GENE TECHNOLOGY BILL

Received from the House of Assembly and read a first time.

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I move:

That this bill be now read a second time.

I seek leave to have the second reading explanation inserted in Hansard without my reading it.

Leave granted.

The Gene Technology Bill 2001 is the South Australian component of the national co-operative regulatory scheme for genetically modified organisms ('GMOs'). The Bill is necessary to ensure that coverage of the national scheme in this State is complete. All Australian Governments have worked together to establish the national scheme with the aim of protecting the safety of the Australian community and the Australian environment, by assessing and managing risks posed by or as a result of GMOs.

The national scheme includes the Gene Technology Act 2000 of the Commonwealth which commenced on 21 June 2001 ('the Commonwealth Act') together with the Commonwealth Gene Technology Regulations; nationally consistent complementary State and Territory legislation, such as this Bill; a Gene Technology Intergovernmental Agreement; and, a Ministerial Council.

Tasmania has already passed its Gene Technology Bill. The Western Australian, Victorian and Queensland Governments have introduced Gene Technology Bills into their Parliaments.

The application of gene technology in the areas of medicine, agriculture, food production and environmental management is providing, or has the potential to provide benefits to South Australians. However, future benefits can only be realised if the community is confident that any associated risks are rigorously assessed and managed through regulation that is transparent and accountable.

The national regulatory scheme adopts a cautious approach to the regulation of GMOs which is transparent, accountable and based on best practice risk assessment and risk management.

Each 'dealing' with a GMO is assessed on a case by case basis to ensure that any risks are identified and that the level of regulation is commensurate with that risk. This approach will protect our community and environment without stifling our research and development sector or unnecessarily limiting the possibility of South Australians gaining benefits from the application of gene technology.
Gene Technology Regulator

The Commonwealth Act established the Gene Technology Regulator ("the Regulator"). The Bill confers functions and powers on the Regulator in the same terms as the Commonwealth Act. The Regulator is a statutory office holder with a high level of autonomy in administering the legislation. The Regulator has the ability to report directly to the Commonwealth Parliament. The office of the Gene Technology Regulator is located in the Commonwealth Department of Health and Aged Care.

Under this Bill and the Commonwealth Act, the Regulator is responsible for regulating 'dealings' with GMOs in South Australia through a national licensing system. 'Deal with' is defined widely in the Bill. For example, it includes developing a GMO and conducting experiments with, breeding, growing, propagating and importing a GMO. Consequently it covers contained research, field trials and commercial release. The intentional release of a GMO into the environment in South Australia, such as a field trial with a GM crop or the commercial growth of a GM crop, is prohibited unless licensed by the Regulator.

In deciding whether to approve a licence authorising the release of a GMO into the environment in South Australia, such as growing a GM plant in a field trial or a general release, the Regulator considers the potential impact of the GMO on the environment and public health. The Regulator requires comprehensive information from an applicant on the impacts of the GMO on animals, plants, water, soil and biodiversity. The Regulator independently assesses the information provided, and also seeks additional information from a variety of sources.

The Regulator must be satisfied that any risks identified to the environment or public health can be managed before an application is formally received. The Regulator assesses the release of a GMO into the environment on the basis of the information provided and decides whether the risks can be managed. The decision is made on the basis of rigorous scientific assessment of risks to human and environmental safety and must also be consistent with policy principles issued by a Ministerial Council concerning social, cultural, ethical and other non-scientific matters.

All applications for licences which involve the release of GMOs into the environment are available to anyone who wishes to see them. Such applications are automatically provided to the States because the Regulator must seek the advice of States regarding matters relevant to the development of the risk assessment and risk management plan. The Regulator develops the risk assessment and risk management plan taking into account advice provided by States and Territory Governments, the gene technology technical advisory committee; Commonwealth agencies; local councils and the public.

In addition, the advice of the States must be sought regarding the Regulator's draft decision regarding whether or not to issue a licence authorising the release of a GMO into the environment and regarding any conditions to be applied to the licence. The Regulator also seeks the advice of the gene technology technical advisory committee; Commonwealth agencies; local councils and the public.

There is a Gene Technology Ministerial Council, on which each Australian jurisdiction will be represented, with the role of setting the policy framework within which the Regulator functions. SA is a member of the Council.

The Bill confers functions on the Ministerial Council in the same terms as the Commonwealth Act enabling it to issue policy principles on social, cultural, ethical and other non-scientific matters. The Regulator cannot act inconsistently with such policy principles. The Council can also issue policy guidelines on matters relevant to the functions of the Regulator and codes of practice which may be applied by the Regulator as a condition of licence.

