsibilities - which include

informing people working under the licence, such as employees or contractors - he commits an offence. If the licence holder has complied with those responsibilities, and yet a person working under the direction of the licence holder knowingly causes an incident with genetic material, that person also commits an offence, and the Bill deals with that situation. I cannot see how any of the examples given by the member for Vasse can undermine the wording in the legislation, and I cannot see how adding the words proposed in the member's amendment will add any weight to the implementation of the legislation.

Mr MASTERS: I assume the parliamentary secretary drives a car, and that he has done so for a number of years. I also assume that he has regularly driven at speeds of 70 kilometres an hour or more.

Mr Logan: Have you been checking my drivers licence?

Mr MASTERS: I did not say he was driving at that speed in a 60 kilometres an hour zone, just that he had driven at that speed. If he is driving at 70 kilometres an hour in a 60 zone, and his speedometer is broken, he is guilty of an offence, because among other things, as an experienced driver he should know when he is driving beyond the limit. He may be overtaking other cars, the sound of the engine may be different, and the handling characteristics of the car may be affected, along with a range of other things. The mere fact that he did not know that the speedometer was broken, or was reading 20 per cent below the actual speed, would not absolve him of the responsibility of using his better judgment, commonsense and experience to appreciate that he is actually travelling at 70 kilometres an hour in a 60 zone. Exactly the same principle applies here. A person who is working in an environment covered by a GMO licence must know the conditions of the licence. That person must know the conditions, and if he does not, he must take the trouble to find out what those conditions are. The parliamentary secretary has obviously been instructed not to accept the amendment, so I will not labour the point. I will simply ask for one final response. Will the parliamentary secretary tell me what harm would be done to the day-to-day workings or application of this legislation, if this amendment were passed? If the legislation contained a reasonable expectation that holders of a licence must know the conditions of a licence, how would that detract from the workings of the legislation, and how would it make it worse than it currently is?

Mr LOGAN: I indicate once again that a comparison of the provisions of this legislation with speeding while driving a car is irrelevant. There is no comparison between the two. It is a ridiculous assumption. The answer to the member's question is quite simple. The proposed amendment shares the onus of responsibility between the holder of the licence and the person working under the holder of the licence, so that they share the penalty equally. The Government does not agree with this, as I have indicated before. A legal distinction must exist between the person working for the holder of the licence and the holder of the licence. That is one of the benefits of holding a licence. That is why the Bill is structured in this way, and why the Government does not accept the amendment.

Mr MASTERS: Just for the record, I do not believe that the amendment would in any way diminish the responsibility that would lie on the shoulders of the holder of the GMO licence. I am referring to two different people, one being the holder of the licence, the other a person covered by a licence, presumably an employee of some sort. The parliamentary secretary has quite rightly pointed out that the person holding the licence has a responsibility, and I am simply suggesting, through this amendment, that all the people covered by a GMO licence, not excluding, but in addition to, the holder should have a reasonable expectation placed on their shoulders that they obtain knowledge of the conditions of the licence. Considering the profound and permanent implications for human health and safety, and the protection of the environment, should a GMO escape into the environment when the regulator and the community do not want that to happen, extending the onus of responsibility from the licence holder to all the people covered by the licence is entirely fair and reasonable.

Amendment put and negatived.

Mr LOGAN: I move -

> Page 23, line 19 - To delete "(3)" and substitute "(2)".
>
> Page 23, line 21 - To delete "subsection (1)" and substitute "this section".

Amendment put and passed.

Clause, as amended, put and passed.

Clause 35: Person must not breach conditions of a GMO licence - strict liability offence -

Mr MASTERS: I move -

> Page 24, line 9 - To insert after "has" the words "or can be reasonably expected to have".

This refers to a person being required not to breach the conditions of a GMO licence and is a strict liability offence. The subclause states that a person covered by a GMO licence commits an offence if -

(c) the person has knowledge of the conditions of the licence.

My argument is the same as for the previous amendment.

Amendment put and negatived.

Clause put and passed.

Clauses 36 to 44 put and passed.

