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Patently at odds over genes

A war of words has erupted over a federal bill aimed at banning the patenting of biological material

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IT was open letters at 20 paces this week as opponents and proponents of gene patenting fought over the merits of each side.

The ruckus erupted amid the likelihood that a bill to prohibit the process could be debated within months. The Senate's legal and constitutional affairs committee is considering the private member's bill — Patent Amendment (Human Genes and Biological Materials) Bill 2010 — and must submit its report by June 16.

The first shot came from a group co-ordinated by industry body Medicines Australia.

"Should the bill become law we hold grave concerns about the unintended consequences on the access of Australians to life-changing medicines and diagnostics, on the ability of scientists to conduct medical research in this country and on the future of the Australian biotechnology and medicines industry," they wrote in their open letter to federal parliament, released to the media.

Translation: it takes time and money to commercialise drugs and other biomedical products. We need patent royalties to

cover costs. No money, no drugs.

Shot two will come next week from the backers of the proposed legislation. Their counter letter, obtained by *Weekend Health*, is co-ordinated by Cancer Council Australia. It says the bill would not compromise medical research or reduce access to healthcare products. "The bill... aims to do the opposite: protect competitive research by eliminating commercial monopolies over naturally occurring biological materials or those that have been immaterially altered; and to help ensure that diagnostic tests remain available in public laboratories."

In other words: patents are awarded for invention, not discovery. If researchers and clinicians must pay for access to humanity's genetic nuts and bolts, the development of new treatments and products would slow to a trickle. Money from inventive products, not discovery of natural phenomena.

That's why breast cancer campaigner Sarah Murdoch backs the bill. "It's as simple as this: how is it possible [that] naturally occurring genes that you and I possess are



RAY STRANGE

Breast cancer campaigner Sarah Murdoch wonders how it is possible for naturally occurring genes to be owned by anyone

now owned by others?" she asked last November when a cross-party group of senators, including Bill Heffernan, Helen Coonan, Rachel Siewert and Nick Xenophon, announced they would table the bill that month. Liberal MP Peter Dutton did so in the House of Representatives last month.

A quick look at the 108 submissions to the Senate inquiry suggests the obvious: backers of the bill are largely academics, clinicians and advocacy groups such as Cancer Voices Australia.

Opponents generally are biotech industry outfits, patent attorneys and a handful of research institutes seeking funding through patents, for instance Mel-

bourne's Walter and Eliza Hall Institute.

While the basic dispute is about patenting human genes the Australian Academy of Science is concerned the wording of the bill is vague. "The way in which the bill is written would cover far more than human DNA," argues its science policy secretary Bob Williamson. "It would cover every naturally occurring molecule, including bacterial, yeast and DNA of plants and animals."

Not so, claims patent law expert Luigi Palombi from the Australian National University and Sydney University. "It would only prevent the patenting of biological materials when modifications to

them are so trivial or immaterial that they're substantially identical to those that naturally occur."

But Heffernan is rewriting the contentious paragraph. "It's good," he says. "We've got [opponents] to think about solutions."

Meanwhile, *Weekend Health* understands industry groups such as Melbourne's AusBiotech have opted to support the Intellectual Property Laws Amendment (Raising the Bar) Bill 2011, released in draft form by Innovation, Industry, Science and Research Minister Kim Carr.

This draft bill sidesteps gene patenting altogether by guaranteeing free access to "patented inventions for research and regulat-

ory activities", a route Palombi says is unworkable.

The fundamental issue goes back to July 2008, when Melbourne-based Genetic Technologies informed eight public pathology laboratories that it would enforce its monopoly rights — obtained from US-based Myriad Genetics — over diagnostic testing of the BRCA1 and BRCA2 genes, where mutations linked to breast and ovarian cancer are located. In November 2008, GTG dropped its push for intellectual property rights. Still, the patents have triggered law suits in Australia and the US.

Additional reporting: Sue Dunlevy