Advisory committees

The Bill confers functions on three advisory committees in the same terms as the Commonwealth Act. The gene technology technical advisory committee, and the gene technology community consultative committee and the gene technology ethics committee will provide advice to the Regulator and Ministerial Council.

Monitoring, enforcement and penalties

Under the Bill the Regulator has the power to appoint inspectors with extensive powers to undertake routine monitoring and spot checks in South Australia. The Bill provides for significant financial penalties and terms of imprisonment, of up to 5 years, for unlawful dealings with GMOs in this State.

Preserving the identity of non-GM crops in South Australia

The Bill and the Commonwealth Act enable the Gene Technology Ministerial Council to issue a policy principle requiring the Regulator to 'recognise areas designated under State law to separate GM and non-GM crops for marketing purposes'. This would enable States and Territories to enact legislation to designate such areas. These areas would only be recognised by the Regulator if declared for the purpose of preserving the identity of non-GM crops for marketing purposes. As indicated previously, human and environmental safety are matters considered by the Regulator with advice from the gene technology technical advisory committee; State and Territory Governments; Commonwealth agencies; local councils; and, the public.

It is my objective, as the South Australian representative Minister on the Gene Technology Ministerial Council, to have that Council establish the policy principle which recognises 'GM crop restricted areas'. Once this policy principle is established then South Australian legislation can be introduced to effectively declare specific areas 'GM crop restricted areas'.

Currently only two GM crops are permitted to be grown commercially in this State. These are a violet-coloured carnation and a long vase-life carnation. A number of field trials with GM crops are being undertaken in South Australia with crops closest to readiness for commercialisation being canola and field pea. However, it is expected that these would not be commercially grown in this State prior to 2003 and then only if a licence from the Regulator allowed it.

Consequently, we have some time to deal with the issue of preserving the identity of non-GM crops in this State and this time is valuable because the issue requires the thorough consideration of a wide range of factors and input from all state jurisdictions. The Government has released a discussion paper for public consultation titled 'Preserving the identity of non-GM crops in South Australia'. The discussion paper highlights the highly complex nature of the issue.

The object of the Bill, like that of the Commonwealth Act which it corresponds and is complementary, is to protect the safety of the community and the environment. The purpose of declaring 'GM crop restricted areas' may only relate to the marketing of crops which is clearly outside the intent of the Bill. Consequently this Bill does not contain provisions for declaring 'GM crop restricted areas' in South Australia as it is not the appropriate place for such provisions.

If the State, after taking account of the results of the consultation process, should decide to legislate for 'GM crop restricted areas', it should be done once the Gene Technology Ministerial Council has established the policy principle and by an Act that is separate from the South Australian Gene Technology Act. Therefore, this Bill should proceed without such provisions.

In summary, the national regulatory scheme for GMOs adopts a cautious approach to the regulation of GMOs. It is transparent, accountable and based on best practice risk assessment and risk management. The Bill will form the corresponding South Australian law in the national scheme to ensure that the ability of the scheme to protect our South Australian community and South Australian environment is complete.

Explanation of clauses

The provisions of the Bill are as follows:

PART I—PRELIMINARY

Clause 1

This clause is formal.

Clause 2

This clause will be brought into operation by proclamation.

Clause 3

Clause 3 provides that the object of this Bill is to protect the health and safety of people and the environment, by identifying risks posed by, or as a result of, gene technology, and by managing those risks through regulating certain dealings with genetically modified organisms (GMOs).

Clause 4

Clause 4 provides that the object of the Bill is to be achieved through a regulatory framework that will provide that where there are threats of serious or irreversible environmental damage, a lack of scientific certainty should not be used as a reason for postponing cost-effective measures to prevent environmental degradation and provides an efficient and effective system for the application of gene technologies. The object of the Bill is also to be achieved through a framework that operates in conjunction with other Commonwealth and State regulatory schemes relevant to GMOs and GMO products.
Clause 5

A provision is made to be reviewed at the end of each year by a committee appointed by the Parliament, or by the government, as the case may be.

Clause 6

The provision is subject to review by the government, or by the Parliament, as the case may be.

Clause 7

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Clause 30

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Division 2—Dealing with GMOs must be licensed

Clause 32
Clause 32 provides that dealing with GMOs are prohibited unless authorised by a GMO licence, a dealing is a notified low risk dealing, a dealing is an exempt dealing, or the dealing is included on the GMO Register.

Clause 33
Clause 33 describes the same offence as clause 32 but enables strict liability to apply in respect of the offence. Such offences are punishable by smaller pecuniary fines.