Clause 45: Regulator must not use certain information in considering licence application -

Mr MASTERS: I move -

Page 29, after line 8 - To insert the following -

(2) While fully protecting the identities of applicants, the Regulator is to take reasonable steps to inform the first person of the application by another person in an attempt to overcome or reduce the need for identical or similar information to be duplicated by subsequent applicants.

This clause is to ensure that the regulator cannot use information provided by applicant No 1 when some time later applicant No 2 seeks a licence for a somewhat similar or potentially identical purpose. The words on page 29 of the Bill read -

> the Regulator must not take that information into account for the purposes of considering an application by another person for a GMO licence, unless the first person has given written consent for the information to be so taken into account.

The regulator is not required under this clause to let applicant No 1 know that applicant No 2 may require the information that was provided by applicant No 1 some time prior to the knock on the door from applicant No 2. I imagine that we are talking about very technical, potentially expensive and time-consuming data that may need to be gathered by an applicant to satisfy the regulator that his GMO process can be done safely and appropriately. Under this clause, the regulator must ensure that information is not passed on from one to the other unless the first person has given written consent. However, nothing in this clause requires the regulator, without identifying applicants, processors or the technical information that might be required, to say to applicant No 1 that another applicant is seeking a licence very similar to his licence; therefore, they could perhaps communicate and come to an arrangement that will see applicant No 1 get a lot of money back for the work he has done. Potentially, applicant No 2 will be saved money, time and effort by not having to re-invent the wheel.

My amendment requires that the regulator take reasonable steps to advise the first applicant that money, time and effort can be saved by both applicant No 1 and a subsequent applicant by avoiding potential duplication of knowledge and information. The parliamentary secretary has advised me that the Government will not accept this clause. Does the parliamentary secretary accept that there is no onus on the regulator to do anything to advise applicant No 1 that applicant No 2 can do a deal and save a lot of money, time and effort?

What harm might come from the adoption of this clause, which simply requires the regulator, while fully protecting the identities of all applicants, to discourage duplication of time and effort by applicant No 2 when the wheel has already been invented by applicant No 1?

Mr LOGAN: Is the member for Vasse suggesting that the regulator should tell the holder of a licence to alter genetic material in a unique way when another person is seeking a licence to undertake exactly the same process?

Mr Masters: I do not wish the term "applicant" to be restricted to people who are in the process of applying for a licence. From my reading of the clause, an applicant can still be considered an applicant even after he has been granted a licence. My intention is that applicants and successful licence holders should be referred to as "the first person of the application".

Mr LOGAN: This is a confidentiality clause; it is not a patent registration clause. It is not about acknowledging the similarities between proposals to get a licence to genetically modify material and having a patent over that process. It has nothing to do with that. The member for Vasse appears to be attempting to address that in his amendment, which seems to be a sort of patent provision whereby he is saying that if the wheel has already been invented, why should we reinvent it? That has nothing to do with this clause, which deals with confidentiality. It is right and proper for a regulator to treat the information he receives confidentially.

A person may come along to gain a licence for the purposes of dealing with genetically modified organisms, and maybe he has a process. He may wish to open up a laboratory or to do a field trial - I do not know. I will use the example to which the member for Vasse has alluded. This person may have a process of genetic manipulation.

That person applies only for a licence. Another person may also apply for a licence. It appears to the regulator that the second person has exactly the same process as the first person. This clause states that the regulator shall not take the first person's information into account when considering the second person's application for a licence, unless the first person has given written consent for the information to be so taken into account. It is not up to the regulator to control competition. The effect of it is that the regulator can deal only with an application for a licence on the grounds presented before him. He must deal with the information confidentially, particularly if, as the member says, it is commercial information, unless the first applicant consents to that information being provided to the second applicant.

I imagine, particularly given the competition in GMO manipulation, that any person seeking a licence to do GMO work would say clearly, "No way. I'm not providing that form of information to the second applicant. He will probably get a competitive jump on me." The way the clause is structured is quite proper. The member for Vasse's amendment seeks to achieve something that this clause does not deal with.

