



24 February, 2011

Ms Julie Dennett  
Committee Secretary  
Senate Standing Committee on Legal and Constitutional Affairs  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia

By Fax 02 6277 5794

Dear Ms Dennett

**Submission to Senate Standing Committee on Legal and Constitutional Affairs –  
Inquiry into the Patent Amendment (Human Genes and Biological Materials)  
Bill 2010 (*Bill*)**

We wish to provide this submission to the Senate Standing Committee on Legal and Constitutional Affairs (Committee) in its inquiry on the Bill.

We ask the Committee to consider our submission in the context of the effects that the Bill (if passed in its current form) would have on our company's business, and on the Australian biotechnology and pharmaceutical industries more generally.

The Bill proposes to exclude the patenting of the following under Australian law:

'biological materials including their components and derivatives, whether isolated or purified or not and however made, which are identical or substantially identical to, such materials as they exist in nature.'

In our view, the effects of this ban on the patenting of biological materials would be extremely broad, and may have some serious consequences for our company's continued research and development and other operations in Australia.

Our company currently has five granted Australian patents and another four Australian patent applications which contain claims which could potentially fall within the broad wording of the proposed ban on patentability outlined in the Bill.

Specifically, our company's patents and patent applications include claims in relation to fragments of human growth hormone.

*Potential effect of Bill on Metabolic Pharmaceuticals Pty Ltd*

If passed in its current form, the Bill may have serious consequences for the operation of Metabolic Pharmaceuticals' business.

Patents are key assets for Metabolic Pharmaceuticals, If the company is not able to seek and obtain protection for its research by way of a patent, this could potentially have the consequence of rendering it impossible to undertake clinical development and develop pharmaceuticals aimed at reducing obesity, osteoporosis and other diseases.

This would have further impacts on :

- inability to attract and retain investors;
- heavily reduced share price;
- inability to continue research in the area due to lack of funding and inability to protect the results of research;
- loss of large potential international revenue from licensing of patented technology;]

*Submission*

For the reasons outlined above, we strongly urge the Committee to reject the proposed amendment to the Patents Act 1990.

As an alternative, we urge the Committee to review and consider the recommendations of the Australian Law Reform Commission's report on gene patenting and human health from 2004.

Yours sincerely,

**David Kenley**  
CEO