Clause 34(4) provides that in this clause ‘exempt dealing’ has the same meaning as in clause 32.

Clause 34
Clause 34(1) provides that a holder of a GMO licence is guilty of an offence if the holder intentionally acts or omits to take an action, knowing that the act or omission contravenes the licence or being reckless as to whether the act or omission contravene the licence.

Clause 34(2) provides a similar offence for a person who is covered by GMO licence. However, in this case it will also be necessary for the prosecution to establish that the person had knowledge of the conditions of licence.

Clause 35
Clause 35 describes the same offences as clause 34 but enables strict liability to apply in respect of those offences.

Clause 36
Clause 36 provides that a person is guilty of an offence if the person deals with a GMO knowing that it is a GMO, and the dealing is on the GMO Register and contravenes a condition specified in the GMO Register (described in Part 6, Division 3) relating to the dealing. Strict liability applies in relation to establishing that the dealing is on the GMO Register and that the dealing contravened a condition on the Register.

Clause 37
Clause 37 provides that a person is guilty of an offence if the person deals with a GMO knowing that it is a GMO and the dealing is a notified low risk dealing, and the dealing contravenes the regulations. Strict liability applies in relation to establishing that the dealing is a notified low risk dealing and that it contravened the regulations.

Clause 38
Clause 38 describes the concept of an aggravated offence, as referred to in clauses 32, 33, 34 and 35. An aggravated offence is one that causes significant damage, or is likely to cause significant damage, to the health and safety of people or to the environment.

Clause 38(2) describes what the prosecution must prove in order to prove an aggravated offence.

PART 5—LICENSING SYSTEM
Division 1—Simplified Outline

Clause 39
Clause 39 provides a simplified outline of the Part.

Division 2—Licence applications

Clause 40
Clause 40 describes the requirements for applying to the Regulator for a licence authorising specified dealings with one or more specified GMOs by a person or persons.

Subclause (3) requires the application to specify whether any of the dealings proposed to be authorised by the licence would involve the intentional release of a GMO into the environment.

Subclause (4) sets out the kinds of dealings in respect of which a person may apply for a licence.

Subclause (5) provides that the applicant may apply for a licence that authorises dealings by a specified person or persons, a class of persons or all persons.

Subclause (6) requires the application to be accompanied by any application fee that may be prescribed.

Clause 41
Clause 41 allows the applicant to withdraw a licence application at any time before the licence is issued. However, the application fee is not refundable.

Clause 42
Clause 42 provides that the Regulator may by written notice require an applicant to give the Regulator further information. The notice may specify the period within which information is to be provided.

Clause 43
Clause 43 provides that the Regulator must consider an application under clause 40, but that the regulator is not required to consider the application in the circumstances listed under subclause (2).
Clause 53 allows the Regulator to take other actions for the purpose of deciding the application, in addition to those required by this Division. These actions may include holding a public hearing.

Clause 54 provides that a person may request a copy of a licence application, risk assessment or risk management plan. The Regulator must provide the person with the information, excluding any confidential commercial information and any information about the applicant's relevant convictions (within the meaning of clause 58).

Clause 55 provides that, after taking the steps required by Division 4 of Part 5 in relation to an application for a GMO licence, the Regulator decides whether or not to issue a licence. If the Regulator decides to issue a licence, he or she may impose conditions to which the licence is subject.

Clause 56 provides that the Regulator must not issue the licence unless he or she is satisfied that any risks posed by the dealings proposed to be authorised by the licence are able to be managed in such a way as to protect public health and safety and the environment.

Subclause (2) specifies the matters the Regulator must have regard to for the purpose of subclause (1), including (where required) the risk management and risk management plan, and any documents received under clause 52 in relation to the licence.

Clause 57 provides that the Regulator must not issue the licence if he is satisfied that issuing the licence would be inconsistent with a policy principle issued by the Ministerial Council under clause 21, and unless the Regulator is satisfied that the applicant is a suitable person to hold the licence.

Clause 58 provides that the Regulator must have regard to in deciding whether a natural person or a body corporate is a suitable person to hold a licence. The Regulator may have regard to other matters, in addition to those specified under subclauses (1) and (2).

Clause 59 provides that the Regulator must provide written notification to the applicant of the Regulator's decision, including any conditions imposed.

Clause 60 provides that a licence issued under the Bill continues in force either until the end of a specified period, or until it is cancelled or surrendered.

Subclause (2) provides that a licence is not in force during any period of suspension.

Division 6—Conditions of licence

Clause 61 provides that licences may be subject to a range of conditions, including conditions set out in clauses 63, 64 and 65, conditions prescribed by the regulations and conditions imposed by the Regulator at the time of issuing the licence at any time thereafter.