Mr MASTERS: One of the groups of people that is opposed to GMOs is environmentalists or greens, and the target of their unhappiness is corporations like Monsanto. I hope that the parliamentary secretary has not accepted that this Bill is only about regulating corporations. As I said at the conclusion of the second reading debate last week, gene technology and genetically modified organisms apply to not only corporations and industry, but also academics, the general public, farmers and a wide range of people who are involved in dealings and in understanding a whole range of matters. There may be cases in which the "first person" may be a corporation that does not want to allow its knowledge, information and patents to go to a second party. However, with the greatest respect, that is just one small part of the GMO picture. Overwhelmingly in Western Australia, most of the work that has been done with GMOs is, as I understand it, conducted at the universities; that is, research.

The clear image that I have in my mind is of two universities. For example, the University of Western Australia school of agricultural sciences may want to do an agricultural trial with a GMO of some sort. Three months later, the Murdoch University school of veterinary science may say to the regulator that it wants to do something. The regulator is the only person who knows that Murdoch University wants to do almost identical work to the work of the University of Western Australia. In theory, there is no commercial confidentiality. However, two universities, both of which are struggling for funds, have the ability to say that they do not want to share knowledge. Nothing in the amendment or in clause 45 requires that knowledge to be shared. All that my amendment says is that the regulator is the only person who has a reasonable chance of knowing that there are two applicants - or one might be a licence holder, and the second one might be an applicant; therefore, the second one would be the applicant - and that there is information that should be common to both applications, or a licence and application. By talking to applicant one or licence holder one in such a way as to protect identities, the regulator can benefit both parties.

I repeat that two universities may have limited funding budgets. The regulator may say to them, "Okay, you want to deal with a genetically modified canola. Everyone in the game knows that canola is a close relative of wild radish. Wild radish is a plant that now grows wild in Western Australia." Therefore, the regulator tells applicant one that it must gather all the details about the movement of genetic information from canola to wild radish everywhere else in the world, and then come back and convince the regulator that its field trial is safe to the environment and to people, and poses no health risks to people. Obtaining that sort of information could be a major task.

I spent a number of years working as a consultant representing proponents. I would go to the Department of Environmental Protection with a proposal. To assist me and my clients, the public servants there would say to me that that information had already been created by another consultant or another proponent. It was not confidential but it was proprietary knowledge. By their passing on that information, as a consultant I knew that I could make someone else an offer to buy, beg, borrow or steal the information that had already been created. Why should we reinvent the wheel? It must be remembered that the regulator is the only person who knows that effort and knowledge is duplicated. The regulator would have the power to get the two people together only if both parties agreed to get together.

Mr LOGAN: This Bill does not deal with the mass production of widgets off a production line; it deals with manipulation of genetic material, which is experimental in its nature and which may or may not be successful. However, the information about how to undertake the processes, and the success of those processes, is securely guarded because of competition, the commercial nature of those processes and any benefits that arise therefrom. It is absolutely binding on the regulator to recognise that fact, and to ensure that the information in any application for a licence is dealt with sensitively and is kept confidential. In dealing with a second application, the regulator cannot pass on the information of the first applicant unless there is written consent from the first applicant. In this day and age - the member for Vasse knows how ruthless it is in the genetically modified

organisms market - that consent probably would not be given and for good reason. That is why it is absolutely important that the regulator deal with that commercial information in a confidential manner.

To answer the second point raised by the member for Vasse about replicating the wheel, the regulator is not there to determine competition in the GMO marketplace. It is not his role to determine that a particular type of process has been invented and it is the only one that will be used. If another person comes along with the same process, the regulator will not inform the second applicant about the first applicant's information unless the first applicant agrees to it. In that instance, the regulator may issue licences to both, assuming that they have met all the tests, conditions and codes of conduct that are required of them. It is not the regulator's role to determine who does or does not make money out of commercial information. I find it strange indeed that a Liberal Party member is running that line, because it is anathema to the philosophy of the Liberal Party.