Clause 62 describes matters which licence conditions may include and to which they may relate.

Clause 63 deals with conditions that must be imposed on a GMO licence.

Clause 64 makes it a condition of a licence that, where requirements for informing people covered by a licence have been prescribed or specified, the licence holder must comply with those requirements.

Clause 65 provides that, where a person is authorised by a licence to deal with a GMO, and a particular licence condition applies to that dealing, it is a condition of the licence that the person authorised to deal with the GMO must allow the Regulator (or delegate) to enter premises where the dealing is being undertaken, for the purposes of auditing or monitoring the dealing.

Subclause (2) provides that subclause (1) does not limit the conditions that may be imposed by the Regulator or prescribed by the regulations.

This clause makes it a condition of a licence that the licence holder provides information to the Regulator in the following circumstances—

- where he or she becomes aware of additional information as to any risks to public health and safety or to the environment, or
- where he or she becomes aware of any contraventions of the licence by a person covered by the licence; or
- where he or she becomes aware of any unintended effects of the dealings authorised by the licence.

Subclause (2) provides that the licence holder is to have become aware of additional information of the kind mentioned under subclause (1) if he or she was reckless as to whether such information existed. The licence holder is also taken to have become aware of contraventions or unintended effects of a kind mentioned in subclause (1) if he or she was reckless as to whether such contraventions had occurred or unintended effects existed.

Clause 66 provides that a person covered by a licence may inform the Regulator if he or she becomes aware of the following: additional information as to any risks to public health and safety or the environment associated with the dealings authorised by the licence; any contraventions of the licence by a person covered by the licence; or any unintended effects of the authorised dealings.

Clause 67 provides that civil proceedings may not be brought against a person who has given information to the Regulator under clause 65 or 66, because another person has suffered loss, damage or injury as the result of that disclosure.

Division 7—Suspension, cancellation and variation of licences

Clause 68 this clause gives the Regulator the power to suspend or cancel a licence. This power may be exercised by the Regulator by giving written notice to the licence holder. The grounds for the exercise of this power are listed in this clause and include: the Regulator's belief on reasonable grounds that there has been a breach of a licence condition; or the Regulator becoming aware of risks associated with the continuation of the authorised dealings and being satisfied that the licensee has not proposed or is not in a position to implement, adequate measures to deal with those risks.

Clause 69 this clause allows a licence holder to surrender a licence, with the consent of the Regulator.

Clause 70 Subclause (1) provides that a licence holder and a transferee may jointly apply to the Regulator for the licence to be transferred to the transferee.

Subclause (2) provides that the application must be in writing and must include information prescribed in the regulations (if any) and information specified in writing by the Regulator.

Subclause (3) requires that the Regulator must not transfer the licence unless satisfied that any risks posed by the authorised dealings will continue to be able to be managed in such a way as to protect public health and safety and the environment.

Subclause (4) provides that the Regulator must not transfer the licence unless satisfied that the transferee is a suitable person to hold the licence.

Subclause (5) requires that the Regulator provide written notice of his or her decision to the licence holder and the transferee.

Clause 71 provides that if the Regulator decides to transfer the licence, the transfer takes effect on the date specified in the written notice and the licence continues in force as mentioned in clause 60 and is subject to the same conditions as in force immediately before the transfer.
Biosafety Committee; and the containment level of facilities in which such dealings are undertaken.

Division 3—The GMO Register

Clause 76
This clause comprises a note that states that section 76 of the Commonwealth Act provides for the establishment and maintenance of the GMO Register.

Clause 77
This clause provides that, where the Regulator determines that a dealing with a GMO is to be included on the GMO Register, the Register must contain a description of the dealing with the GMO; and any condition(s) to which the dealing is subject.

Clause 78
Clause 78 provides that the Regulator may place a dealing with a GMO on the Register if satisfied that the dealing is, or has been, authorised by a GMO licence or the GMO is a GM product and is a genetically modified organism only because it has been declared as such by the regulations.

Clause 79
Subclause (1) prevents the Regulator from placing a dealing with a GMO on the Register unless the Regulator is satisfied that any risks posed by the dealing are minimal, and that it is not necessary for the persons undertaking the dealing to hold, or be covered by, a GMO licence in order to protect public health and safety or the environment.

For the purposes of subclause (1) the Regulator must have regard to the matters specified under subclause (2), which include any data available to the Regulator concerning adverse effects posed by the dealing, and may have regard to any other matters that the Regulator considers relevant.