Mr MASTERS: I am sorry, but I said to the parliamentary secretary that I was specifically not talking about industry, and I gave a specific example. I have spoken to gene technology researchers at Curtin University of Technology and they absolutely agree with the proposition that I am putting forward. The parliamentary secretary should try to get the Monsanto-type bogy out of his mind. Without giving away confidential information, proprietary information that is covered by patents, or the identities of applicants or licence holders, the regulator is the only person who knows when two applicants, or one licence holder and an applicant, must gather the same information to qualify in the regulator's mind as having a fit and appropriate experiment to allow a licence to be granted for dealings in GMOs. I cannot understand why the parliamentary secretary is apparently not prepared to accept that what I am talking about is nothing to do with industry; industry might be involved in the periphery. However, like the parliamentary secretary, I suspect that industry will say that the other company can take a running jump as it is not interested in helping. Monsanto would not be interested in helping another company involved in GMOs. However, as the regulator is the only person who knows when a duplication of information and effort is required, there is no reason that this amendment should not require the regulator also to fully protect identities and information that will go to the licence applicants or the licence holders and to ask whether they want to do a deal, so that both can benefit financially.

Unless the parliamentary secretary has been living on a different planet from me, he would know that all universities are currently under financial constraint. Researchers I have spoken to at Curtin University have said that it is absolutely bloody stupid for the regulator to be the only person with the knowledge of a request or a requirement for duplication of information, yet the regulator is not directed by this legislation to try to broker a deal and see whether there is some way in which, for example, two universities could mutually benefit each other by the first giving written consent for the second to have the information gathered by the first.

I seek leave to amend my amendment. In the first line of my amendment, immediately after the word "applicants", I seek to insert the two words "and licensees".

[Leave denied.]

Mr MASTERS: Not only the parliamentary secretary, but also the Leader of the Government are being pig-headed by not accepting the amendment to my amendment.

Mr Barnett: It demonstrates legislation being handled by someone with limited parliamentary experience.

Mr MASTERS: I very politely made that comment earlier.

Mr Barnett: Maybe he needs to be given time to learn a bit more about Parliament.

Mr Logan: Stick to pig-headed; it is much easier.

Mr Barnett: When you learn to respect this place, you will gain respect from people in this Chamber. When you treat the Parliament like that, you will be treated accordingly.

Mr MASTERS: All I can do is use my time and make the point that -

Mr Barnett: Smart alecs in Parliament do not succeed.

Mr Kobelke: Exactly; you know it well.

The ACTING SPEAKER (Mrs Hodson-Thomas): Order, members! The member for Vasse has the floor.

Mr MASTERS: This amendment makes a genuine attempt to improve the legislation in a way that will put a small additional workload on the shoulders of the regulator, but which potentially could create enormous financial and logistical benefits for research at such universities. However, the Government does not want it.

The ACTING SPEAKER: I am having difficulty hearing the member for Vasse.

Mr LOGAN: I continue my opposition to the proposal. I repeat that I have not mentioned Monsanto or any company or commercial operation. The member for Vasse alluded to the fact that that was in my head when I responded to his argument.

Mr Masters: Check *Hansard*; that is what you have been saying.

Mr LOGAN: No; I have not referred to any particular company. I am talking about what might possibly be commercial information; it could be research information. I am not arguing the point with the member. Nevertheless, it is sensitive information. They were the words I used. It is information that is sensitive to the organisation that made the application; it could be a university, as put forward by the member for Vasse. Nevertheless, competition is extreme between universities, as outlined by the member for Vasse, given that funding is reliant on that level of competition. For those reasons, it is crucial that the regulator deal with this information sensitively and keep the information confidential.

The point that the member for Vasse made about passing on that information is still available under the proposal in the Bill, if the first applicant agrees in writing. I do not understand the member's complaint. The amendment he has moved would not only confuse it dramatically, but also add nothing to the Bill. It has the hallmarks of patent legislation, as opposed to legislation dealing with the clause as written; that is, the regulator must deal with information both sensitively and confidentially, and for good reason.

Mr MASTERS: We are talking to each other, but one of us is not listening, and I do not know whether it is the parliamentary secretary or me. Nothing in the amendment that I moved forces the regulator to hand over commercially confidential information. It refers to nothing other than the knowledge that one person needs that is potentially the same information that the first one has already gathered. The only onus on the regulator is to ensure the information is passed on to a second person.

Debate interrupted, pursuant to standing orders.