Clause 80
This clause allows the Regulator to vary the GMO Register by written determination. A variation may remove a dealing from the GMO Register; revoke or vary conditions to which the dealing is subject; or impose additional conditions on the dealing.

Clause 81
This clause comprises a note that states that section 81 of the Commonwealth Act requires the Regulator to permit any person to inspect the GMO Register.

PART 7—CERTIFICATION AND ACCREDITATION

Division 1—Simplified outline

Clause 82
This clause provides a simplified outline of the Part.

Division 2—Certification

Clause 83
This clause allows a person to apply to the Regulator for certification of a facility to a particular containment level. The application must be in writing, must contain such information as the Regulator requires, and be accompanied by the application fee (if any) as prescribed by the regulations.

Clause 84
This clause authorises the Regulator to certify the facility to a specified containment level if it meets the containment requirements specified in guidelines issued by the Regulator under clause 90.

Clause 85
This clause authorises the Regulator to request an applicant for certification of a facility to provide further information regarding the application as the Regulator requires. The written notice which requests the information may specify the period within which information must be provided.

Clause 86
This clause provides that the certification of a facility is subject to several conditions: those imposed by the Regulator at the time of certification; those imposed after certification varying the original certification; and any conditions prescribed by the regulations.

Clause 87
This clause authorised the Regulator to vary the certification of a facility.

Clause 88
This clause authorises the Regulator to suspend or cancel the certification of a facility if he or she believes on reasonable grounds that a condition of the certification has been breached.

Clause 89
Subclause (1) requires that, before suspending, cancelling or varying a certification, the Regulator must provide written notice of the proposal to the holder of the certification.

Subclause (2) states the formal requirements for the notice and provides that the notice may require the holder of the certification to provide specific information relevant to the proposal suspended.
PART 8—THE GENE TECHNOLOGY TECHNICAL ADVISORY COMMITTEE, THE GENE TECHNOLOGY COMMUNITY CONSULTATIVE COMMITTEE AND THE GENE TECHNOLOGY ETHICS COMMITTEE
Division 1—Simplified outline

Clause 99
This clause provides a simplified outline of the Part.
Division 2—The Gene Technology Technical Advisory Committee

Clause 100
This clause comprises a note that states that section 100 of the Commonwealth Act provides for the establishment and membership of the Gene Technology Technical Advisory Committee.

Clause 101
This clause provides that the function of the Gene Technology Technical Advisory Committee is to provide scientific and technical advice, on the request of the Registrar or the Ministerial Council, on a range of specific matters including gene technology, GMOs and GM products and the biosafety aspects of gene technology.

Clause 102
This clause comprises a note that states that section 102 of the Commonwealth Act provides for the appointment of expert advisers to the Gene Technology Advisory Committee.

Clause 103
This clause comprises a note that states that section 103 of the Commonwealth Act provides for the payment of remuneration and allowances to members of, and expert advisers to, the Gene Technology Technical Advisory Committee.

Clause 104
This clause comprises a note that states that section 104 of the Commonwealth Act empowers the making of regulations relating to the establishment and operation of the Gene Technology Technical Advisory Committee.

Clause 105
This clause comprises a note that states that section 105 of the Commonwealth Act deals with the establishment of subcommittees by the Gene Technology Technical Advisory Committee.

Clause 106
This clause comprises a note that states that section 106 of the Commonwealth Act establishes the Gene Technology Community Consultative Committee.

Clause 107
This clause comprises a note that states that section 107 of the Commonwealth Act provides for the payment of remuneration and allowances to members of the Consultative Committee.

Clause 108
This clause comprises a note that states that section 108 of the Commonwealth Act provides for the establishment of subcommittees by the Consultative Committee.

Clause 109
This clause comprises a note that states that section 109 of the Commonwealth Act empowers the making of regulations relating to the membership and operation of the Consultative Committee.

Clause 110
This clause comprises a note that states that section 110 of the Commonwealth Act empowers the making of regulations relating to the membership and operation of the Consultative Committee.

Clause 110A
This clause comprises a note that states that section 110A of the Commonwealth Act provides for the establishment of subcommittees by the Consultative Committee.

Clause 111
This clause comprises a note that states that section 111 of the Commonwealth Act provides for the establishment and membership of the Gene Technology Ethics Committee.

Clause 112
This clause provides that the function of the Ethics Committee is to provide advice, on the request of the Registrar or the Ministerial Council on specific matters including ethical issues relating to gene technology.

Clause 113
This clause comprises a note that states that section 113 of the
Commonwealth Act provides for the appointment of expert advisers to the Ethics Committee.

 Clause 114
This clause comprises a note that states that section 114 of the Commonwealth Act provides for the payment of remuneration and allowances to members of, and expert advisers to, the Ethics Committee.

 Clause 115
This clause comprises a note that states that section 115 of the Commonwealth Act empowers the making of regulations relating to the membership and operation of the Ethics Committee.

 Clause 116
This clause comprises a note that states that section 116 of the Commonwealth Act deals with the establishment of subcommittees by the Ethics Committee.

PART 9—ADMINISTRATION
Division 1—Simplified outline

 Clause 117
This clause provides a simplified outline of the Part.

 Division 2—Appointment and conditions of Regulator

 Clause 118
This clause comprises a note that states that section 118 of the Commonwealth Act provides for the appointment of the Regulator.

 Clause 119
This clause comprises a note that states that section 119 of the Commonwealth Act sets out the circumstances in which the Regulator’s appointment may be terminated.

 Clause 120
This clause comprises a note that states that section 120 of the Commonwealth Act requires the Regulator to disclose his or her interests to the Minister.

 Clause 121
This clause comprises a note that states that section 121 of the Commonwealth Act deals with the appointment of a person to act as the Regulator.

 Clause 122
This clause comprises a note that states that section 122 of the Commonwealth Act deals with the terms and conditions of appointment of the Regulator.

 Clause 123
This clause comprises a note that states that section 123 of the Commonwealth Act prohibits the Regulator from engaging in paid outside employment without the approval of the Minister.

 Clause 124
This clause comprises a note that states that section 124 of the Commonwealth Act provides for the payment of remuneration and allowances to the Regulator.

 Clause 125
This clause comprises a note that states that section 125 of the Commonwealth Act deals with the entitlement of the Regulator to leave of absence.

 Clause 126
This clause comprises a note that states that section 126 of the Commonwealth Act deals with the procedure for resignation by the Regulator.

Division 3—Money

 Clause 127
This clause provides that the Regulator may charge for services provided by, or on behalf of, the Regulator in the performance of his or her functions under this Bill and the regulations.

 Clause 128
As the Bill applies to the Crown in all its capacities including the Crown in right of South Australia, clause 128(1) has been included to clarify that fees and charges under the Bill and the regulations are notionally payable by the State and bodies representing the State.

 Clause 129
This clause comprises a note that states that section 129 of the Commonwealth Act provides for the establishment of the Gene Technology Account.

 Clause 130
This clause provides that certain amounts must be paid to the Commonwealth for crediting to the Gene Technology Account.

 Subclause (2) provides that the Consolidated Fund is appropriated to the extent necessary to enable amounts to be paid to the Commonwealth in accordance with subclause (1).

 Clause 131
This clause provides that the amounts specified under paragraphs (a) to (c) may be recovered in court as debts due to the State of South Australia.

 Clause 132
This clause comprises a note that states that section 132 of the Commonwealth Act sets out the purposes for which money in the Gene Technology Account may be expended.

 Division 4—Staffing

 Clause 133
This clause comprises a note that states that section 133 of the Commonwealth Act provides for staff to be made available to assist the Regulator.

 Clause 134
This clause comprises a note that states that section 134 of the Commonwealth Act enables the Regulator to engage consultants.

 Clause 135
This clause comprises a note that states that section 135 of the Commonwealth Act provides for staff to be seconded to the Regulator.

 Division 5—Reporting requirements

 Clause 136
This clause requires the Regulator to provide the Minister with an annual report on the operations of the Regulator under this Bill and the regulations.

 Clause 136A
This clause requires the Regulator to provide the Minister with quarterly reports on the Regulator’s operations under the Bill and the regulations. The reports must include information on various matters including GMO licences issued during the quarter. The Minister must cause a copy of the report to be laid before each House of Parliament within 15 sitting days of that House after the Minister receives the report.

 Clause 137
Subclause (1) provides that the Regulator may, at any time, cause a report about matters relating to the Regulator’s functions under this Bill to be laid before each House of Parliament.

 Subclause (2) requires the Regulator to give a copy of the report to the Minister.

Division 6—Record of GMO and GM product dealings

 Clause 138
This clause provides that the Record of GMO and GM product dealings (which is to be maintained by the Regulator) must contain specific information (other than confidential commercial information), in relation to licences issued under clause 55. The Record must also contain specific information (other than confidential commercial information) in relation to each notifiable low risk dealing that is notified in accordance with regulations under clause 75. The Record must also contain any information (excluding confidential commercial information) prescribed by the regulations regarding GM products mentioned in designated notifications provided to the Regulator under any Act.

 The Record must also contain a description of each dealing on the GMO Register and any condition to which the dealing is subject. This information must be entered on the Record as soon as is reasonably practicable.

 Clause 139
This clause comprises a note that states that section 139 of the Commonwealth Act requires the Regulator to permit any person to inspect the Record.

Division 7—Reviews of notifiable low risk dealings and exemptions

 Clause 140
This clause allows the Regulator, at any time, to consider whether a dealing with a GMO should become a notifiable low risk dealing, or whether an existing notifiable low risk dealing should no longer be recognised as such.

 Subclause (2) requires that, in making these decisions, the Regulator must consider the matters in clause 74(2) or clause 74(3). These matters include whether the proposed dealing involves an intentional release of a GMO into the environment and whether the GMO can be biologically contained so that it is not able to survive or reproduce without human intervention.

 Clause 141
This clause allows the Regulator, at any time, to consider whether an exempt dealing should no longer be such and whether a dealing should be an exempt dealing.

 Clause 142
This clause enables the Regulator to publish a notice, at any time, inviting submissions with respect to any matter the Regulator may consider under clauses 140 and 141. This clause also sets out the matters that the Regulator must include in the notice and requires the Regulator to notify the States, the Gene Technology Technical...
Clause 143
This clause authorises the Regulator to recommend to the Ministerial Council that a dealing be declared notifiable in accordance with the regulations under clause 143(1) if satisfied that:

(a) a matter relates to an existing notifiable low risk dealing which is proposed to be reconsidered and the Regulator considers that the dealing should not be a notifiable low risk dealing, or

(b) the matter relates to a dealing that is made under clause 144.

Clause 144
This clause provides that the requirement to review notifiable low risk dealings or exemptions is at the discretion of the Regulator.

Clause 145
This clause provides a simplified outline of the Part.

Clause 146
This clause authorises the Regulator to give directions to the licence holder to take all reasonable steps to bring that person back into compliance with the licence, where the Regulator believes the licence holder has not complied with the licence or regulations and it is necessary to exercise powers under the licence to protect public safety or health or the environment.

Clause 147
This clause authorises the Regulator to take the same action with respect to a person covered by a GM licence.

Clause 148
This clause provides that if costs are incurred by the Regulator, the person covered by the licence is liable to pay the State an amount equal to the cost.

Clause 149
This clause provides that a court may order forfeiture of any thing owned or involved in the commission of an offence. The forfeited thing becomes the property of the State and may be dealt with in accordance with directions of the Regulator.

PART 11—POWERS OF INSPECTION

Division 1—Simplified outline

Clause 150
This clause provides a simplified outline of the Part.

Division 2—Appointment of inspectors and identity cards

Clause 151
This clause requires the Regulator to issue an identity card to an inspector.

Clause 152
This clause provides powers of entry and monitoring to inspectors for the purposes of discovering whether the Bill or regulations have been complied with.

Clause 153
This clause describes the monitoring powers that an inspector may exercise for the purposes of finding out whether the Bill or regulations have been complied with.

Clause 154
This clause provides the powers of entry and seizure. The warrant is to be executed, giving a copy of the warrant to the person as soon as practicable after the seizure.

Clause 155
This clause describes the powers an inspector may exercise under clause 154(2).

Clause 156
This clause authorises an inspector in specific circumstances to operate equipment at premises, seize equipment, put material in documentary form and to copy material.

Clause 157
This clause authorises the inspector on certain occasions to secure a premises until it has been operated by an expert.

Clause 158
This clause provides an inspector with powers of entry and seizure and power to secure a thing, and to require compliance with the Bill and regulations, when the inspector has reasonable grounds for suspecting that there may be a thing on premises in respect of which the Bill or regulations have not been complied with, and the inspector considers it necessary to use powers under this clause to avoid an imminent risk of death, serious illness, serious injury or to protect the environment. These powers may only be exercised to the extent that it is necessary for the purpose of avoiding an imminent risk of death, serious illness, serious injury or serious damage to the environment.

Clause 159
If the Regulator incurs costs through an inspector taking reasonable steps or arranging steps to be taken, under clause 158(2)(e), the Regulator can recover the cost of taking those steps.

Clause 160
This clause provides that if an inspector cannot exercise any of the powers under this Part in relation to premises unless he or she produces his or her identity card upon being requested to do so by the occupier of those premises.

Clause 161
This clause provides that, before obtaining a warrant from a person to enter premises, or to enter premises under clauses 153(2)(a) or 154(2)(a), the inspector must inform the person that he or she may refuse consent.

Clause 162
This clause requires the inspector to make available a copy of a warrant to the occupier of the premises or a person representing the occupier. This copy need not include the signature of the magistrate who issued the warrant. The inspector must also identify himself or herself.

Clause 163
This clause provides requirements for an inspector to follow before entering premises under a warrant. An inspector does not have to comply with these requirements if he or she believes on reasonable grounds that immediate entry is required to ensure a person’s safety, to prevent serious damage to the environment or to ensure that the effective execution of the warrant is not frustrated.

Clause 164
This clause empowers an inspector to examine goods, open search baggage or a container, if he or she believes on reasonable grounds that the goods are goods to which this clause applies, and that the goods may be, or contain, evidential material. The inspector is also authorised to question a person who appears to be associated with the goods, any question regarding the goods. Failure or refusal to answer a question relating to such goods is punishable by a maximum fine of $3 300.

Clause 165
This clause provides that an inspector may seize any goods if he or she has reasonable grounds to suspect the goods are evidential material.

Clause 166
This clause provides that if an inspector seizes, under a warrant, a thing or information that can be readily copied the inspector must, on request of the occupier or their representative who is present when the warrant is executed, give a copy of the thing or the information to that person as soon as practicable after the seizure.

Clause 167
This clause provides that if a warrant is being executed, occupiers
This clause comprises a note that states that section 183A of the Commonwealth Act requires that a State be taken to be a person aggrieved for the purpose of the application of the Administrative Decisions (Judicial Review) Act 1977 of the Commonwealth in relation to certain decisions, failures or conduct under the Commonwealth Act or regulations.

Clause 183B
This clause does not affect any other right of appeal under Commonwealth law or the Constitution.

Division 3—Confidential commercial information

Clause 184
This clause provides that a person may apply to the Regulator for a declaration that specified information is confidential commercial information. The application must be in writing and in the form approved by the Regulator.

Clause 185
This clause provides that if the Regulator is satisfied that information is of a kind specified under subclause (1)(a) to (c) then he or she must declare that information to be confidential commercial information.

Subclause (2) provides that the Regulator may refuse to make a declaration if satisfied that the public interest in disclosure outweighs the prejudice that the disclosure would cause to any person.

Subclause (3) provides that if the Regulator declines to declare information to be confidential commercial information and the information relates to a location where field trials involving GMOs are occurring, or are proposed to occur, the Regulator is required to make publicly available reasons for the declaration, including the matters listed under clause 185(3A)(b) or (c).

Clause 186
This clause enables the Regulator to revoke a declaration made under clause 185 if the Regulator is satisfied that the information no longer meets the criteria set out in clause 185(1)(a), (b) or (c), or that the public interest in disclosure of the information outweighs the prejudice that disclosure would cause to any person. The revocation of a declaration does not take effect until any review rights under clause 181 or 183 have been exhausted.

Clause 187
This clause prohibits the disclosure of confidential commercial information except in the specified circumstances.

Division 4—Conduct by directors, employees and agents

Clause 188
This clause provides for the determination of the elements of offences when a body corporate is involved and when employees or agents of other persons are involved.

Clause 189
This clause defines terms used in clause 188 of the Bill.

Division 5—Transitional provisions

Clause 190
This clause provides for transitional arrangements in relation to dealings with GMOs approved prior to the commencement of the Bill. The clause only covers matters previously approved by the Genetic Manipulation Advisory Committee.

The effect of clause 190(1) and (2) is that if an advice to proceed from the Genetic Manipulation Advisory Committee was in force in relation to a dealing with a GMO before the commencement of the licensing provisions of this Bill, then that dealing is deemed to be licensed under this Act. The licence is taken to be subject to any conditions imposed by the Genetic Manipulation Advisory Committee’s advice to proceed.

Clause 191
This clause provides that regulations may be made in relation to transitional matters arising from the enactment of this Bill.

Division 6—Other

Clause 192
This clause provides a prohibition against knowingly giving false or misleading information or producing a document that is false or
Clause 192A provides the penalty and the elements of an offence involving damaging, destroying or interfering with premises at which MO dealings are being undertaken, or damaging, destroying, interfering with a thing, or removing a thing from, such premises.

Clause 192B provides that an attempt to commit an offence against a Bill constitutes the offence of attempting to commit that offence.

Clause 193 provides a regulation making power with respect to matters required or permitted to be prescribed by the Bill, or necessary or convenient to be prescribed for carrying out or giving effect to the Bill. The regulations may require a person to comply with codes of practice or guidelines issued under the Bill.

Clause 194 provides for an independent review of the Bill as soon as possible after four years after its commencement.

The Hon. CAROLYN PICKLES secured the adjournment of the debate.